



Fw: Reply of U.S. Bank N.A. to AWG Consultative Group - Response Paper on Non-Citizen Trusts

Marc Warren to: LaDeana Peden, Joseph R Standell

05/31/2011 02:12 PM

From: "Borden, Robert" [RMBorden@goodwin.com]

Sent: 05/31/2011 03:09 PM AST

To: Marc Warren

Cc: "jeffrey.wool@awg.aero" <jeffrey.wool@awg.aero>; David Grizzle; Joseph R Standell; "claude.brandes@airbus.com" <claude.brandes@airbus.com>; "scott.scherer@boeing.com" <scott.scherer@boeing.com>; "John.Pritchard@hklaw.com" <John.Pritchard@hklaw.com>; "Brantner, Andrea J (GECAS)" <Andrea.Brantner@gecas.com>; "philip.kanejr@usbank.com" <philip.kanejr@usbank.com>; "Burnick, Corrine" <CBurnick@goodwin.com>

Subject: RE: Reply of U.S. Bank N.A. to AWG Consultative Group - Response Paper on Non-Citizen Trusts

I'm re-sending the letter referenced in my email message below in case the prior version could not be opened. Thank you. Rob Borden

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From: Borden, Robert

Sent: Tuesday, May 31, 2011 2:40 PM

To: marc.warren@faa.gov

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Subject: RE: Reply of U.S. Bank N.A. to AWG Consultative Group - Response Paper on Non-Citizen Trusts

Hello, Mr. Warren: attached please find my reply on behalf of U.S. Bank to the AWG Consultative Group response paper on non-citizen trusts. As noted in the letter, we intend to participate in the Public Meeting scheduled for tomorrow via the hotel teleconferencing system.

Best regards, Rob Borden

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SHIPMAN & GOODWIN LLP®
COUNSELORS AT LAW

May 31, 2011

Marc Warren
Acting Chief Counsel
Federal Aviation Administration
Washington, DC

Re: Notice of Public Meeting Regarding Use of Non-Citizen Trusts/Reply
to Response of AWG Industry Consultative Group

Dear Mr. Warren:

Shipman & Goodwin LLP represents U.S. Bank National Association and U.S. Bank Trust National Association (referred herein to together as “U.S. Bank”) in their respective capacities as owner trustee with respect to over 300 aircraft registered on the U.S. registry. We have reviewed the submission made to the FAA entitled “NCT-AWG Industry Consultative Group, Responses to FAA Discussion Questions Contained in Notice of June 1, 2011 Public Meeting” (the “Consultative Group Memo”) dated May 26, 2011, and wish to respond to certain of the comments and proposals made therein.

While we commend the Consultative Group members for the hard and thoughtful work evidenced by the Memo, we have not had sufficient time to review and provide meaningful input during its drafting, and therefore wish to respond to certain statements made therein concerning current practices of, and requirements of laws applicable to, owner trustees, generally.

We have the following specific concerns with the Consultative Group Memo:

1. The Consultative Group Memo includes several references to the “exhaustive” or “extensive” due diligence currently performed by many owner trustees with respect to the beneficial owners and operators of aircraft (see, for example the Responses to Question 1 and Question 7). We do not know what the applicable parameters are of an “exhaustive” or “extensive” due diligence process, but believe that performance by owner trustees of such due diligence as may be required under the Patriot Act and the Office of Foreign Assets Control (OFAC) should be sufficient for FAA purposes. We do not believe that the level of due diligence should be expanded

through the use of subjective standards, making it impossible to determine what procedures are appropriate and how compliance is to be monitored.

Further, we submit that the due diligence required under the Patriot Act and OFAC needs to be performed only with respect to contractual counterparties, i.e., the beneficiary under the trust agreement and the lessee or operator, to the extent that the NCT or owner trustee of the NCT is a party to the lease or operating agreement. The scope of due diligence required does not (and should not be expanded to) extend to entities or persons with whom the owner trustee does not have privity of contract.

We believe that the due diligence requirements of the Patriot Act and OFAC serve as the best standards for determining what is in the best interests of the U.S. with respect to NCT beneficiaries and do not disagree with the Consultative Group Memo on that point.

2. The Consultative Group Memo states that owner trustees have the ability to control a trust beneficiary or lessee/operator pursuant to contractual covenants (see Response B to Question 1). In our experience, such "control" only extends to the ability of the owner trustees to refuse to act in accordance with a direction by the trust beneficiary or to exercise express contractual remedies in the event of a covenant breach -- which may include resignation as owner trustee, conveyance of title back to the beneficiary (and resulting de-registration of the aircraft with the FAA), or exercise of rights of repossession and termination in the event of a specified "default" under the lease or operating agreement. This limited control does not provide the owner trustees with the ability to prevent bad acts by beneficiaries or lessee/operators and should not be viewed as a substitute for supervision and intervention by other authorities under applicable laws.

3. While an owner trustee can serve as a resource for information regarding the beneficial owner and operator of U.S registered aircraft which it is provided by those parties, it cannot guarantee the accuracy of such information, and subsequent transfers of beneficial interest or operational control may occur without the owner trustee's knowledge. Owner trustees should not be required to perform exhaustive research beyond that required by OFAC and Patriot Act to ascertain parties' identities. At most, owner trustees should be required to provide the FAA, upon request, with the last, best information that the owner trustee possesses based upon the diligence performed.

4. In considering the adoption of due diligence, control or other supervisory requirements for owner trustees of NCTs, the additional cost of performing those

Marc Warren
Federal Aviation Administration
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obligations should be taken into account by the FAA and transaction parties. The fees paid on these transactions are based upon a minimum amount of ongoing administration expected of the owner trustee. It should also be expected that administration fees will increase commensurate with any additional obligations imposed.

We welcome any requests for further discussion on these points, and intend to participate in the Public Meeting on June 1st via hotel teleconferencing services.

Very truly yours,



Robert Borden
Shipman & Goodwin, LLP

RMB:cah

cc: David Grizzle and Joseph Standell, FAA
cc: Jeffrey Wool, Secretary General, Aviation Working Group
cc: John Pritchard, Holland & Knight; Andrea Brantner, GECAS, AWG
Representatives