



May 26, 2011

Marc Warren
Acting Chief Counsel
Federal Aviation Administration
Washington, DC

Re: Non-Citizen Trust / Meeting of June 1, 2011 - Response to Questions by AWG Industry Consultative Group

Dear Marc,

With a view to assisting FAA by providing considered responses to the questions set out in the Notice of the June 1, 2011 meeting, an informal consultative group was formed under the aegis of the Aviation Working Group.

That group included an array of aviation industry participants, including a number of leading commercial and business aircraft manufacturers, financiers, lessors, trustees, lawyers (both in and outside of the express FAA Aeronautical Center legal practice) and other service providers and FAA users.

Attached is a document setting out the responses prepared by that group. Such responses follow an introductory section that we believe puts the use of NCTs in historical, legal and commercial perspective.

As of this writing, we are authorized to express the support of the organizations and companies listed on the Schedule to this letter (the *Supporting Entities*) for the content of the attached document.

We have invited other participants in the group to express their support for the content of the attached document to FAA prior to the June 1, 2011 meeting.

A number of participants in the group will be at the meeting. While the undersigned cannot attend on account of a prior scheduling conflict, the attached document will be outlined on that occasion by John Pritchard, Holland & Knight, the coordinating draftsman of the responses.

Joining John and the undersigned on the drafting group, which was tasked with capturing the views of, sending drafts to, and meeting with, the wider consultative group, were the following: Andrea Brantner – who also coordinated the industry input (GECAS), Jon Croasmun (Wells Fargo), Gil Gaddis (Crowe & Dunlevy), Amy Rhodes (GE Capital Corporate Aircraft Finance) and Ed Gross (Vedder Price). AWG would like to express its appreciation to all those involved in the effort.

The Supporting Entities stand ready to help following the meeting, seeking to ensure that the requirements of USG and the global aviation industry are met in connection with the continued use of NCTs.

We thank you very much for taking our views into account.

Sincerely yours,

A handwritten signature in blue ink that reads "J. Wool". The signature is written in a cursive style with a horizontal line underneath it.

Jeffrey Wool
Secretary General
Aviation Working Group

CC: David Grizzle and Joseph Standell, FAA

CC: Each of the Supporting Entities Noted Above

CC: Scott Scherer (Boeing) and Claude Brandes (Airbus), AWG Co-Chairs

CC: John Pritchard (Holland & Knight) and Andrea Brantner (GECAS), AWG Representatives

Supporting Entities
(listed in alphabetical order)

Associations:

Air Carrier Association
Air Transport Association
Aircraft Owners and Pilots Association
Association of Aircraft Title Lawyers
Aviation Working Group
Equipment Leasing and Finance Association
General Aviation Manufacturing Association
National Air Transportation Association
National Aircraft Finance Association
National Business Aviation Association
Pacific Northwest Business Aviation Association
Regional Airline Association

Companies:

A&L Goodbody
AerCap Holdings N.V.
Airbus Financial Services
Aircastle Limited
Aircraft Guaranty Title & Trust
Alaska Airlines, Inc.
Allen & Overy LLP
Asset Finance Legal Counsel, LLP
Avcorp Registrations
Aviation Capital Group Corp.
Aviation Legal Group, P.A.
AWAS
Bank of Utah
Bell Helicopter Textron Inc.
Boeing Capital Corporation
Bombardier Aerospace Structured Finance
Cessna Aircraft Company
Cessna Finance Corporation
Cirrus Aircraft
Cooling & Herbers, P.C.
Crowe & Dunlevy
Crowell & Moring LLP
Dassault Falcon Jet Corp.
Daugherty, Fowler, Peregrin, Haught & Jenson
DeBee Gilchrist
Embraer S.A.

Fulbright & Jaworski L.L.P.
GE Capital Aviation Services
GE Capital Corporate Aircraft Finance
Greenberg Traurig, P.A.
Harper Meyer Perez Hagen O'Connor Albert & Dribin LLP
Hawker Beechcraft Corporation
Hinckley, Allen & Snyder, LLP
Hogan Lovells US LLP
Holland & Knight LLP
Horizon Air Industries, Inc.
Katten Muchin Resenman LLP
Kaye Scholer LLP
Lane Powell PC
McAfee & Taft, P.C.
Michael L. Dworkin and Associates
Milbank, Tweed, Hadley & McCloy LLP
ORIX Aviation Systems Limited
Pillsbury Winthrop Shaw Pittman LLP
Pratt & Whitney
Ray Quinney & Nebeker P.C.
Smith, Gambrell & Russell, LLP
Stewart H. Lapayowker, P.A.
Textron Financial Corporation
Vedder Price P.C.
Wells Fargo Bank Northwest, NA
Wilmington Trust Company

NCT - AWG INDUSTRY CONSULTATIVE GROUP

**RESPONSES TO FAA DISCUSSION QUESTIONS
CONTAINED IN
NOTICE OF JUNE 1, 2011 PUBLIC MEETING**

INTRODUCTION TO
NCT - AWG INDUSTRY
CONSULTATIVE GROUP RESPONSES

This Consultative Group formed under the aegis of the Aviation Working Group (AWG - see www.awg.aero) is made up of and has drawn its views from a broad aviation industry coalition of commercial and business aircraft manufacturers, financiers, lessors, trustees, lawyers (both in and outside of the express FAA Aeronautical Center legal practice) and other service providers and FAA users. The Group believes that the approach to NCTs should be solution-oriented, taking into account and advancing established regulatory, economic and commercial objectives, and transactional and related practicalities.

Our goals are virtually identical to those of the FAA today and over the past 40 years and before: to continue to lead and facilitate U.S. aviation safety, security and development needs globally within the bounds of the treaties, statutes and regulations governing the industry while concurrently continuing to achieve important economic and commercial objectives.

The Development of U.S. Law
Relating to the Registration of Aircraft Owned by Trustees
for Non-U.S. Citizen Beneficiaries

The development of the registration of aircraft by the Federal Aviation Administration (the "FAA") requires a review of the relevant provisions of the Transportation Code (the successor to the Civil Aeronautics Act of 1938) and the Federal Aviation Regulations (the "FARs"). Section 44103(a) of the Transportation Code provides that an aircraft must be registered in the name of its "owner," which is not defined in the Transportation Code. Although many countries register aircraft in the names of their operators, the U.S. rejected this approach and has always registered aircraft based on their ownership. An important distinction, though, which will be discussed later, is that in many cases, the owner of an aircraft is not also the operator of that aircraft.

The general rule followed by the FAA beginning with the enactment of the Civil Aeronautics Act of 1938 is the owner is the person holding legal title to an aircraft. This rule was discussed and expanded somewhat in the O'Connor decision (1 CAA 5) in 1939, where the FAA determined that the buyer under a conditional sales agreement is the "owner" for FAA registration purposes even though the title to the aircraft was vested in the seller and remained in the seller until all payments were made. Over the following years this exception has been expanded to include nominal purchase option leases, synthetic leases and other forms of leases generally referred to as "finance" leases. This refinement of the FAA's position was in response to increasingly complex and sophisticated forms of aircraft financing instruments, and has paralleled the characterization of transactions under the Uniform Commercial Code ("UCC").¹

Once a determination has been made as to the identity of the owner of an aircraft, the next step is to determine if the owner is eligible to register the aircraft in its name. Section 44102(a)(1) of the Transportation Code permits the registration of an aircraft only if it is owned by a "citizen of the United States" (with two exceptions in the statute that are not relevant to the current discussion). A "citizen of the United States" is defined in § 40102(a)(15) of the Transportation Code with respect to individuals, partnerships and corporations. Trusts and trustees (as well as other types of entities that were not commonly used in aircraft transactions at the time the Civil Aeronautics Act became law in 1938) were not and are not today included in the definition of "citizen". However, there are numerous references in the FARs to "persons" in connection with respect to aircraft, and "person" is defined in 14 C.F.R. 1.1 to include a "trustee" of an individual, a partnership, a corporation and a company, among others.

¹ The FAA Aeronautical Center Counsel ("ACC") has several published legal opinions that have reviewed evolving types of transactions and applied legal principles from the UCC. In 1981 (46 Fed Reg 18877 March 26, 1981), the FAA drew on the development of commercial financing and leasing principles at that time to analyze how American Airlines was able to lease an aircraft from a UK owner and itself still be the owner for FAA purposes. The complex cross border transaction was critical to bringing foreign capital to the aircraft market and was based on sound legal principles. In 1990 (55 Fed Reg 40502 October 3, 1990), the ACC issued an opinion on finance leases to distinguish who is an owner in a lease by utilizing principles developed in UCC Article 2A on Leases and the revised definitions of "security interests" in UCC Article 1. The sophistication of the ACC has thus been seen in many aspects of aircraft registration where flexibility of approach was key to the aviation industry.

In the 1970s, ownership by trustees of aircraft leased to air carriers became common because such structures accommodated the investment by multiple equity participants in a single aircraft. At that time the FAA recognized the validity of the registration of these aircraft by owner trustees in opinions issued by the FAA Aeronautical Center Counsel (the "ACC"). In some of these transactions, non-U.S. citizen investors sought to become beneficiaries under the trust agreements. The FAA initially approved the registration of aircraft subject to these trust agreements, provided the interests of the non-U.S. citizen beneficiaries did not exceed 25 percent. In response to transactions in which the interests of non-U.S. citizens exceeded 25 percent, the FAA issued opinions approving the registration of the aircraft in the names of owner trustees, provided the control over the owner trustee by the non-U.S. citizen beneficiaries was limited to 25 percent of the total control over the owner trustee. It should be noted that these FAA opinions issued in the 1970s were in response to developments in the manner in which air carrier aircraft were being financed, even though at that time there were not any specific provisions in the Transportation Code or FARs relating to the registration of trustee owned aircraft.

In 1979, the FAA proposed amendments to the FARs to cover the registration of aircraft subject to various forms of ownership, which for the first time included trustee owned aircraft. These amendments became effective on January 1, 1980, and included § 47.7 of FAR Part 47. § 47.7(c) set forth the requirements applicable to the registration of aircraft owned by trustees and such requirements were based on the positions of the FAA expressed in opinions issued in the 1970s.

We point out that the final rule did not adopt the standard from the proposed rule of "totally independent judgment" on the part of the trustee, nor did it include the proposed requirement that the trust documents establish that "any trustee has full authority over all matters of administration of the trust, including matters relating to dispositions of the aircraft, independent of any direction from a beneficiary or any foreign interest" (see 44 Fed. Reg. 67 (1979)). In the discussion about the final rule, it was noted that § 47.7(c)(3) contains the limit on the directions from a foreign beneficiary and therefore such references contained in the proposal were not necessary (see 44 Fed. Reg. 61938 (1979)). The subsequent ACC interpretations cited in the Meeting Notice (Interpretation 1981-56 and Interpretation 1982-6) which reference such total control in a "discussion" seem an attempt to read this standard back into the regulation, but should not be cited as authority since the regulation itself includes no such standard.

The last sentence of § 47.7(c)(3) is of particular importance. It provides: "Nothing in this paragraph prevents those persons from having more than 25 percent of the beneficial interest in the trust." The "persons" referred to in this sentence are those "who are neither U.S. citizens or resident aliens." Subsequent to the adoption of these amendments to the FARs, the FAA issued hundreds of opinions approving the registration of aircraft owned by trustees holding title for the benefit of one or more non-U.S. citizens, provided the trust agreements contained provisions limiting the beneficiaries' control over the trustees.²

Over the years, the financing, leasing and operating arrangements for aircraft of all types have changed in many ways, including the fact that it is no longer common to find multiple

² The first opinions of which we are aware concerning NCTs were issued in the 1980's.

equity investors as beneficiaries under one trust in aircraft financing, leasing or operating arrangements, although there are often multiple owners of an aircraft (particularly in cases of fractional ownership programs) and therefore there may be more than one NCT owner of an individual aircraft. In today's global economy, aircraft sales, leases, financings and other transactions involve parties from many locations, giving rise to the need for and uses of Non-Citizen Trusts.

The FAA has continuously demonstrated an appreciation of the changes in the structures used to finance, lease and operate aircraft and has guided the development of the Non-Citizen Trust in conjunction with the statutes and the regulations, but with a recognition of the changing and globalizing of the aviation industry. While developing this regulatory framework and interpreting its scope from time to time, the FAA had to take into account certain practicalities. Specifically, the FAA maintains an ownership registry, and whether owned pursuant to a trust or otherwise, an owner is not necessarily going to operate an aircraft (and, in the case of Non-Citizen Trusts, no aircraft held in trust will be operated by its registered owner); and although the identity of the operator may be ascertainable from time to time, neither the statute nor the regulations could be interpreted to require registration by a related or 3rd party operator.

The Uses of Non-Citizen Trusts ("NCTs")

Over the past 40 years or more NCTs have been utilized for the U.S. registration of aircraft owned by trustees for the benefit of non-U.S. citizens, and these uses have been on the whole extremely beneficial to the U.S. in terms of economic benefit and global competitiveness. Some examples of such usages are set forth below, but are by no means an exhaustive list of the uses.

Aircraft in Transition. Aircraft that are either owned or purchased by non-U.S. citizens are held in trust by owner trustees and placed on the FAA Registry: (i) while the aircraft is being modified to satisfy airworthiness requirements of another country; (ii) so the aircraft can be ferried to another country; (iii) while the interior is installed on a "green" aircraft after which a U.S. Export Certificate of Airworthiness can be obtained; or (iv) when the aircraft cannot be registered under the laws of a particular country because it is a type not yet certificated by that country. The example in (iv) involves certifications in other countries that can take a significant amount of time during which an NCT is the only way that an FAA certified aircraft can be registered and operated by a non-U.S. citizen. The use of NCTs in all of the foregoing situations and in numerous other temporary situations not described here facilitates the sales of new and used aircraft by manufacturers (including U.S. manufacturers), dealers and owners to non-U.S. citizens, as many countries highly value the imprimatur of an FAA Export Certificate of Airworthiness when evaluating an aircraft for certification.

Aircraft Leased by Non-U.S. Citizens. FAA registered aircraft that are owned and leased by non-U.S. citizen operating or financing lessors to their lessee customers are held in trust by owner trustees under NCTs. The beneficiaries of these NCTs are often financing sources, operating lessors or passive investor entities, which may or may not have operations in the U.S., but do not meet the

citizenship requirements of the Transportation Code. The lessees include air carriers or individuals or business entities relying on aircraft for business purposes, and may be based in or have operations in the U.S. (although this is not required). This use of NCTs fosters air commerce by allowing air carriers and business and general aviation users more choices when considering operating and finance leasing options. Preserving this expanded leasing availability through NCTs is essential to the cost-competitive nature of this marketplace, and thereby stimulates the sale and re-sale of aircraft. This greater availability of quality aircraft benefits the public at large, including reducing the cost of air travel for consumers.

Repossessed or Stored Aircraft. Aircraft that are repossessed by lenders who are not U.S. citizens, are often placed into trust under NCTs to be eligible to place or maintain the aircraft on the FAA Registry. Obtaining or maintaining U.S. registration is desirable because these aircraft will remain subject to high U.S. maintenance standards thereby maintaining their value and, in many cases, the aircraft will be marketed to U.S. purchasers or lessees or operators, among others. Often these aircraft will be stored in the desert and will be maintained, repaired and modified in the U.S. during this period of repossession and remarketing.

U.S. Corporations with Technical Non-Compliance. NCTs are very important with respect to those aircraft that are owned by U.S. corporations that either (a) do not or may not satisfy the U.S. citizenship requirements because their President or the required percentage of other managing officers and directors are not U.S. citizens or (b) they cannot sufficiently determine the citizenship status of their shareholders. Examples such as the President of a large public corporation being a foreign citizen who is not a resident alien are well known. With global business development, these situations occur with some regularity.

U.S. Partnerships with Technical Non-Compliance. Aircraft that are owned by U.S. partnerships where at least one partner is not an individual would fail the citizenship test because U.S. citizenship of partnerships is limited to those composed solely of individual U.S. citizens. Since few partnerships owning aircraft today are composed solely of individuals, the use of NCTs allows partnerships with non-U.S. citizen partners to beneficially own U.S. registered aircraft.

Aircraft Made in or Brought to the U.S. by Non-U.S. Citizen Manufacturers or Distributors. Non-U.S. citizen aircraft manufacturers place the titles to their aircraft in trust under NCTs so the aircraft can be used as demonstrators in the U.S. or marketed to U.S. purchasers or non-U.S. Purchasers.

Lenders and Finance Lessors required FAA Aircraft Registration. Lenders and finance lessors taking security interests in aircraft owned by non-U.S. citizens frequently require the aircraft to be registered in the U.S. in the names of owner trustees under NCTs. Because of the stricter operational and maintenance

requirements of the FAA, the high quality and easy availability of maintenance facilities, certainty of the underlying registration system and the well-developed case law and judicial system (including the Cape Town Convention), FAA registered aircraft are expected to be safe, well maintained and have a high resale value in the event they are repossessed by the lenders. Lenders and finance lessors also look to maintaining U.S. registration as such registration avoids problems encountered in cancelling foreign registrations after a default and repossession in another country.

Operational Flexibility and Cost Effectiveness. Operators of U.S. registered aircraft who are not engaged in common carriage are permitted to engage in limited cost-sharing operations under Part 91 of the FARs. These operations may be prohibited in certain cases even if the operator is a "citizen of the United States" in the event that the aircraft is owned by a non-U.S. citizen and not FAA registered through a NCT. Given the cost of large business aircraft, the ability to share the cost, especially among affiliated companies, becomes even more important.

Cape Town Convention Connecting Factor of FAA Aircraft Registration. Since the U.S. ratification of the Cape Town Convention, parties to certain transactions have required using FAA aircraft registration because that is a basis on which the Cape Town Convention would apply so that the parties would obtain the greater certainty of legal principles that they need.

The foregoing discussion of development and uses of NCTs shows the willingness of the FAA to adopt policies that encourage air commerce, which results in the creation and retention of jobs in the U.S. in the aviation manufacturing sector, as well as many others. These policies evolved over a period of 40 years and were in response to changes in the way aircraft are financed by a wide range of aircraft operators (commercial, business and general aviation) and in response to the challenges faced by U.S. aircraft manufacturers in selling their aircraft to non-U.S. citizens. As such, the loss of the NCT would become a crucial aviation manufacturer jobs issue, as well as have adverse consequences in other sectors.

The economic impact and disadvantages arising from the loss of the NCT were described in two letters sent to the FAA in May 2010; one by the Association of Aircraft Title Lawyers (AATL) on May 4, 2010 and the other by various industry participants on May 11, 2010, copies of each of which are attached as Annex 1 hereto. We all appreciated at that time the alacrity with which the FAA recognized our concerns and gave further consideration to the NCT issue as is now being done in the June 1 FAA Public Meeting on NCTs in Oklahoma City in connection with which this Response Paper has been prepared. Historically there has been a balancing of the purpose of the U.S. citizenship restrictions as evaluated from time to time relative to the practical implications on legitimate business practices, air commerce, job creation and retention and the availability of financing for aircraft. The FAA is to be commended for having recognized the aviation industry as part of an ever changing global economy and we hope that the FAA will continue to do so in this context.

RESPONSES TO QUESTIONS

QUESTION 1:

What are the appropriate obligations to impose on a trustee of a trust with beneficiaries that are neither U.S. citizens nor resident aliens in order to satisfy the statute and regulations?

This Question 1 focuses on trustee obligations.

We have split the answer below into a background explanation of the current regulatory obligations required of trustees and a description of current practice.

The requirements of the statute and regulations relating to registration of aircraft by trustees through trusts with non-U.S. citizen beneficiaries are fairly straightforward. A U.S. citizen trustee acting on behalf of a non-U.S. citizen beneficiary can meet the requirement in 49 U.S.C. § 44102 that only "a citizen of the United States" is eligible to register an aircraft if the trustee submits the following items to the FAA Registration Branch along with the Aircraft Registration Application:

- (a) a copy of each document legally affecting a relationship under the trust; and
- (b) an affidavit from the trustee stating that "the trustee is not aware of any reason, situation, or relationship (involving beneficiaries or other persons who are not U.S. citizens or resident aliens) as a result of which those persons together would have more than 25 percent of the aggregate power to influence or limit the exercise of the trustee's authority."

See 14 C.F.R. § 47.7(c)(1),(2). A copy of the FAA approved Owner Trustee's Affidavit of Citizenship is attached as **Annex 2** hereto.

In addition to the affidavit requirement, the regulations require that the trust instrument include a covenant that non-U.S. citizens "may not have more than 25 percent of the aggregate power to direct or remove a trustee" (hereafter referred to as the "Non-citizen Control Language").

See 14 C.F.R. § 47.7(c)(3).

These requirements are appropriate obligations to place upon trustees and, if properly adhered to by the aviation community and accessed for information purposes by the FAA along with its other resources as suggested below, will provide the FAA with the ability to fulfill its mission.

A. Requirement 1: Submit a copy of each document legally affecting a relationship under the trust

The Owner Trust Agreement (and any amendments, supplements or modifications thereof) are the only documents that affect the relationship between the trustee and the trustor under the trust. As we explain in more detail in our answer to Question 4, the relationship between the trustee and the trustor is established pursuant to the Owner Trust Agreement entered

into between the trustee and the trustor and further informed by the fiduciary duty that a trustee owes to the trust estate. The trustee is, therefore, under clear obligation by the referenced regulations to provide each document to the FAA and there can and should be no "secret" document that in any way modifies the relationship. The trustees participating in this Response paper take that obligation very seriously.

With respect to the form of the Owner Trust Agreement, the FAA requires that such Owner Trust Agreement specifically contain the language required by § 47.7(c)(3), as well as proscriptions on removal of the trustee only for cause. Also, pursuant to the ACC's helpful practice of rendering opinions upon request by outside counsel for private parties, the ACC has guided certain other language contained in the limitation on control section of the Owner Trust Agreement (Article 9 in Annex 3).

We note, however, that it has been the position of the FAA in its practice over the years and is the position of this group, that agreements by the trustee providing another with possession, use and/or control of the aircraft, such as leases, operating agreements or other forms of bailment agreements, are not to be considered "a document legally affecting a relationship under the trust". In addition, such agreements do not circumscribe the duties of the trustee contained in the Owner Trust Agreement or otherwise owing under applicable law.

B. Requirement 2: An Affidavit and Trust Agreement Language Prohibiting Non-Citizen Control

The requirements that: (a) the trustee submit an affidavit of citizenship attesting that non-U.S. citizens do not have more than 25 per cent of the power to influence or limit the trustee's authority; and (b) the Owner Trust Agreement contain the Non-citizen Control Language (defined above), are powerful limitations on the non-U.S. citizen beneficiary's control over the trustee when they are combined with the covenants and agreements made by the beneficiary in the Owner Trust Agreement itself.

As the FAA is aware, in addition to containing the Non-citizen Control Language, Article 9 of the standard Owner Trust Agreement approved by the ACC, a copy of which is attached as Annex 3 hereto, states that the "Trustor will have no rights or power to direct, influence or control the Owner Trustee in the performance of the Owner Trustee's duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft." *See* Article 9.1. Furthermore, the trustor agrees that the "Trustee shall have absolute and complete discretion" and "shall be free of any kind of influence or control whatsoever by the Trustor." *See id.* The Owner Trustee has the power to take any action which, in its discretion, is necessary "to protect the interests of the United States." *See id.* While the Owner Trustee is permitted to "seek the advice of the Trustor" before taking any action, it is not obligated to follow such advice. *See id.*

The trustees that act as owner trustee of U.S.-registered aircraft take their responsibility to be free from total control of the non-citizen beneficiary very seriously. This freedom from non-U.S. citizen beneficiary control is demonstrated in a number of ways.

First, the current practice of many trustees is to perform extensive due diligence on any prospective beneficiary (which they are also required to do pursuant to the USA PATRIOT Act and their own internal procedures) to understand who ultimately owns or controls the beneficiary. In most cases, trustees require that the beneficiary provide them with relevant documents related to the ownership of the beneficiary, including the government-issued identifications of the ultimate owners of the beneficiary. The trustees then screen this information against government and regulatory databases to ensure that the trustees are not doing business with prohibited persons and that acting as trustee will not put the trustees at risk of contravening the laws or interests of the United States. As a result of this extensive due diligence, the major trust companies have in multiple instances refused to act as trustee after due diligence determined that the beneficiary or operator would put the trustee at risk of contravening the laws or interests of the United States.

Second, many trustees perform the same exhaustive due diligence set forth above on the operator of the aircraft as well. This gives the trustee knowledge of the identity of the operator and enables them to confirm that such operator does not put the trustee at risk of contravening the laws or interests of the United States. See also the discussion below in "Fourth" on the efforts made regarding transfers.

Third, virtually all trustees can cite actual examples of when they have refused to heed the advice of a beneficiary because doing so might cause legal or reputational risk to the trustee, harm a third party, or contravene the interests of the United States. For instance, one trustee refused instruction to sell an aircraft from the trust to a foreign political figure because of the risk of violating OFAC or similar sanctions. Another trustee terminated the trust agreement and conveyed the aircraft back to the beneficiary when the beneficiary refused to provide evidence of insurance or to otherwise communicate with the trustee. In addition, trustees have refused to sell an aircraft out of trust when doing so would jeopardize the lien held by a third party. These examples demonstrate that, far from merely following every instruction of the beneficiary, the trustees do exercise discretion before deciding whether to follow a beneficiary's wishes.

Fourth, some trustees have begun including express requirements in the Owner Trust Agreement and lease or operating agreements that provide: (a) in operating the aircraft, the beneficiary and lessee/operator comply with all applicable U.S. laws and regulations, including the Export Administration Regulations, 15 C.F.R. Parts 730-774, and the Office of Foreign Assets Control ("OFAC") Economic Sanctions Regulations, 31 C.F.R. Parts 500 *et seq.*; and (b) the beneficiary agree to not transfer its interest in the trust and the lessee/operator agree not to sublease or otherwise transfer possession and control of the aircraft to another lessee/operator without notifying the trustee so that the trustee can perform adequate due diligence on the new parties. In addition, some trustees have begun applying the same due diligence to a purchaser of aircraft when asked to execute a bill of sale directly to such purchaser. As counterparties to contracts such as the Owner Trust Agreement and (if applicable) any lease or operating agreement, a trustee can only contractually obligate a beneficiary or a lessee/operator to take or refrain from taking actions pursuant to covenant requirements in such contracts. These covenants obligate the parties to keep the trustee informed of any changes, as well as obligating them to impose similar notice requirements on counterparties to related contracts. While the trustee cannot force or guaranty compliance by such counterparties, failure to honor the covenants would constitute breach providing the trustee the right to demand compliance and,

ultimately, the remedy to resign as owner trustee, if necessary. Accordingly, the FAA can take comfort that the trustee is doing what it can to determine the identity of the relevant entities and make the best decisions in discharging its duties under the trust, especially in respect of the limitations on control provisions of Article 9 of Annex 3.

As a result of the foregoing due diligence and controls placed on the parties to a non-U.S. citizen trust, the members of this group believe that the FAA can take comfort that the trust beneficiaries and operators for aircraft registered through owner trusts are subject to far more diligence than aircraft registered by direct owners.³

As the above examples demonstrate, the trustees do not blindly do business with anyone willing to set up a trust or blindly heed the advice of a beneficiary. Rather, they exercise the discretion vested in them under the Owner Trust Agreement to avoid putting themselves at risk of contravening the laws or interests of the United States. The trustees hope that the high level of due diligence and care they take will give the FAA a high degree of confidence in non-citizen trust registrations – a level of confidence on par with, if not greater than, registrations that are not made through an NCT.

We recognize that, while the trustees taking part in this Consultative Group account for a large percentage of the owner trust registrations taking place with the FAA every year, not all entities willing to act as trustee are using these standards. Therefore, in addition to relying on the provisions of the Owner Trust Agreement and the actions of the trustee set forth above, the FAA might consider the use of some of these current practice methods to improve the approved form of Owner Trust Agreement described above to address further the concerns that a non-U.S. citizen beneficiary not exercise total control over the trustee. The suggestions of this Consultative Group in this regard are contained in the answers to Question #7.

It is important for the FAA to note that the FAA's recently enacted re-registration and renewal regulations already require the owner of an aircraft upon re-registration and then triennially upon each renewal to certify that ownership of the aircraft "meets citizenship requirements of 14 C.F.R. § 47.3." The FAA should view this certification by a trustee as a reaffirmation of the trustee's obligations under 14 C.F.R. § 47.7 and should understand that the trustees view their reaffirmation in that light.

³ For example, a U.S. citizen can register through a simple closely held Delaware corporation as to whose ultimate owners there is no recorded or institutional knowledge and as to whose subsequent shareholder transfers there is no such knowledge.

QUESTION 2:

In the case of a trust with beneficiaries that are neither U.S. citizens nor resident aliens, which rights and actions must be prohibited on the part of the beneficiaries in order to satisfy the statute and regulations?

This Question 2 focuses on what are prohibited rights and actions by non-U.S. citizen beneficiaries.

Non-U.S. citizen beneficiaries should be prohibited from acting or instructing the trustee to act in any manner contrary to applicable laws, regulations, court orders or other lawful directions of a government agency with jurisdiction over the trust or the aircraft. If the form of Owner Trust Agreement used for NCTs do not contain such language now, it could be incorporated into the Owner Trust Agreement.

We point out, however, that the current form of limitations on control language found in most NCTs (Article 9 in Annex 3) includes language that provides that the trustor has no rights or powers to direct, influence or control the trustee in the performance of the trustee's duties under the trust agreement in connection with matters involving the ownership and operation of the aircraft by the trustee and that the trustee shall have absolute and complete discretion in connection therewith. The agreements go on to state that the trustee exercises this discretion with due regard for the interests of the trustor and may seek the advice of the trustor. However, the provisions also usually include the need for prior written consent of the trustor to sell, mortgage, pledge or otherwise dispose of the Aircraft other than as provided for in the trust agreement. We submit that this language, which developed over years of practice based on input from the FAA, in addition to the required Non-citizen Control Language referenced in our response to Question 1, already provide the limitations on the rights and actions on the part of non-U.S. citizen beneficiaries necessary to satisfy the statute and regulations.

In addition, as more completely explained in our response to Question 5, currently trust agreements also contain language limiting removal of the trustee by a beneficiary only for cause.

QUESTION 3:

Which forms of granting possession, use or operational control of an aircraft by a trustee to its beneficiaries that are not U.S. citizens or resident aliens are permitted and which are prohibited under the statute and regulations?

This Question 3 focuses on whether the U.S. trustee is limited by any restriction on possession, use and operational control.

Neither 49 U.S.C. § 44102 nor 14 C.F.R 47.7(c) expressly permit or prohibit any forms of granting possession, use or operational control of an aircraft by a trustee to its beneficiaries that are not U.S. citizens or resident aliens.

The forms of granting possession that are currently used are circumstantial and are driven by the purpose and/or market practice of the subject grant. The dynamics impacting owners and

operators in commercial aviation, business aviation and general aviation are sufficiently different from market to market, as well as within those markets, so as not to be susceptible to a finite listing of the various dispositions "typically" made from time to time with respect to the related aircraft.

One concern shared among all aircraft owners is the ever-increasing cost and expense relating to servicing, maintaining, insuring, hangaring, fueling, piloting and financing aircraft. Having to bear these costs requires a practical approach to maximizing the value of the aircraft. Causing the aircraft to be on the FAA Registry, and maintained in compliance with the FARs, is meaningful to the value of the aircraft.

Perhaps as important to aircraft owners and operators looking to defray some of these costs are opportunities to generate revenue from the aircraft when it is not otherwise being operated by that owner or operator. Commercial aircraft operators have always recognized this business purpose, and increasingly, business and other general aviation owners and operators have relied on these opportunities to make aircraft ownership and operation more affordable.

An example of a regulation evidencing the FAA's recognition of the practicalities of trustee registration and ownership of an aircraft is 14 C.F.R. §91.403(a). This regulation includes the following lead-in: "The owner or operator of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition...". As noted, the FARs include various regulations acknowledging (by implication or otherwise) that the aircraft owner might not also be the operator of that aircraft.⁴ Nothing in the referenced statute or regulations require a trustee to both own and operate an aircraft, nor assume any responsibility for maintenance, airworthiness or operation of the aircraft. Any such restriction would render NCTs impractical.

Accordingly, the trustee must convey or facilitate the conveyance of the right to use, possess and operate to the person or business entity who will be undertaking those activities. On some occasions, these rights could be further transferred through a series of parties (e.g., sub-leases, sub-sub-leases, etc.) or on a non-exclusive on demand basis to multiple parties, subject in each case to compliance with FAA operational control requirements. The trustee may or may not be a party to that lease or other arrangement, and it is more likely the case that the beneficial owner or its affiliate or agent will contract directly with the operator or such other party. It is likely that an operator or other third party would be unwilling to rely on a trustee as a counterparty to these arrangements, and would require that the counterparty be a creditworthy person or business entity against whom the operator or service provider will have direct recourse in the event of a breach.

If the trustee does not enter into a lease of the aircraft, it is likely that it will enter into an operating agreement or similar bailment document under which the trust gives possession and operational control of the aircraft to an operator (referred to generally as an "operating agreement"). In many cases, trustees have relied upon operating agreements and other arrangements to move those rights to the party intended to be vested with them when the trust

⁴ The FARs contain programs that directly address the operator and that issue "Letters of Authorization" to the "Aircraft Operator" and not the "registered aircraft owner". One example of these programs is the RVSM operating authority (14 C.F.R. § 91.180). Further, certificated airlines and charter operators must comply with certain FARs defining operational control and addressing the manner in which that control is to be documented.

was created. These operating agreements or other similarly purposed agreements might or might not constitute "leases" for the purposes of 14 C.F.R. §91.23. However, these grants, especially with respect to business aviation users, may be less formal but still consistent with the various arrangements permitted by 14 C.F.R. §91.501 and other pertinent regulations.

Also as noted above, there is no express requirement in the statute or regulation requiring notice by the trustee or any transferee to the FAA with respect to its entering into an operating agreement or other arrangement transferring the rights to possess, use or operate an aircraft. Nor do the statute or regulations require that the trustee undertake ongoing due diligence to determine on a day-to-day or other periodic basis the identity of the person or entity then using, possessing or operating the aircraft.

There are provisions of the regulations relating to agreements affecting certain provisions of the trust. There are also other regulations unrelated to NCTs requiring the filing of certain leases or other undertakings pursuant to which the FAA may become aware of grants of use, possession or operation of an aircraft. For example, in the circumstances referenced in footnote 4, the FAA has established procedures that will facilitate its determining the identity of the operator of the subject aircraft. Otherwise, the FAA has not imposed any such requirement that the registered owner know the identity of the then current operator, whether relating to aircraft owned and registered in NCTs or otherwise. Accordingly, regarding an aircraft owned and registered pursuant to an NCT, the FAA could choose to rely on the trustee as its primary contact, but should not expect that the trustee is the operator since that is not the owner trustee's role in an NCT.

The FAA currently accepts filings for recordation of aircraft lease agreements pursuant to 14 C.F.R. §49.1 *et seq.*, and requires that certain leases be submitted to the FAA pursuant to the Truth in Leasing provisions of 14 C.F.R. § 91.23. Further, the trustee is required under 14 C.F.R. §47.7(c) to submit to the FAA Aircraft Registry, together with its Aircraft Registration Application, a copy of each document legally affecting a relationship under the trust. However, it has been the practice of the FAA to not accept filings or submissions of operating agreements or other similar agreements granting a right to use, possess or operate an aircraft unless constituting a lease. If the FAA were to change its current practice to permit, if the parties so choose, the filing of operating agreements for any one or more of the above purposes, such files could be a source of information as to the operator of the aircraft. In the event that the parties elected not to file an operating agreement, assuming performance of the requirements referenced in the answer to Question #7, the trustee is nonetheless likely to be a resource for that information.

QUESTION 4:

What are the specific elements of "the trustee's authority" (14 C.F.R. 47.7(c)(iii)) about which the FAA should be concerned, and what are the forms of influence or limitation that the FAA should proscribe?

This Question 4 focuses on the power of a non-U.S. citizen beneficiary to influence or limit the U.S. citizen trustee's authority with respect to the registered aircraft.

The specific elements of "the trustee's authority" should be read within the backdrop of basic trust principles, the FAR governing the NCT, and the interpretations in ACC opinions as to specific trust language that has been required in the FAA approved form of Owner Trust Agreement attached in Annex 3, which specifies that the owner trustee shall have absolute and complete discretion in connection with all matters involving the ownership and operation of the aircraft by the owner trustee. This does not mean that the owner trustee has to make decisions that are taken solely by itself, but an owner trustee can choose to follow the directions of the trustor if the owner trustee decides that this does not violate its discretion not to do so if needed to act in the interests of the United States as stated in the Owner Trust Agreement.

Basic Trust Principles

Turning first to trust law principles, it is important to note that a trust is an entity created and governed under the state law in which it was formed whereby the trustee acts as a fiduciary between the trustor and the beneficiary for a stated purpose. In the case of aircraft trusts the stated purpose is to own and register the applicable aircraft and in almost all cases to enter into one or more other relevant transaction documents.

The trust agreement usually includes a description of the rights, duties, and powers of the trustee, distribution of assets, power of the trustor to amend, modify, revoke, or terminate the trust agreement; the designation and selection of a trustee or successor trustees; and the designation of the state under which the terms and provisions of the trust agreement are to be governed. Various trust arrangements may confer broader or more limited powers and rights on the trustor to effect the decisions of the trustee, depending on a number of factors, including the intended tax treatment of the beneficiary. In the trusts used in NCTs, the trustor and the beneficiary are usually the same. In this paper, we use the word "trustor" or "beneficiary" meaning both entities⁵.

The Regulations

14 C.F.R. §47.7(c)(iii) provides that a trustee applicant must submit with the application - "if any beneficiary under the trust, including any person whose security interest in the aircraft is incorporated in the trust, is not a U.S. citizen or resident alien, an affidavit from each trustee stating that the trustee is not aware of any reason, situation, or relationship (involving

⁵ The trustor is the creator of the trust relationship and the trust agreement establishes the terms and provisions of the trust relationship between the trustor and the trustee. By entering into a trust agreement, the trustee is charged with the duty to act as a fiduciary for the benefit of the trust estate in accordance with the express terms of the trust agreement.

beneficiaries or other persons who are not U.S. citizens or resident aliens) as a result of which those persons together would have more than 25 percent of the aggregate power to influence or limit the exercise of the trustee's authority."

The "trustee's authority" under the Typical NCT Trust

A trustee only has those powers conferred to it pursuant to the trust agreement and may take only those actions within such authority acting in its fiduciary capacity to benefit the trust estate. Since the trust agreement itself sets forth the authority of the trustee with respect to the trust estate, only an amendment to the trust agreement would effectively limit the trustee's authority, which is an authority to exercise its discretion with the full latitude given in Article 9 of the FAA approved Owner Trust Agreement as described in our answer to Question #1 and in Annex 3 hereto. Authorizations to the trustee to execute conveyances of operational control may be inserted into the trust agreement or alternatively may be requested by the trustor pursuant to an authorization in the trust agreement or a separate instruction. In respect of such authorizations, whether contained in the trust agreement or in a separate instruction, the owner trustee is still subject to, and has the full benefit of, those provisions in the trust agreement requiring it to exercise its discretion with the full latitude given in Article 9 of the FAA approved Owner Trust Agreement.

FAA Required Trust Language - as to "influence" and "limitation".

The trust agreements for non-citizenship trusts have historically contained additional limitations on ownership and operation of the trust property, namely, statements that "the Trustor will have no rights or powers to direct, influence or control the Owner Trustee in the performance of the Owner Trustee's duties under this Agreement *in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee*". Once the trust agreement is in effect, the trustor cannot direct the trustee to take any particular action without the trustee, in exercising its fiduciary relationship to the trust estate, making the decision that such action (1) benefits the trust estate, (2) is within the scope of the trustee's authority, including its rights under the FAA approved form of Owner Trust Agreement language to act in its absolute and complete discretion, and (3) does not violate its obligations at law including its obligation to comply with the FARs. The contractual provision goes further than the requirement of 14 C.F.R. §47.7 in that the regulation rightly speaks to control over the trustee's authority and not control over ownership and operation. Specifically, the regulation neither requires the trustee to possess the aircraft nor retain operational control over the aircraft.

Historically, the trust agreements for NCTs have also conferred on the trustees an independence from contractual provisions to "exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee as it, in its discretion, shall deem necessary *to protect the interests of the United States, notwithstanding any countervailing interest of any foreign power which, or whose citizens, may have a direct or indirect interest in the Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which the Owner Trustee might otherwise have to the Trustor*". This provision frees the owner trustee to act in ways that "protect the interests of the United States" without non-citizen influences because the Owner Trustee is protected from liability for such actions.

As such, we submit that the current form of the trust agreement language for NCTs, including the Non-citizen Control Language, is sufficient to establish the appropriate level of influence and limitation and that the FAA need not go further to proscribe any particular form of influence or limitation.

QUESTION 5:

How may a beneficiary that is not a U.S. citizen or resident alien participate in the decision to remove a trustee in accordance with the statute and regulations?

This Question 5 focuses on the circumstances under which a non-citizen beneficiary may remove a U.S. citizen trustee.

As referenced elsewhere in this response paper, we note that the nature of the aviation industry, including financing, leasing and ownership, has changed substantially since 1979 when 14 C.F.R. §47.7 was revised. In particular, the concept of many investors owning an asset is no longer common, except in cases of fractional ownership programs, which are specifically recognized and afforded appropriate treatment under the FARs (and even with fractional ownership programs, the use of NCTs as owner of one or more of the fractional shares has become commonplace).

Often there is only one non-citizen beneficiary/trustor which is clearly disclosed in the trust agreement. The FAA has acknowledged these changed circumstances and addressed the issue in its letter opinion from Joseph Standell, Aeronautical Center Counsel to Susan Haught of Daugherty, Fowler, Peregrin & Haught, P.C., dated January 8, 2002 (a copy of which is attached as **Annex 4** hereto).

That opinion letter specifically addressed the removal requirement from that day forward and stated that "... in any circumstance where there is a non-citizen beneficiary, the trust agreement must restrict exercise of removal powers to situations involving "cause." The opinion letter goes on to state that "... the Aeronautical Center Counsel's office has viewed a person's ability to remove a trustee as the pinnacle of control and power. Therefore, consistent with Section 47.7(c)(3) of the Regulations, the power to remove must be limited by other means to not more than 25 percent in the aggregate....I therefore conclude the most effective way to satisfy the intent of Section 47.7(c) of the Regulations is to limit the exercise of removal powers to "cause" situations." In circumstances that most commonly exist today, when there is only one beneficiary of a trust and that beneficiary is a non-U.S. citizen, splitting a power by percentages is not practical and the ACC recognized this and provided guidance as to an effective proxy for such a limitation. Since the issuance of that opinion letter, all NCTs contain the proscription on removal for cause only.

To further the intent of the Regulations and the letter opinion cited above, we suggest that the trust agreement for NCTs contain an example of what would not constitute "cause". That means, among other things, a beneficiary cannot remove and replace a trustee just because the trustee honors its obligations under Article 9 of the standard Owner Trust Agreement referenced in the answer to Question 1 or for other reasons similar in nature. For example, refusing to follow directions from a beneficiary that would cause the trustee either by its own actions or the

actions of the beneficiary to (1) violate the laws, regulations, court orders or lawful directions of a government agency as set forth above, (2) act in a way that is outside the scope of the trustee's authority, or (3) act in a way that is contrary to its obligations under Article 9 of the standard Owner Trust Agreement would not constitute an action or inaction by the trustee that would justify removal for cause. It may be that language of this kind could be added to the standard Owner Trust Agreement clauses for NCTs.

QUESTION 6:

To what extent, if any, are the FAA interpretations cited above in need of amendment?

This Question 6 focuses on whether any of the interpretations that are cited by the FAA Notice need to be amended.

The cited interpretations are from a different era in 1981 and 1982 and do not reflect the current or even the past 25 years of practice by the ACC or the FAA Aircraft Registry as a whole. Therefore, the interpretations that are cited do need to be amended to reflect the more recent interpretations that have been issued and to be more consistent with the regulatory history of the applicable regulation, as noted and described in the Introduction section of this Consultative Group Response paper. Without repeating all that has been stated before in this Response paper, an entire aviation industry now relies upon a trustee mechanism which permits non-citizens to register aircraft through United States citizen trustees who are responsible and are responsive to the U.S. needs and the FAA requirements.

In particular, the interpretations should be issued in an FAA Memorandum form similar to what was done with limited liability companies ("LLCs") when LLCs became so common that the FAA had no choice but to devise a system for registering aircraft in their names within the existing statutory and regulatory framework. That was done very successfully and the FAA Memorandum to which we refer is attached to this Response paper as Annex 5 hereto.

The approach of the trustee being the registered owner of an aircraft that is operated even by the beneficiary of the trust is not unique at all to the NCT area and the same issues regarding knowledge and information could be asked of any trust relationship for a regular U.S. citizen beneficiary with the same benefit in information by the FAA as in the situation at hand. In addition, other parts of the FARs documenting aircraft operation take note of the distinction between the owner and the operator routinely so that this is not a new issue.

For specifics, we would propose that an interpretation be issued that reflects the best practices that have been used to date as supplemented by our other responses in this Response paper. To facilitate your consideration of this approach, the Consultative Group hereby submit (1) a description of existing FAA Procedures in NCT transactions as Annex 6 hereto and (2) a working draft of Core Conditions of the Proposed Memorandum on NCT Trust Agreements which include those currently required by the ACC and those that could be added in such an interpretation as Annex 7 hereto.

QUESTION 7:

Which, if any, knowledge and information requirements (e.g., address of operator, location of maintenance records, principal hangar location) are appropriate for the FAA to impose on trustees of trusts [with] beneficiaries that are not U.S. citizens or resident aliens?

This Question 7 focuses on "what" information the trustee should provide to the FAA and, we would add, "how" to provide it.

As set forth in our answer to Question 1 above, existing laws and regulations and the terms of the Owner Trust Agreement already impose a requirement on the trustee to gather a great deal of information about the beneficiary and the lessee/operator. However, with regard to information about the aircraft itself, i.e., maintenance records, hangar location, etc., we believe this is information the FAA should require from the lessee or operator of the aircraft just as it would in a non-trustee registration. The FAA already has this information for any person operating under FAA operating rules (Parts 91, 121, 125, 129 or 135). In addition, as noted in the response to Question #3, there are other areas where the FAA has information about operators based on their operation of aircraft and compliance with the relevant regulations.

A. Information about the Beneficiary and the Operator

First, as to the operator, information would be available by permitting operating agreements to be filed if the parties so choose or could be filed in the truth-in-leasing files. This would enable the FAA to contact the operator to obtain maintenance or other information whenever necessary.

Second, currently, many of the trustees represented in this Consultative Group are gathering extensive due diligence information on the beneficiary and the operator. The information gathered typically includes the name of beneficiary or the operator, as the case may be, address, phone number, fax number, contact name, and information on the ultimate ownership of the beneficiary or the operator up to individuals who may have an ownership interest. Currently, the FAA can contact the owner trustee at any time to request this information. It has been the practice of these trustees to provide this information to the FAA upon request.

Additionally, the FAA could consider implementing any of the following suggestions to ensure that the trustee obtains this information:

- 1) The FAA could issue a published Memorandum which summarizes current Articles 3.02 and 9 of the standard Owner Trust Agreement, containing the obligations currently imposed on a trustee under 14 C.F.R. § 47.7. The Memorandum could describe covenants by the trustee in the Owner Trust Agreement as to the trustee's gathering of information about its beneficiary and an operator (as more fully described below).
- (2) The FAA Memorandum could require that: Owner Trust Agreements include confirmation by the trustee that it has diligence procedures in place that are intended to meet the requirements of the USA PATRIOT Act "know your

customer" requirements and OFAC regulations so as to form a reasonable belief with respect to the identity of the beneficiary and the operator/lessee (the "Identity Due Diligence").

- (3) The FAA Memorandum could require that: Owner Trust Agreements include covenants that prohibit transfer of the beneficial interest in the trust without first notifying the trustee and providing the current information as to the identity and contact information with respect to such new beneficiary and giving the trustee the opportunity to perform the Identity Due Diligence on the proposed new party.
- (4) The FAA Memorandum could require that: Owner Trust Agreements contain covenants requiring the inclusion of certain transfer restrictions in each Operational Agreement. For the purposes of the referenced memorandum, an "Operational Agreement" would mean, with respect to an aircraft then owned pursuant to an NCT, any lease, operating agreement or other bailment agreement, entered into from time to time, whether by or through the beneficiary of the NCT, or such other transferee/operator, in each case if granting possession and operational control of the aircraft for a period in excess of 180 consecutive days. Pursuant to such covenants, the beneficiary would agree that any Operational Agreement entered into by such beneficiary or at its direction (i.e., any Operational Agreements between the trustee and any third party transferee) would prohibit further transfers of such rights to a transferee/operator unless the transferor of such rights first notifies the trustee, providing it with the then current information as to the identity and contact information with respect to such proposed transferee/operator, and giving the trustee the opportunity to perform the Identity Due Diligence on such proposed transferee/operator and update the trustee's files. This transfer restriction would cascade down through all subsequent Operational Agreements thereby requiring each such transferor of its possessory and operational rights thereunder to provide such information to the trustee, and include the requirement in any subsequent Operational Agreements to which it may be a party.

B. Information about maintenance records, hangar location, etc.

As the FAA is aware, under an aircraft lease arrangement (either with a trustee or with a non-trustee as lessor), the operational control and maintenance responsibilities of an aircraft are turned over to the lessee, with the lessor maintaining a passive role when it comes to operating and maintaining the aircraft. Whether the possession is transferred by a lease or an operating agreement, this benefits the trustee who wishes to ensure that the operator and not the trustee, as a passive owner, is liable for any incidents, accidents or other circumstances arising out of the aircraft. (See 49 U.S.C. §44112.)

Under standard lease agreements, the lessee would be responsible for keeping all the maintenance records, maintaining current insurance coverage, hangaring the aircraft, etc., during the time that it has quiet enjoyment of the aircraft. Likewise, under the operating agreement, the operator has all of the same obligations and rights of a lessee under a lease agreement. This practice falls within the guidelines of 14 C.F.R. § 91.403(a) which states, "the owner or operator

of an aircraft is primarily responsible for maintaining that aircraft in an airworthy condition..." Since the operator/lessee has the contractual obligation to maintain the aircraft in its airworthy condition, it remains the best party to maintain operational information regarding the aircraft.

On the other hand, the trustee, much like a commercial leasing company, is not primarily responsible for maintenance and operational records. It is not the best source of this type of information. Currently when a true lease agreement is filed with the FAA, the FAA will reach out to the lessee under the lease agreement to obtain this information. To our knowledge, the only reason the FAA does not take the same approach with an operator under an operating agreement is because it does not have current information about the operator on file. However, it would be a simple item for the FAA to obtain such information by following any of the courses of action suggested above.

If any changes are implemented from the suggestions in this Question #7, they should specifically grandfather-in any aircraft registrations based on existing Owner Trust Agreements to ensure that no uncertainty exists with regard to the conformity of such Owner Trust Agreements (for any purpose). Any such uncertainty could seriously disrupt aircraft operators and the aircraft leasing and financing industry.

**ANNEXES
TO
RESPONSE TO QUESTIONS**

- Annex 1 Letters to the FAA regarding Non-Citizen Trusts dated May 4, 2010 from the Association of Aircraft Title Lawyers (AATL) and May 11, 2010 from industry participants
- Annex 2 FAA Approved Owner Trustee's Affidavit of Citizenship for NCT
- Annex 3 FAA Approved Non-Citizen Trust Agreement
- Annex 4 FAA Aeronautical Center Counsel Opinion Letter dated January 8, 2002 to Susan Haught of Daugherty, Fowler, Peregrin & Haught, P.C.
- Annex 5 FAA Memorandum on Limited Liability Companies (LLCs) dated August 23, 1999 from the Manager, Aircraft Registration Branch
- Annex 6 FAA Procedures in NCT Transactions and Aircraft Registration
- Annex 7 Core Conditions of proposed FAA Memorandum on NCT Trust Agreements

Annex 1

Letters to the FAA regarding Non-Citizen Trusts dated May 4, 2010 from the Association of Aircraft Title Lawyers (AATL) and May 11, 2010 from industry participants

AATL LETTER

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May 4, 2010

[This letter has been revised slightly from
the one provided originally to Mr. Standell]

Joseph R. Standell, Esq.
Assistant Chief Counsel
for the Aeronautical Center
Federal Aviation Administration
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Re: Response of the Association of Aircraft Title Lawyers (“**AATL**”) regarding the Federal Aviation Administration’s (“**FAA**”) review of non-citizen owner trust agreements (“**Non-Citizen Trusts**”) used for registering aircraft pursuant to 14 C.F.R. §47.7

Dear Mr. Standell:

You recently advised us that the FAA had been reviewing the use of Non-Citizen Trusts¹ in connection with aircraft registration and had identified certain issues presented by those trusts. You indicated that some of the issues could call into question the valid registration of aircraft in certain circumstances and could apply retroactively to aircraft currently registered under Non-Citizen Trusts.

AATL recognizes that Non-Citizen Trusts, as set forth in the FARs, are of great value to the aviation industry. Below is a summary of the concerns we raised with you. We provide this information for review and consideration by you and the ACC legal team. We also offer our assistance to the FAA in any way we can to find solutions to the FAA’s concerns without wholesale change to the industry’s use of the Non-Citizen Trusts and/or retroactive application

¹ You have advised us that the Non-Citizen Trust transactions under investigation by the FAA are those in which the trustee permits operational control of the aircraft by the non-U.S. citizen beneficiary.

of any change which would impact potentially thousands of aircraft currently registered by the FAA.

You mentioned that there are at least 10,000 aircraft currently registered by the FAA under owner trusts. Any ruling that could be interpreted to apply retroactively to the registration of those 10,000 or more aircraft, and possibly invalidate those registrations, would be devastating to the industry and related parties for the following reasons:

- invalid registration could impact insurance coverage for the owners, operators, passengers, lenders, lessors and other insured parties;
- invalid registration could cause a lender or lessor's legal perfection in its collateral to be lost;
- invalid registration and the associated problems with insurance and legal perfection could trigger a default under essentially all leases and security agreements that cover aircraft registered through Non-Citizen Trusts;
- lenders and lessors would have few options other than to ground aircraft until the issue is resolved; and
- these issues and problems would apply to aircraft manufacturers, lenders both foreign and domestic (including all major U.S. and international financial institutions), U.S. leasing companies and many publicly traded U.S. companies.²

The use of Non-Citizen Trusts is an essential part of the U.S. aviation industry, and any opinion the FAA issues in regard to a change in the use of such trusts should be drafted in a manner that addresses the FAA's concerns but does not unnecessarily restrict the industry. A ruling that is too broad could:

- result in all of the negative items set forth above, including defaults, grounding of aircraft and questions with respect to insurance coverage;
- curtail aircraft financing for commercial and corporate aircraft alike, thus negatively affecting (i) U.S. aircraft and engine manufacturers and other companies that service and support the aircraft industry, and (ii) national and international lessors and lenders;
- result in certain U.S. publicly traded companies having no ability to register aircraft in the U.S. (even though those aircraft are based and used in the U.S.);
- result in U.S. partnerships losing the ability to register aircraft in the U.S. under the current registration structure (even though the partnerships have U.S. ownership and management and the aircraft are based and used in the U.S.);
- result in foreign purchasers having no legal or economically justifiable way to move aircraft outside of the U.S. after they have purchased the aircraft, thus adversely impacting aircraft sales of U.S. aircraft and increasing illegal operations;
- adversely impact U.S. aviation and lending industries and ultimately the employment of U.S. workers in the aviation industry;
- create an unfavorable environment for international companies that may result in the loss of U.S. business and investment to other countries; and

² Many U.S. based publicly-traded companies use a trust structure for registration because the company does not qualify as a U.S. Citizen or cannot confirm that it qualifies due to the nature of its stock distribution.

- create uncertainty for those in the U.S. that are manufacturing, financing, leasing, selling and purchasing aircraft.

As we discussed, the industry's reliance on the Non-Citizen Trust form of registration and the FAA's long history of approving Non-Citizen Trusts is based on clear regulatory authority.³ The form of trust agreement used by the industry has been carefully vetted over many years, working closely with the FAA, so that the trustee is free from control of a non-citizen beneficiary in instances involving the ownership and registration of the aircraft, all in compliance with 14 C.F.R. §47.7(c)(3). Under this long-standing regulatory practice, there are many legitimate uses of Non-Citizen Trusts, such as the following:

- allows lenders and lessors, including all major national and international lenders and leasing companies which finance aircraft to non-U.S. citizen entities, to keep aircraft registered by the FAA and the financing subject to the Cape Town Convention and U.S. law;
- provides a mechanism for aircraft manufacturers that do not qualify as U.S. citizens to register newly manufactured aircraft in the U.S. for sale to third party buyers;
- provides a mechanism for repossessing lenders to register aircraft with the FAA after repossession and prior to sale to a third party;
- allows publicly-traded U.S. companies that cannot confirm that they are U.S. citizens due to diverse stock ownership, to register and operate aircraft for business purposes;
- allows the FAA registration of aircraft owned by U.S. partnerships that are not comprised entirely of individuals;
- allows non-citizen owners that base an aircraft in the U.S. and/or operate in the U.S. for business purposes, to maintain U.S. registration;
- provides a legal method for non-citizen parties who purchase an aircraft in the U.S. to maintain registration of the aircraft until it can be lawfully removed from the U.S.; and
- because the trustees are independent of the beneficiaries in matters of ownership and legal title, trusts are used by lenders to facilitate repossession and are critical to lenders in connection with liability and bankruptcy protection.

It is unclear from our discussion whether the FAA's primary concern is ownership of the aircraft, operational control of the aircraft, or other issues that were not identified in the meeting. In connection with Non-Citizen Trusts, these trusts (like all trusts) are established such that the trustee holds legal title for the benefit of the beneficiary under the terms established by the trust agreement. The Non-Citizen Trust agreement contains clear language that limits the beneficiary's control of the trustee; however, the regulations do not prohibit the beneficiary from using the aircraft.

Non-Citizen Trusts are not used by legitimate companies to hide the ownership or operation of aircraft. If required by the FAA, trustees would be able to provide the FAA with much more

³ The FAA Aircraft Registry is an owner registry, not an operator registry, and 14 CFR §47.7(c)(3) specifically provides for the use of Non-Citizen Trusts for registering aircraft. In fact, 14 CFR §47.7(c) specifically acknowledges that a trustee will only hold legal title and there is nothing in Part 47 that specifically prohibits a beneficiary from operating the aircraft. It is also important to note that the FARs do not preclude the operation of aircraft by foreign entities.

information about the ownership and operation of an aircraft than what is currently required from owners of aircraft registered under non-trust registration methods. In the event the industry is invited to work with the FAA on pinpointing the issues of concern to the FAA, we are confident that those issues can be resolved in a way that will satisfy the FAA's concerns, with minimal disruption and economic loss for the aviation industry and the U.S. economy.

We recognize that this is an extremely critical issue to the entire aviation industry and the FAA and we would like to request a meeting with your team, the AATL and/or certain members of the aviation industry to discuss these issues and solutions that would better achieve the FAA's goals. It is expected that essentially all of the major lenders in the United States that finance aircraft, the U.S. airlines (and many foreign airlines), and manufacturers would be glad to meet with the FAA to develop meaningful solutions.

Finally, many transactions involving Non-Citizen Trusts are currently pending. We need to advise our clients as to whether the FAA is receptive to working with the industry and whether these pending transactions can go forward. Therefore, we respectfully request that you contact us at your earliest opportunity so that we can work together to resolve these very important issues.

We also respectfully request that you please forward the AATL's views expressed in this letter to your ACC team, including the Office of the Chief Counsel, as well as your colleagues at the FAA who have been working with you on this matter.

Respectfully submitted,
ASSOCIATION OF AIRCRAFT TITLE LAWYERS

**MAY 11 LETTER FROM
INDUSTRY PARTICIPANTS**

By e-mail

May 11, 2010

The Honorable J. Randolph Babbitt
Administrator
randy.babbitt@faa.gov

David Grizzle, Esq.
Chief Counsel
david.grizzle@faa.gov

Federal Aviation Administration
800 Independence Ave., SW
Washington, D.C. 20591

Re: Non-Citizen Trusts and FAA registration

Dear Administrator Babbitt and Mr. Grizzle,

We are a group of vital stakeholders in the manufacture, operation and financing of aircraft in the United States and internationally including the law firms and title companies that assist the stakeholders in this industry. We have recently been made aware of the fact that the FAA has concerns over the use of non-citizen owner trusts (“Non-Citizen Trusts”) to obtain valid registration of aircraft in the United States. We reference the attached letter from the Association of Aircraft Title Lawyers (“AATL”) that was sent to the ACC in Oklahoma City, which describes AATL’s understanding of the FAA’s concerns and the consequences that may come from making Non-Citizen Trusts invalid for FAA registration purposes.

We endorse the AATL Letter and emphasize the importance of collaboration between the FAA and industry as the best way to address the FAA’s concerns over Non-Citizen Trusts without disrupting a large portion of the aviation industry in the US and internationally.

Further, we understand the FAA has imposed a moratorium on the processing of any pending registrations involving Non-Citizen Trusts and the ACC will not issue any so-called “(iii)” opinions, all without notice to the industry. While the moratorium may be applied with discretion (though without articulated criteria), the potential consequences of it (and a change in FAA policy) on the aviation community are hard to over-state. For example, at present there are a large number of transactions that either are pending or will soon be entered into which rely on the Non-Citizen Trust structure. The FAA moratorium will delay or possibly prevent those transactions. Such events could cause defaults under the relevant agreements and result in hundreds of millions of dollars of damages, lost deposits and litigation expenses. Airlines, companies and individuals would not be able to take delivery of, or sell, lease or finance aircraft which, in turn, will significantly impact the manufacturers, sellers, lessors and buyers of those aircraft. By way of example, looking only at the sale and delivery of new or used aircraft, a conservative estimate of currently impacted deals shows more than 34 transactions worth in excess of \$357,000,000 that are adversely impacted in the next 30 days. We trust that the FAA does not intend to cause such wide-scale disruption to the aviation industry.

Administrator Babbitt
Mr. Grizzle
Federal Aviation Administration
May 11, 2010
Page 2 of 2

We stand ready to assist the FAA in achieving its goals in connection with Non-Citizen Trusts and urge the FAA to work together with the industry to craft a strong and equitable solution. We believe that any substantive change to the FAA's longstanding definitive interpretation of its regulations on owner trusts would require notice and comment rulemaking under the Administrative Procedures Act. In the interim, we respectfully request the FAA to (i) continue the standard industry practice of allowing the use of Non-Citizen Trusts (including continued issuance of customary legal opinions) and (ii) confirm that any future decisions as to the validity of such trusts will not have retroactive effect.

Sincerely,

| | | |
|---|--|---|
| GE Capital Aviation Services | AerCap Holdings N.V. | Aircastle Limited |
| Cooling & Herbers, P.C. | Wiley Rein LLP | Wilmington Trust Company |
| Stewart H. Lapayowker, P.A. | Kaye Scholer LLP | Aviation Legal Group P.A. |
| Holland & Knight LLP | Lane Powell PC | Clifford Chance LLP |
| Crowell & Moring LLP | Hinckley, Allen & Snyder LLP | BOC Aviation Pte. Ltd. |
| Pillsbury Winthrop Shaw Pittman LLP | Freshfields Bruckhaus Deringer LLP | A&L Goodbody |
| Dassault Falcon Jet Corp. | Aircraft Guaranty Title & Trust | Vedder Price P.C. |
| Insured Aircraft Title Service, Inc. | RBS Aviation Capital | McAfee & Taft A Professional Corporation |
| Milbank, Tweed, Hadley & McCloy LLP | DeBee Gilchrist, a Professional Corporation | Crowe & Dunlevy, P.C. |
| General Aviation Manufacturers Association | Cirrus Aircraft | Bank of Utah |
| Smith, Gambrell & Russell, LLP | The Boeing Company | Barbera & Watkins LLC |
| Hogan Lovells US LLP | Greenberg Traurig, P.A. | Katten Muchin Rosenman LLP |
| EMBRAER - Empresa Brasileira de Aeronáutica S.A. | Garofalo Goerlich Hainbach PC | |

cc: Peggy Gilligan
Associate Administrator for Aviation Safety
peggy.gilligan@faa.gov

Annex 2

FAA Approved Owner Trustee's Affidavit of Citizenship for NCT

Annex 3

FAA Approved Non-Citizen Trust Agreement

TRUST AGREEMENT
()

THIS TRUST AGREEMENT (), dated as of , (the "Agreement") by and between , a [corporation organized and existing] [limited liability company formed]¹ under the laws of ("Trustor"), and , a , a organized and existing under the laws of the ("Owner Trustee");

WITNESSETH:

WHEREAS, Trustor desires to cause title to the Aircraft (as hereinafter defined) to be conveyed to Owner Trustee;

WHEREAS, Trustor desires to create a trust (the "Trust") and contribute the Aircraft thereto in order to ensure the eligibility of the Aircraft for United States registration with the Federal Aviation Administration (the "FAA");

WHEREAS, this Agreement is designed to create a Trust in order that the Owner Trustee may hold title to the Aircraft until such time as Trustor directs the Owner Trustee to distribute the Aircraft in accordance with Trustor's written instructions; and

WHEREAS, Owner Trustee is willing to accept the trusts as herein provided;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Trustor and Owner Trustee agree as follows:

ARTICLE 1

DEFINITIONS

Capitalized terms used in this Agreement shall have the respective meanings assigned thereto below, unless such terms are otherwise defined herein or the context hereof shall otherwise require. The terms "hereof", "herein", "hereunder" and comparable terms refer to this Agreement, as amended, modified or supplemented from time to time, and not to any particular portion hereof. References in this Agreement to sections, paragraphs and clauses are to sections, paragraphs and clauses in this Agreement unless otherwise indicated.

"Affidavit" means the Affidavit of Owner Trustee pursuant to Section 47.7(c)(2)(iii) of Part 47 of the Federal Aviation Regulations.

¹ Choose the appropriate phrase depending on whether Trustor is an LLC or a corporation.

"Aircraft" means the Aircraft, serial number , FAA Registration Number N together with the engines, bearing manufacturer's serial numbers and , which are transferred to the Owner Trustee in trust under this Trust Agreement.

"Aircraft Registration Application" means AC Form 8050-1 Aircraft Registration Application by Owner Trustee covering the Aircraft.

"Citizen of the United States" means "citizen of the United States" as that term is defined in Section 40102(a)(15) of Title 49 of the United States Code.

"FAA" means the Federal Aviation Administration of the United States or any Government Entity succeeding to the functions of such Federal Aviation Administration.

"FAA Bill of Sale" means an AC Form 8050-2 Bill of Sale for the Aircraft from Trustor to Owner Trustee.

"Lessee" means any lessee under any Lease, or any operator under any Operating Agreement.

"Lease" means any lease from time to time entered into with respect to the Aircraft by the Owner Trustee, as Lessor, and a Lessee, at the direction of the Trustor or any operating agreement entered into between the Owner Trustee and the Trustor.

"Operating Agreement" means any operating agreement entered into between the Owner Trustee and the Trustor.

"Trust Estate" means all estate, right, title and interest of Owner Trustee in and to the Aircraft, the Lease, the Warranty Bill of Sale and the FAA Bill of Sale, including, without limitation, all amounts of the rentals under any Lease, insurance proceeds (other than insurance proceeds payable to or for the benefit of Owner Trustee, for its own account or in its individual capacity, or Trustor), and requisition, indemnity or other payments of any kind for or with respect to the Aircraft, (other than amounts owing to Owner Trustee, for its own account or in its individual capacity, Trustor or any Lessee of the Aircraft).

"Warranty Bill of Sale" means a full warranty bill of sale for the Aircraft, executed by Trustor in favor of Owner Trustee and specifically referring to each engine installed on the Aircraft.

ARTICLE 2

CREATION OF TRUST

Section 2.01 Transfer of Control. Trustor shall cause title to the Aircraft to be conveyed to Owner Trustee.

Section 2.02 Acceptance and Declaration of Trust. Owner Trustee accepts the Trust created hereby, and declares that it will hold the Trust Estate upon the trusts hereinafter set forth for the use and benefit of Trustor, in accordance with and subject to all of the terms and conditions contained in this Agreement, and agrees to perform the same, including without limitation the actions specified in Section 4.01 hereof, and agrees to receive and disburse all moneys constituting part of the Trust Estate, all in accordance with the terms hereof.

ARTICLE 3

THE OWNER TRUSTEE

Section 3.01 Status. Owner Trustee hereby represents and warrants that it is a Citizen of the United States.

Section 3.02 Removal. Owner Trustee may be removed at any time, but for cause only, by a written instrument or instruments signed by Trustor. Such removal shall take effect immediately upon the appointment of a successor Owner Trustee pursuant to Section 3.04, whereupon all powers, rights and obligations of the removed Owner Trustee under this Agreement (except the rights set forth in Section 3.08) shall cease and terminate. Without any affirmative action by Trustor, any Owner Trustee shall cease immediately to be an Owner Trustee at such time as it ceases to be a Citizen of the United States or at such time as it for any reason is not free from control by Trustor as described in Article 9, and shall give immediate notice thereof to Trustor. Any Owner Trustee shall also give Trustor notice of a possible change of citizenship at the later of (i) 90 days prior to a change in citizenship and (ii) actual knowledge by Owner Trustee that such a change in citizenship is probable.

Section 3.03 Resignation. Owner Trustee may resign at any time upon giving 30 days prior written notice of such resignation to Trustor. Such resignation shall take effect only upon the appointment of a successor Owner Trustee pursuant to Section 3.04, whereupon all powers, rights and obligations of the resigning Owner Trustee under this Agreement (except the rights set forth in Section 3.08) shall cease and terminate.

Section 3.04 Successor Owner Trustee. Promptly upon receipt of a notice of resignation from the Owner Trustee in accordance with Section 3.03, a successor trustee shall be appointed by a written instrument signed by a duly authorized officer of Trustor and the successor trustee shall execute and deliver to the predecessor Owner

Trustee an instrument accepting such appointment. Such successor trustee shall be a Citizen of the United States and shall assume all powers, rights and obligations of such Owner Trustee hereunder immediately upon the resignation of such Owner Trustee becoming effective. Such successor, concurrently with such appointment, shall file an Affidavit with the FAA and all other documents then required by law to be filed in connection therewith. If the Trustor shall not have so appointed a successor Owner Trustee within 30 days after such resignation or removal, the Owner Trustee may apply to any court of competent jurisdiction to appoint a successor Owner Trustee to act until such time, if any, as a successor or successors shall have been appointed by the Trustor as above provided. Any successor Owner Trustee so appointed shall immediately and without further act be superseded by any successor Owner Trustee appointed by the Trustor as above provided.

Section 3.05 Merger. Any corporation into which Owner Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which Owner Trustee shall be a party, or any corporation to which substantially all the corporate trust business of Owner Trustee may be transferred, shall, subject to the terms of Section 3.04, be Owner Trustee without further act.

Section 3.06 Tax Returns. The Owner Trustee shall keep all appropriate books and records relating to the receipt and disbursement by it of all monies under this Agreement or any agreement contemplated hereby. The Trustor will prepare all tax returns required to be filed with respect to the trust hereby and the Owner Trustee, upon request, will furnish the Trustor with all such information as may be reasonably required from the Owner Trustee in connection with the preparation of such tax returns. The Owner Trustee will execute and file the tax returns as prepared by the Trustor.

Section 3.07 Vacancies. If any vacancy shall occur in the position of Owner Trustee for any reason, including, without limitation, removal, resignation, loss of United States citizenship or the inability or refusal of such Owner Trustee to act as Owner Trustee, the vacancy shall be filled in accordance with Section 3.04.

Section 3.08 Fees; Compensation. The Owner Trustee shall receive from the Trustor as compensation for the Owner Trustee's services hereunder such fees as may heretofore and from time to time hereafter be agreed upon by the Owner Trustee and the Trustor and shall be reimbursed by the Trustor for all reasonable costs and expenses incurred or made by it in accordance with any of the provisions of this Agreement. If an event of default under any Lease shall occur, the Owner Trustee shall be entitled to receive reasonable compensation for its additional responsibilities, and payment or reimbursement for its expenses. Owner Trustee shall have a lien on the Trust Estate, prior to any interest therein of the Trustor, to secure payment of such fees and expenses.

Section 3.09 No Duties. Owner Trustee shall not have any duty (i) to see to any insurance on the Aircraft or maintain any such insurance, (ii) to see to the

payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against, the Aircraft (provided, however, that Owner Trustee shall not create, permit or suffer to exist any lien or encumbrance on any part of the Aircraft which results from claims against Owner Trustee unrelated to its capacity as Owner Trustee hereunder), (iii) to confirm or verify any notices or reports, (iv) to inspect the Aircraft at any time or ascertain the performance or observance by either of any Lessee or Trustor of its covenants under any Lease, or (v) except as set forth herein, to see to any recording or see to the maintenance of any such recording or filing with the FAA or other government agency.

Section 3.10 Status of Moneys Received. All moneys received by Owner Trustee under or pursuant to any provisions of this Agreement shall constitute trust funds for the purpose for which they are paid or held, and shall be segregated from any other moneys and deposited by Owner Trustee under such conditions as may be prescribed or permitted by law for trust funds.

Section 3.11 Owner Trustee May Rely. Owner Trustee shall not incur any liability to anyone in acting or refraining from acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably believed by it to be genuine and reasonably believed by it to be signed by the proper party or parties. As to any fact or matter, the manner or ascertainment of which is not specifically described herein, Owner Trustee may for all purposes hereof rely on a certificate, signed by or on behalf of the party executing such certificate, as to such fact or matter, and such certificate shall constitute full protection of Owner Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. In the administration of the Trust, Owner Trustee may, at the reasonable cost and expense of Trustor, seek advice of counsel, accountants and other skilled persons to be selected and employed by them, and Owner Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the actions, advice or opinion of any such counsel, accountants or other skilled persons.

Section 3.12 Owner Trustee Acts as Trustee. In accepting the Trust, Owner Trustee acts solely as trustee hereunder and not in any individual capacity (except as otherwise expressly provided in this Agreement or any Lease), and all persons other than Trustor having any claim against the Owner Trustee by reason of the transactions contemplated hereby shall not have any recourse to Owner Trustee in its individual capacity.

Section 3.13 No Expenses for Owner Trustee. Owner Trustee shall not have any obligation by virtue of this Agreement to expend or risk any of its own funds, or to take any action which could, in the reasonable opinion of Owner Trustee, result in any cost or expense being incurred by Owner Trustee. Owner Trustee shall not be required to take any action or refrain from taking any action under this Agreement unless it shall have been indemnified by Trustor in a manner and form satisfactory to Owner Trustee against any liability, cost or expense (including reasonable attorneys' fees) which may be incurred in connection therewith. No provisions of this Agreement

shall be deemed to impose any duty on Owner Trustee to take any action if Owner Trustee shall have been advised by counsel that such action would expose it to personal liability, is contrary to the terms hereof or is contrary to law.

Section 3.14 Notice of Event of Default. In the event that a responsible officer in the Corporate Trust Department of the Owner Trustee shall have actual knowledge of a default or an event of default under any Lease, the Owner Trustee shall give or cause to be given prompt notice of such default or event of default to the Trustor. The Owner Trustee shall take such action with respect to such default or event of default as shall be specified in written instructions from the Trustor. For all purposes of this Agreement and any Lease, in the absence of actual knowledge of a responsible officer in the Corporate Trust Department of the Owner Trustee, the Owner Trustee shall not be deemed to have knowledge of a default or event of default unless notified in writing by the Trustor.

Section 3.15 Certain Duties and Responsibilities of Owner Trustee.

(a) Owner Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Agreement and in any Lease, and no implied duties, covenants or obligations shall be read into this Agreement or any Lease against Owner Trustee; Owner Trustee agrees that it will not manage, control, possess, use, sell, lease, dispose of or otherwise deal with the Aircraft or any other part of the Trust Estate, except as required by the terms of any Lease and as otherwise expressly provided herein, and in no event will Owner Trustee permit any party to possess or use the Aircraft, except that Owner Trustee shall, from time to time, lease the Aircraft to any Lessee under and upon the terms and conditions of any Lease, and/or Owner Trustee shall distribute the Aircraft pursuant to written instruction of the Trustor.

(b) Whether or not herein expressly so provided, every provision of this Trust Agreement relating to the conduct or affecting the liability of or affording protection to Owner Trustee shall be subject to the provisions of this Section 3.15.

Section 3.16 No Representations or Warranties as to the Aircraft or Documents. OWNER TRUSTEE MAKES (i) NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OF THE AIRCRAFT OR AS TO THE TITLE THERETO, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE AIRCRAFT WHATSOEVER, except that _____, in its individual capacity warrants that on the date on which the Aircraft is transferred to the Trust contemplated by this TRUST AGREEMENT, Owner Trustee shall have received whatever title was conveyed to it, and (ii) no other representations or warranties are made by the Owner Trustee other than to the extent expressly made herein by Owner Trustee, except that Owner Trustee represents and warrants that it has full right, power and authority to enter into, execute, deliver and perform this Agreement and that this Agreement constitutes the legal, valid and binding obligation of the Owner Trustee.

ARTICLE 4

THE TRUST ESTATE

Section 4.01 Authorization and Direction to Owner Trustee. Trustor hereby authorizes and directs Owner Trustee, not individually but solely as Owner Trustee hereunder, and Owner Trustee covenants and agrees:

(a) to execute and deliver each agreement, instrument or document to which Owner Trustee is a party in the respective forms thereof in which delivered from time to time by Trustor for execution and delivery and, subject to the terms hereof, to exercise its rights and perform its duties under any Lease in accordance with the terms thereof, including without limitation, accepting title to, and delivery of, the Aircraft and leasing the Aircraft to any Lessee or, subject to the provisions of Section 7 hereof, distributing the Aircraft to Trustor pursuant to the specific written instructions of Trustor;

(b) to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any other document or instrument required therefor;

(c) to execute and deliver each other document referred to in any Lease or which Owner Trustee is required to deliver pursuant to any Lease or this Agreement; and

(d) subject to the terms of this Agreement, to perform the obligations and duties and exercise the rights of Owner Trustee under any Lease.

Section 4.02 Supplier Warranties. Trustor hereby assigns to Owner Trustee any and all warranties and indemnities of, and other claims against, any supplier relating to the Aircraft.

Section 4.03 Advances by Trustor. Trustor shall make advances to Owner Trustee in such amounts and at such times as may be necessary to permit Owner Trustee to satisfy its obligations under any Lease and this Trust Agreement.

ARTICLE 5

DISTRIBUTIONS

Section 5.01 Receipts. Except as otherwise provided in this Agreement, any payment received by Owner Trustee for which provision as to the application thereof is made in any Lease shall be applied promptly to the purpose for which such payment shall have been made in accordance with the terms of such Lease; and any payment received by Owner Trustee for which no provision as to the application thereof

is made in any Lease or in this Article 5 shall, unless Trustor shall have otherwise instructed Owner Trustee in writing, be distributed promptly to Trustor.

Section 5.02 Manner of Making Distributions. Owner Trustee shall make all distributions to Trustor under this Agreement and any Lease promptly upon the receipt of proceeds available for distribution, but shall not be obligated to make any distributions until the funds therefor have been received by Owner Trustee. All distributions to Trustor hereunder shall be made to such account and in such manner as Trustor shall from time to time direct in writing.

ARTICLE 6

INDEMNIFICATION OF OWNER TRUSTEE BY TRUSTOR

Section 6.01 Indemnification Trustor hereby agrees, whether or not any of the transactions contemplated hereby shall be consummated, to assume liability for, and does hereby indemnify, protect, save and keep harmless _____, in its individual capacity and its successors, assigns, legal representatives, agents and servants, from and against any and all liabilities, obligations, losses, damages, penalties, taxes (excluding any taxes payable by _____ in its individual capacity on or measured by any compensation received by _____ in its individual capacity for its services hereunder), claims, actions, suits, costs, expenses or disbursements (including, without limitation, reasonable ongoing fees of Owner Trustee and reasonable attorneys' fees and expenses) of any kind and nature whatsoever which may be imposed on, incurred by or asserted against _____ in its individual capacity (whether or not also indemnified against by a Lessee under any Lease or also indemnified against by any other person) in any way relating to or arising out of this Agreement or any Lease or the enforcement of any of the terms hereof or thereof, or in any way relating to or arising out of the manufacture, purchase, acceptance, nonacceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of the Aircraft (including, without limitation, latent and other defects, whether or not discoverable, and any claim for patent, trademark or copyright infringement), or in any way relating to or arising out of the administration of the Trust Estate or the action or inaction of Owner Trustee or _____ in its individual capacity hereunder, except (a) in the case of willful misconduct or gross negligence on the part of Owner Trustee or _____ in its individual capacity in the performance or nonperformance of its duties hereunder, or (b) those resulting from the inaccuracy of any express representation or warranty of _____ in its individual capacity (or from the failure of _____ in its individual capacity to perform any of its covenants) contained in this Agreement or any Lease, or (c) in the case of the failure to use ordinary care on the part of Owner Trustee or _____ in its individual capacity in the disbursement of funds. The indemnities contained in this Article 6 extend to _____ only in its individual capacity and shall not be construed as indemnities of the Trust Estate. The Indemnities contained in this Article 6 shall survive the termination of this Agreement. In addition, and to secure the foregoing indemnities, Owner Trustee shall have a lien on the Trust Estate, which shall be prior to any interest therein of Trustor.

ARTICLE 7

TERMINATION

Section 7.01 Termination Date. The Trust shall terminate without any notice or other action of Owner Trustee upon the earlier of (a) such date as may be directed by Trustor and the sale or other final disposition by the Owner Trustee of all property constituting the Trust Estate or (b) twenty one years less one day after the earliest execution of this Trust Agreement by any party hereto.

Section 7.02 Distribution of Trust Estate Upon Termination. Upon any termination of the Trust pursuant to the provisions of Section 7.01 hereof, Owner Trustee shall convey the Trust Estate to Trustor or its nominee.

ARTICLE 8

MISCELLANEOUS

Section 8.01 Nature of Title of Trustor. Trustor shall not have legal title to any part of the Trust Estate. No transfer, by operation of law or otherwise, of the right, title and interest of Trustor in and to the Trust Estate or the trusts hereunder, in accordance with the terms hereof, shall operate to terminate this Agreement or the trusts hereunder or entitle any successor or transferee of Trustor to an accounting or to the transfer of it of legal title to any part of the Trust Estate.

Section 8.02 Power of Owner Trustee to Convey. Any assignment, sale, transfer or other conveyance by Owner Trustee of the interest of Owner Trustee in the Aircraft or any part thereof made pursuant to the terms of this Agreement or any Lease shall bind Trustor and shall be effective to transfer or convey all right, title and interest of Owner Trustee and Trustor in and to the Aircraft or such part thereof. No permitted purchaser or other permitted grantee shall be required to inquire as to the authorization, necessity, expediency or regularity of such assignment, sale, transfer or conveyance or as to the application of any sale or other proceeds with respect thereto by Owner Trustee.

Section 8.03 Trust Agreement for Benefit of Certain Parties Only. Nothing herein, whether expressed or implied, shall be construed to give any person other than Owner Trustee and Trustor any legal or equitable right, remedy or claim under or in respect of this Agreement; but this Agreement shall be held to be for the sole and exclusive benefit of Owner Trustee and Trustor.

Section 8.04 Notices. Unless otherwise expressly provided herein, all notices, instructions, demands and other communications hereunder shall be in writing and shall be delivered personally or sent by registered or certified mail, postage prepaid and return receipt requested, or sent by facsimile transmission, with a confirming copy

sent by air mail, postage prepaid, and the date of personal delivery or facsimile transmission or 7 business days after the date of mailing (other than in the case of the mailing of a confirming copy of a facsimile transmission), as the case may be, shall be the date of such notice, in each case addressed (i) if to the Owner Trustee, to _____ at its office at _____, Attention: _____ and (ii) if to the Trustor, to _____, Attention: _____.

Section 8.05 Co-Trustee and Separate Trustees. If at any time it shall be necessary or prudent in order to conform to any law of any jurisdiction in which all or any part of the Trust Estate is located, or Owner Trustee being advised by counsel shall determine that it is so necessary or prudent in the interest of Trustor or Owner Trustee, or Owner Trustee shall have been directed to do so by Trustor, Owner Trustee and Trustor shall execute and deliver an agreement supplemental hereto and all other instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons (any and all of which shall be a Citizen of the United States) approved by Owner Trustee and Trustor, either to act as co-trustee jointly with Owner Trustee, or to act as separate trustee hereunder (any such co-trustee or separate trustee being herein sometimes referred to as "additional trustee"). In the event Trustor shall not have joined in the execution of such agreements supplemental hereto within 10 days after the receipt of a written request from Owner Trustee so to do, or in case an event of default, as defined in any Lease, shall have occurred and be continuing, Owner Trustee may act under the foregoing provisions of this Section 8.05 without the concurrence of Trustor; and Trustor hereby appoints Owner Trustee its agent and attorney-in-fact to act for it under the foregoing provisions of this Section 8.05 in either of such contingencies.

Every additional trustee hereunder shall, to the extent permitted by law, be appointed and act, and Owner Trustee and its successors shall act, subject to the following provisions and conditions:

(a) all powers, duties, obligations and rights conferred upon Owner Trustee in respect of the custody, control and management of moneys, the Aircraft or documents authorized to be delivered hereunder or under any Lease shall be exercised solely by Owner Trustee;

(b) all other rights, powers, duties and obligations conferred or imposed upon Owner Trustee shall be conferred or imposed upon and exercised or performed by Owner Trustee and such additional trustee jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed (including the holding of title to the Trust Estate) Owner Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such additional trustee;

(c) no power given to, or which it is provided hereby may be exercised by, any such additional trustee shall be exercised hereunder by such additional trustee, except jointly with, or with the consent in writing of, Owner Trustee;

(d) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder;

(e) Trustor, at any time, by an instrument in writing may remove any such additional trustee. In the event that Trustor shall not have executed any such instrument within 10 days after the receipt of a written request from Owner Trustee so to do, Owner Trustee shall have the power to remove any such additional trustee without the concurrence of Trustor; and Trustor hereby appoints Owner Trustee its agent and attorney-in-fact for it in such connection in such contingency; and

(f) no appointment of, or action by, any additional trustee will relieve the Owner Trustee of any of its obligations under, or otherwise affect any of the terms of, this Agreement or any Lease.

Section 8.06 Situs of Trust; Applicable Law. The Trust has been accepted by Owner Trustee and will be administered in the State of Utah. The validity, construction and enforcement of this Agreement shall be governed by the laws of the State of Utah without giving effect to principles of conflict of law. If any provision of this Agreement shall be invalid or unenforceable, the remaining provisions hereof shall continue to be fully effective, provided that such remaining provisions do not increase the obligations or liabilities of Owner Trustee.

Section 8.07 Amendment. This Agreement may not be amended, modified, supplemented, or otherwise altered except by an instrument in writing signed by the parties thereto.

Section 8.08 Successors and Assigns. In accordance with the terms hereof, this Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and permitted assigns, including any successive holder of all or any part of Trustor's interest in the Trust Estate.

Section 8.09 Headings. The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not affect the meaning or construction of any of the provisions hereof.

Section 8.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute and be one and the same instrument.

ARTICLE 9

CERTAIN LIMITATIONS

Section 9.01 Limitations on Control, Exceptions.

(a) Limitation on Control. Notwithstanding any other provision of this Agreement, but subject to paragraph (b) of this Section 9.01, the Trustor will have no rights or powers to direct, influence or control the Owner Trustee in the performance of the Owner Trustee's duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee. In all matters involving the ownership and operation of the Aircraft by the Owner Trustee, the Owner Trustee shall have absolute and complete discretion in connection therewith and shall be free of any kind of influence or control whatsoever by the Trustor, and the Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee as it, in its discretion, shall deem necessary to protect the interests of the United States, notwithstanding any countervailing interest of any foreign power which, or whose citizens, may have a direct or indirect interest in the Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which the Owner Trustee might otherwise have to the Trustor; provided, however, that subject to the foregoing limitations, the Owner Trustee shall exercise this discretion in all matters involving the ownership and operation of the Aircraft by the Owner Trustee with due regard for the interests of the Trustor. In exercising any of its rights and duties under this Agreement in connection with matters which may arise not relating to the ownership and operation of the Aircraft, the Owner Trustee shall be permitted to seek the advice of the Trustor before taking, or refraining from taking, any action with respect thereto. The Owner Trustee shall notify the Trustor of its exercise of rights and duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee.

(b) Certain Exceptions. Subject to the requirements of the preceding paragraph (a), the Owner Trustee agrees that it will not, without the prior written consent of the Trustor, (i) sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto except as otherwise expressly provided for herein, or (ii) amend any Lease or other document or give any consents thereunder.

(c) Purpose. The purpose of this Section 9.01 is to give the Owner Trustee the power to manage and control the Aircraft with respect to matters involving the ownership and operation of the Aircraft by the Owner Trustee so as to assure that (i) the Aircraft shall be controlled with respect to such matters by a Citizen of the United States and (ii) the Trustor shall have no power to influence or control the exercise of the Owner Trustee's authority with respect to such matters and (iii) Owner Trustee shall be able to give the affidavit required by Section 47.7 (c) (2) (iii) of the Federal Aviation Regulations, 14 C.F.R. 47.7 (c) (2) (iii). Section 9.01 shall be construed in furtherance of the foregoing purpose.

Section 9.02 General. Notwithstanding anything to the contrary in this Agreement, the Owner Trustee and the Trustor hereby agree as follows:

If persons who are neither U.S. citizens or resident aliens have the power to direct or remove the Owner Trustee, either directly or indirectly through the control of another person, those persons together shall not have more than twenty five (25%) percent of the aggregate power to direct or remove the Owner Trustee.

ARTICLE 10

COMPLIANCE WITH LAWS

Section 10.1 Covenant to Comply with Export Restrictions and U.S. Laws. Trustor acknowledges that the Aircraft may be subject to restrictions involving the export and re-export of the same pursuant to the laws and regulations of the United States, that the laws and regulations of the United States restrict the transfer of any interest in the Aircraft to certain persons (collectively, the "Export Restrictions") and that such Export Restrictions may apply to the Aircraft even after the Aircraft has been physically removed or transferred from the United States. Trustor also acknowledges that the Owner Trustee, as a U.S. regulated financial institution, is subject to the laws and regulations of the United States, including, without limitation, those promulgated by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) and the Financial Crimes Enforcement Network (FinCEN) (collectively, the "U.S. Laws"). Trustor agrees that it will comply with, and will not knowingly permit the Aircraft to be used in a manner that is contrary to, Export Restrictions and U.S. Laws applicable to (1) the Trustor; (2) the Owner Trustee; or (3) the Aircraft, including the acquisition, possession, operation, use, maintenance, leasing, subleasing, or other transfer or disposition thereof.

Section 10.2 Approval of Transfer. Trustor agrees that it will not permit the assignment of this Agreement, any transfer of the beneficial interest of the Trustor created by this Agreement, or a lease or sublease of the Aircraft (collectively, a "Transfer") without Owner Trustee's prior written approval of such Transfer. Owner Trustee shall not unreasonably delay its decision on a request for approval from Trustor nor shall it unreasonably withhold its approval to such request. To facilitate Owner Trustee's evaluation of the Transfer, Trustor agrees that it will use reasonable efforts to provide Owner Trustee with any information reasonably requested by the Owner Trustee regarding the Transfer, the proposed transferee and/or the ownership of the proposed transferee. Owner Trustee's decision to approve or disapprove the proposed Transfer shall not be deemed to have been unreasonably delayed if Owner Trustee has not obtained the information it needs to make the decision, and Owner Trustee's approval of the proposed Transfer shall not be deemed to have been unreasonably withheld if Owner Trustee has determined that the Transfer will or may reasonably be expected to put Owner Trustee at risk of violating any laws or regulations applicable to Owner Trustee including, without limitation, the Export Restrictions and/or U.S. Laws. If

Owner Trustee withholds approval of a Transfer as set forth herein, then: (i) subject to the terms of this Agreement, Owner Trustee may resign or Trustor may remove Owner Trustee; and (ii) Owner Trustee shall have no obligation to consent to or facilitate a Transfer while Owner Trustee's resignation or removal is pending.

(The remainder of this page left blank intentionally)

IN WITNESS WHEREOF, Owner Trustee and Trustor have caused this Agreement to be duly executed all as of the date first above written.

TRUSTOR:

By: _____

Title: _____

OWNER TRUSTEE:

By: _____

Title: _____

Annex 4

**FAA Aeronautical Center Counsel Opinion
Letter dated January 8, 2002 to Susan Haught of
Daugherty, Fowler, Peregrin & Haught, P.C.**



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

Mike Monroney
Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

January 8, 2002

Susan H. Haught, Esquire
Daugherty, Fowler, Peregrin & Haught, P.C.
204 North Robinson
900 City Place
Oklahoma City, OK 73102

Dear Ms. Haught:

Recently you posed a question regarding trustee removal clauses contained in trust agreements. Essentially your question was whether a clause stating "the trustee may be removed for cause" is sufficient to satisfy the intent of Title 14, Code of Federal Regulations, Section 47.7(c) (the Regulations) where the beneficiary is a non-citizen.

For the reasons discussed below, I respond in the negative and advise that in any circumstance where there is a non-citizen beneficiary, the trust agreement must restrict exercise of removal powers to situations involving "cause." By way of example, a clause providing "the trustee may only be removed for cause" would be considered an acceptable restrictive clause.

Title 14, Code of Federal Regulations, Section 47.7(c) (3) provides and requires that:

If persons who are neither U.S. citizens nor resident aliens have the power to direct or remove a trustee, either directly or indirectly through the control of another person, the trust instrument must provide that those persons together may not have more than 25 percent of the aggregate power to direct or remove a trustee. Nothing in this paragraph prevents those persons from having more than 25 percent of the beneficial interest in the trust.

Historically, the Aeronautical Center Counsel's office has viewed a person's ability to remove a trustee as the

pinnacle of control and power. Therefore, consistent with Section 47.7(c)(3) of the Regulations, the power to remove must be limited by other means to not more than 25 percent in the aggregate.

In reviewing trust law I find it is a basic principle that a trustee may always be removed for breach of trust. In my opinion, a restatement of that basic principle does not serve to limit the power to remove as required by the Regulations. I therefore conclude the most effective way to satisfy the intent of Section 47.7(c) of the Regulations, is to limit the exercise of removal powers to "cause" situations. For these reasons, henceforth, in situations where there are non-citizen beneficiaries, trust agreements submitted under 14 CFR 47.7(c) must restrict removal rights to situations involving "cause."

This letter opinion has no retroactive effect, however, I recognize there are numerous previously submitted trust agreements containing a removal clause that does not meet the standard articulated herein. For the basic reason that those trust agreements were submitted and found sufficient under the then existing standard, this office does not consider it necessary to amend or modify them to comply with the standard articulated herein.

If you have questions or comments, you may contact the undersigned at 405-954-3296.

Sincerely,
Joseph R. Standell,
Aeronautical Center Counsel

By: 
Michael R. Burton
Senior Attorney

Annex 5

FAA Memorandum on Limited Liability Companies (LLCs) dated August 23, 1999 from the Manager, Aircraft Registration Branch



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Subject: **INFORMATION:** Office Procedures
(Limited Liability Companies (L.L.C.'s))

Date: **AUG 23 1999**

From: Manager, Aircraft Registration Branch, AFS-750

Reply to
Attn of:

To: All Examination Sections
All Public Documents Room Users

As you know, in recent years Limited Liability Company (L.L.C.) applications have become a significant vehicle for aircraft registration. It is a concern of both the Legal and Registry offices that the Registry not become a registry of convenience for persons not meeting the definition of "citizen of the United States". On August 5, 1999, representatives from the Legal and Registry offices met to discuss current procedures and problems encountered in the review of L.L.C. applications. The following paragraphs summarize the decisions made at that meeting. This information will be utilized in the examination of documents submitted for L.L.C.'s.

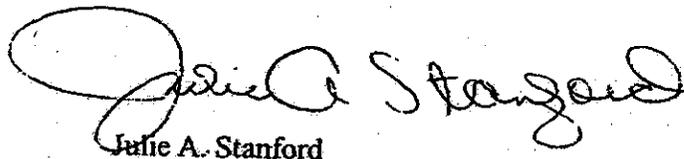
Issue 1 (Citizenship): It is Legal's position that an L.L.C. is eligible to register aircraft in their name, provided (i) at least two-thirds (2/3) of the managers or managing members are "U.S. citizens" within the meaning of 49 U.S.C. Section 40102(a)(15), and (ii) at least seventy-five percent (75%) of the voting interest or units is owned or controlled by persons who are "U.S. citizens" or citizens of one of its possessions. (NOTE: an L.L.C. may not register as a non-citizen corporation.)

Issue 2 (Management Titles): In order to make a citizenship determination, we must be able to identify the citizenship of the managers and members of an L.L.C. . Therefore, the practice of accepting L.L.C. applications for registration showing a corporate or managerial title without further evidence of the L.L.C.'s organization will be discontinued as of September 1, 1999. This is a substantial change from our current procedures.

Issue 3 (Evidence): Legal recommends a modification to our current L.L.C. review process. Accordingly, for the present, in lieu of, or in addition to, submission of documents evidencing the organization of an L.L.C. (e.g., Certificate of Formation, Articles or Organization, or Operating Agreement), we will also accept information and written representations, in letter form, by the legal or management representative, that the L.L.C. qualifies as a U.S. citizen. Satisfactory evidence may include the following information and representations:

- ◆ The full name of the L.L.C.;
- ◆ The state in which the L.L.C. is lawfully organized;
- ◆ The effective date of the L.L.C.;
- ◆ The name of each of the members of the L.L.C. and the type of entity of each member;
- ◆ Whether the L.L.C. is managed by a manager or by its members;
- ◆ Whether the managers, members, or officers may act independently;
- ◆ The name of the manager and type of entity;
- ◆ A description as to how each legal entity within the L.L.C. structure supports a determination that the L.L.C. is a "U.S. citizen" as required by 49 U.S.C. Section 40102(a)(15)(c).

Examiners will make an initial review of the documents submitted to the Registry in support of citizenship and determine if further review by Legal is required. Simple L.L.C. cases (e.g., all L.L.C. managers and members are individuals) need not be sent to Legal for review. All other cases involving an L.L.C. may be directed to Legal for further review.



Julie A. Stanford

Notes from meeting with examiners on 8/31/99:

1. Representation can be accepted by fax. Even though faxes will be accepted, do not suggest to callers that they fax their information.
2. Representation does not need to be notarized—just a statement.
3. Representation may also be signed by a law firm or title search.
4. We will add to the 8050-42 to ask for whatever gives “membership/management/citizenship”.
5. Technical will be doing a sheet on acceptable titles for members/managers like the one for partners/co-owners.
6. If a case has already been rejected for some other reason (i.e., physical address, fee, etc.) prior to 9/1/99 and the app in suspense was signed by “manager” or “officer” (and no L.L.C. file found)—don’t reject for the articles or the operating agreement.
7. If an LLC managed by a manager or officer sells the aircraft and there were never any articles on file, we will not reject at this point for articles.
8. Do not reject for representation if all members are individuals and are management.
9. This is effective September 1 for examination, not for docs filed as of 9/1/99.
10. If an LLC managed by members has never registered an aircraft and submits articles that do not name the members, we will reject for a statement that names the members.
11. Continue to send to Legal all LLCs that include anything but individuals as members.
12. If there is not agreement between docs received and the Articles, etc., reject for clarification.
13. If Articles or Operating Agreement are not clear as to who manages, reject for clarification (i.e., one paragraph states managed by member, but a later paragraph states manager appointed).
14. Legal states they will provide whatever information we require. The Legal LLC summary will be updated to include the execution date.
15. There will not be a form made for applicants to use for the representation. We can tell them what items need to be included—but do not make up a form to send out.



U.S. Department
of Transportation
Federal Aviation
Administration

Memorandum

Subject: **INFORMATION:** Office Procedures
(Acceptable Titles for Limited Liability
Companies (L.L.C.s))

Date: APR 13 2000

From: Manager, Aircraft Registration Branch, AFS-750

Reply to
Attn of:

To: All Examination Sections
Support Section
All Public Document Room Users

On August 30, 1999, the Examination Sections were advised that a list of acceptable titles to use when working L.L.C. cases would be provided. Members of Technical, Examination and Support supervisors later met to discuss some of the problems encountered regarding L.L.C. titles. The following paragraphs summarize the decisions made at that meeting. This information will be utilized in the examination of documents submitted for L.L.C.s.

Previously, when inputting new L.L.C.s into the on-line authorization system, if managed by its members, the individual members names were shown as the authorized signers. Effective this date, when completing the authorization summary on-line, only the title of Member should be shown as the authorized signer. Individual members names are no longer required. NOTE: The submitted L.L.C. documentation must still, however, contain the members names in order to determine citizenship eligibility. Even though the original members names are required, we will not reject applications which have been signed by a new party as long as the appropriate title is shown.

If an L.L.C. is managed by a manager, you may accept the titles of Manager, Managing Member, Member Manager, Manager/Member, Member/Manager. The title must include the word Manager. Member alone would not be acceptable. Corporate type titles (i.e., president, vice-president, secy-treas., etc.) would also be unacceptable.

If an L.L.C. is managed by its members, you may accept the titles of Member, Managing Member, Member Manager, Manager/Member, Member/Manager. The title must include the word Member. Manager alone would not be acceptable. An exception to this rule would be if the L.L.C. documentation shows it to be managed by a "Managing Member" or a "Member Manager". Member alone or Manager alone would be acceptable. Corporate type titles (i.e., president, vice-president, secy-treas., etc.) would be unacceptable in both cases.

If an L.L.C. is managed by officers, and the specific officers' titles are shown (i.e., president, vice-president, secy-treas., etc.), you may accept only those titles. Those specific titles should be reflected in the on-line system. If the on-line system shows only "Officers", any corporate type title would be acceptable. In this case, neither Manager nor Member would be acceptable.

If an L.L.C. is managed by a Board of Governors, you may accept the title of Governor. In this case, no other titles would be acceptable.

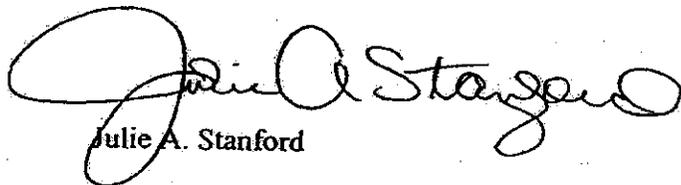
If an L.L.C. document states that management is vested in its members, but that officers have been or will be appointed, the on-line system should reflect Member as the authorized signer. They may appoint officers, but management is still vested in the members. If, however, the L.L.C. documents state that management is vested in its members, but later in the same document it states that officers are appointed to manage the affairs of the L.L.C., the on-line systems should reflect both Member and the specified officer titles.

If you receive Articles of Organization or an Operating Agreement with conflicting statements, or are unable to determine how management is vested, reject for clarification as to actual management of the L.L.C.

There are several duplicate L.L.C. names in the on-line system (i.e., same name, organized in different states). If you are checking the on-line system and find more than one record for your L.L.C. name, it will be necessary to look at the actual L.L.C. files to determine if the required documentation has previously been received. Effective this date, if the L.L.C. name you are entering on-line is a duplicate, you should include the two digit State abbreviation in parenthesis after the name.

If an application is signed by the appropriate party but shows other signatures and titles, do not reject for them to be removed. As long as the correct signature and title are shown, accept the application.

If you receive multiple bills of sale which only "pass through" the L.L.C., and the signer shows a title of Manager or a corporate type title, it is not necessary to reject for L.L.C. documentation. If, however, the signer shows a title of Member, you should request the documentation showing Member is the appropriate signature.



Julie A. Stanford

Annex 6

FAA Procedures in NCT Transactions and Aircraft Registration

ANNEX 6

FAA PROCEDURES IN NCT TRANSACTIONS AND AIRCRAFT REGISTRATION

I. Obtaining Aeronautical Center Counsel ("ACC") opinion.

In NCT transactions in which FAA counsel are involved, the first step is to submit drafts of the Trust Agreement and of the Owner Trustee's Affidavit of Citizenship to ACC for an opinion as to their acceptability for filing with the FAA. In such submissions, it is customary to include a statement that the instruments submitted are substantially the same as instruments previously reviewed by ACC. However, if there are any variances from prior instruments, they are noted in the submission. Local title services often do not obtain ACC opinions, but represent in their cover letters to the FAA enclosing the instruments that they are the same as others previously filed. In a transaction in which the name of the Trustor is similar to the name of the Owner Trustee, ACC requires a statement in the opinion request letter that the officers, directors and shareholders of the Owner Trustee are not officers, directors or shareholders of the Trustor.

II. General NCT Requirements.

The Owner Trustee must be a U.S. citizen or resident alien and the Trust Agreement and Owner Trustee's Affidavit of Citizenship must satisfy the requirements of Section 47.7(c) as interpreted by ACC. An additional requirement is the Trust Agreement must be governed by the laws of one of the States of the U.S. and the Trust Agreement must so provide.

III. Specific Provisions Required in NCTs.

The Owner Trustee's removal must be limited in the Trust Agreement by a provision ACC believes to be an ascertainable standard, such as "for cause" or "for misfeasance, malfeasance or nonfeasance." ACC believes an unlimited right of the Trustor to remove the Owner Trustee would allow the Trustor control over the Owner Trustee by threatening removal.

The additional provisions that must be included in the Trust Agreement are limitations on the Trustor's power to influence, limit or direct the Owner Trustee. These are usually found in an Article in the Trust Agreement titled Control Limitations. These provisions have evolved over the past 30 years based on revisions required by ACC and are now standard in all NCTs.

IV. Affidavit of Citizenship Requirements.

The Owner Trustee's Affidavit of Citizenship must include the language required in § 47.7(c)(2)(iii) of FAR Part 47. This provision generally reads:

The Owner Trustee is not aware of any reason, situation or relationship involving the Trustor or other persons who are not "Citizens of the United States" as defined in Section

40102(a)(15) of the Code or resident aliens as a result of which these persons would have more than twenty-five percent (25%) of the aggregate power to influence or limit the exercise of Owner Trustee's authority under the Trust Agreement.

V. Instruments filed with the FAA.

In order to register an aircraft in the name of an Owner Trustee under an NCT, the following instruments must be filed with the FAA: (i) Aircraft Bill of Sale or other instrument conveying title to the aircraft to the Owner Trustee; (ii) a counterpart or certified copy of the Trust Agreement; (iii) an AC Form 8050-1 Aircraft Registration Application by the Owner Trustee; and (iv) the Owner Trustee's Affidavit of Citizenship. In addition, a copy of the ACC opinion is included in the filing package.

Although § 47.7(c)(2)(i) requires the filing with the FAA a "copy of each document legally affecting a relationship under the trust," Operating Agreements and other agreements with the Owner Trustee as a party are not required by ACC to be filed with the FAA in order to cause the FAA to register the aircraft in the name of the Owner Trustee.

Annex 7

Core Conditions of proposed FAA Memorandum on NCT Trust Agreements

ANNEX 7

CORE CONDITIONS OF PROPOSED FAA MEMORANDUM ON NCT TRUST AGREEMENTS

Trustee Requirements

Affidavit

[current]

- as to citizenship
- as to non-awareness of any reason, situation or relationship involving Trustor or other non-citizens (other than resident aliens) where they have more than 25% aggregate power to influence or limit the OT's authority under the Trust Agreement

Trust Agreement

[current]

- contains language in 9.01 and 9.02 of the FAA approved Owner Trust Agreement as to control:

Section 9.01 Limitations on Control, Exceptions.

(a) Limitation on Control. Notwithstanding any other provision of this Agreement, but subject to paragraph (b) of this Section 9.01, the Trustor will have no rights or powers to direct, influence or control the Owner Trustee in the performance of the Owner Trustee's duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee. In all matters involving the ownership and operation of the Aircraft by the Owner Trustee, the Owner Trustee shall have absolute and complete discretion in connection therewith and shall be free of any kind of influence or control whatsoever by the Trustor, and the Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee as it, in its discretion, shall deem necessary to protect the interests of the United States, notwithstanding any countervailing interest of any foreign power which, or whose citizens, may have a direct or indirect interest in the Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which the Owner Trustee might otherwise have to the Trustor; provided, however, that subject to the foregoing limitations, the Owner Trustee shall exercise this discretion in all matters involving the ownership and

operation of the Aircraft by the Owner Trustee with due regard for the interests of the Trustor. In exercising any of its rights and duties under this Agreement in connection with matters which may arise not relating to the ownership and operation of the Aircraft, the Owner Trustee shall be permitted to seek the advice of the Trustor before taking, or refraining from taking, any action with respect thereto. The Owner Trustee shall notify the Trustor of its exercise of rights and duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft by the Owner Trustee.

(b) Certain Exceptions. Subject to the requirements of the preceding paragraph (a), the Owner Trustee agrees that it will not, without the prior written consent of the Trustor, (i) sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto except as otherwise expressly provided for herein, or (ii) amend any Lease or other document or give any consents thereunder.

(c) Purpose. The purpose of this Section 9.01 is to give the Owner Trustee the power to manage and control the Aircraft with respect to matters involving the ownership and operation of the Aircraft by the Owner Trustee so as to assure that (i) the Aircraft shall be controlled with respect to such matters by a Citizen of the United States and (ii) the Trustor shall have no power to influence or control the exercise of the Owner Trustee's authority with respect to such matters and (iii) Owner Trustee shall be able to give the affidavit required by Section 47.7 (c) (2) (iii) of the Federal Aviation Regulations, 14 C.F.R. 47.7 (c) (2) (iii). Section 9.01 shall be construed in furtherance of the foregoing purpose.

Section 9.02 General. Notwithstanding anything to the contrary in this Agreement, the Owner Trustee and the Trustor hereby agree as follows:

If persons who are neither U.S. citizens or resident aliens have the power to direct or remove the Owner Trustee, either directly or indirectly through the control of another person, those persons together shall not have more than twenty five (25%) percent of the aggregate power to direct or remove the Owner Trustee.

- contains language in 3.02 of the FAA approved Owner Trust Agreement as to removal for cause:

Section 3.02 Removal. Owner Trustee may be removed at any time, but for cause only, by a written instrument or instruments signed by Trustor. Such removal shall take effect immediately upon the appointment of a successor Owner Trustee pursuant to Section 3.04, whereupon all powers, rights and obligations of the removed Owner Trustee under this Agreement (except the rights set forth in Section 3.08) shall cease and terminate. Without any affirmative action by Trustor, any Owner Trustee shall cease immediately to be an Owner Trustee at such time as it ceases to be a Citizen of the United States or at such time as it for any reason is not free from control by Trustor as described in Article 9, and shall give immediate notice thereof to Trustor. Any Owner Trustee shall also give Trustor notice of a possible change of citizenship at the later of (i) 90 days prior to a change in citizenship and (ii) actual knowledge by Owner Trustee that such a change in citizenship is probable.

- contains governing law of a U.S. state
- when filed at the FAA, accompanied by (a) a copy of ACC opinion approving the trust agreement or (b) a statement that the trust agreement complies with the requirements
- when filed at the FAA, accompanied by a copy of each document legally affecting a relationship under the trust

Trust Agreement

[proposed]

- require confirmation by the trustee that it has diligence procedures in place that are intended to meet the requirements of the USA PATRIOT Act "know your customer" requirements and OFAC regulations so as to form a reasonable belief with respect to the identity of the beneficiary and the operator/lessee (the "Identity Due Diligence").
- require covenants that prohibit transfer of the beneficial interest in the trust without first notifying the trustee and providing the current information as to the identity and contact information with respect to such new beneficiary and giving the trustee the opportunity to perform the Identity Due Diligence on the proposed new party.
- require covenants requiring the inclusion of certain transfer restrictions in each Operational Agreement. For the purposes of the referenced memorandum, an "Operational Agreement" would mean, with respect to an aircraft then owned pursuant to an NCT, any lease, operating agreement or other bailment agreement, entered into from time to time, whether by or through the beneficiary of the NCT, or such other transferee/operator, in each case if granting possession and operational control of the aircraft for a period in excess of 180 consecutive days. Pursuant to such covenants, the beneficiary would agree that any Operational Agreement entered into by such beneficiary or at its direction (i.e., any Operational Agreements between the trustee and any third party transferee) would prohibit further transfers of such rights to a transferee/operator unless the transferor of such rights first notifies the trustee, providing it with the then current information as to the identity and contact information with respect to such proposed transferee/operator, and giving the trustee the opportunity to perform the Identity Due Diligence on such proposed transferee/operator and update the trustee's files. This transfer restriction would cascade down through all subsequent Operational Agreements thereby requiring each such transferor of its possessory and operational rights thereunder to provide such information to the trustee, and include the requirement in any subsequent Operational Agreements to which it may be a party.