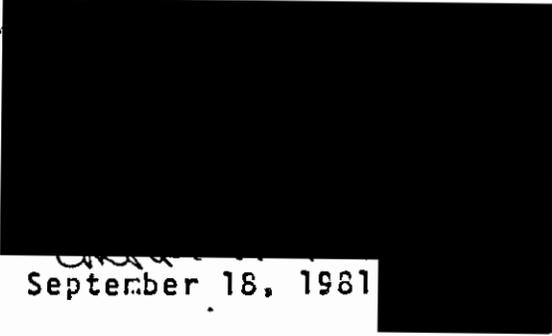


Reviewed Date

RC






September 18, 1981

Howell Begle, Esquire
Verner, Liipfert, Bernhard and McPherson
Suite 1100
1660 L Street, N.W.
Washington, D. C. 20036

Dear Mr. Begle:

This is in response to your inquiry of July 9, 1981, to the Federal Aviation Administration (FAA) concerning the effectiveness of certain proposed arrangements intended to ensure continued eligibility of certain leveraged leased aircraft for U.S. registration under Section 501 of the Federal Aviation Act of 1958, as amended (49 U.S.C. § 1401)(Act) and the Federal Aviation Regulations. I

The need for the proposed arrangements arises because of an imminent change in Crocker National Bank's (CNB) status as a "citizen of the United States", as that term is defined in the Act (49 U.S.C. 1301(16)). CNB currently is an owner-participant in four leveraged leases of U.S. registered aircraft. From the time the leveraged leases commenced until the present, CNB qualified as a "citizen of the United States". Due to the recent approval by the Federal Reserve Board of the acquisition by a foreign citizen of 51% of CNB's parent corporation, CNB will no longer be a "citizen of the United States". If the aircraft subject to the four leveraged leases are to remain registered in the United States, it is necessary for CNB, as an owner-participant, to reduce the amount of control it currently holds over the owner-trustee in each of the four leveraged leases.

We understand from your submissions that the following is true of the leveraged leases which are the subject of your inquiry:

1. Pan American World Airways, Inc. (Pan Am) leveraged lease --
 - (a) The owner-trustee is and will continue to be a "citizen of the United States";

- (b) The owner-trustee holds legal title to the aircraft in trust for the two owner-participants;
- (c) The owner-trustee is and will continue to be the registered owner of the aircraft;
- (d) The two owner-participants, CNB and First Security Bank of Idaho (First Security), hold 90% and 10%, respectively, of the beneficial interests in the owner trust;
- (e) First Security is and will continue to be a "citizen of the United States";
- (f) Currently, the two owner-participants have equal authority to direct or remove the owner-trustee.

2. World Airways, Inc. (World Airways) leveraged lease --

- (a) The owner-trustee is and will continue to be a "citizen of the United States";
- (b) The owner-trustee holds legal title to the aircraft in trust for the two owner-participants;
- (c) The owner-trustee is and will continue to be the registered owner of the aircraft;
- (d) The two owner participants, CNB and First National Bank of Denver, N.A. (First National), hold 75% and 25%, respectively, of the beneficial interests in the owner trust;
- (e) First National is and will continue to be a "citizen of the United States";
- (f) Currently, the two owner-participants have equal authority to direct or remove the trustee.

3. American Airlines, Inc. (American) and Trans World Airways (TWA) leveraged leases --

- (a) The owner-trustee is and will continue to be a "citizen of the United States";

- (b) The owner-trustee holds legal title to the aircraft in trust for the sole owner participant, CNB;
- (c) The owner-trustee is and will continue to be the registered owner of the aircraft.
- (d) CNB holds 100% of the beneficial interests in the owner trust.

With respect to the Pan Am and World Airways leveraged leases, you have proposed an arrangement whereby CNB will relinquish certain of the voting rights it currently holds under its leases. More specifically, CNB will agree to diminish its voting power to 25% of the total voting power exercisable by the owner-participants. You propose to accomplish this by amending the definitions of the terms "majority in interest of owner-participants" and "majority in interest of participants", as used in the relevant trust agreements, by adding the following language:

"For the purpose of this definition, no owner-participant shall be considered to have more than twenty-five percent (25%) of the total voting rights and interests of the owner-participants with respect to the furnishing of instructions to the Trustee or otherwise participating in the management of the Trust, for any period during which the owner-participant fails to qualify as a United States citizen, within the meaning of Section 101(16)."

We are of the opinion that the contractual limitation of CNB's voting rights to 25% of the aggregate voting rights of all owner-participants will be effective to maintain the continued eligibility for U.S. registration of the aircraft subject to the Pan Am and World Airways leveraged leases. The reduction by contract of CNB's power to direct or remove the owner-trustee to 25% of the aggregate power to direct or remove a trustee is consistent with Section 47.7(c)(3) of the Federal Aviation Regulations (14 CFR § 47.7(c)(3)). However, in order to better conform to the requirements of Section 47.7(c)(3), the amendment to the relevant trust agreements should read as follows:

"For the purpose of this definition, no owner-participant shall have more than twenty-five percent (25%) of the total voting rights and interests of the owner-participants with respect to directing or removing the Trustee or otherwise participating in the management of the Trust, for any period during which the owner-participant fails to qualify as a United States citizen, within the meaning of Section 101(16)."

To ensure the continued eligibility for U.S. registration of the aircraft subject to the American and TWA leveraged leases, in which CNB is the sole owner participant, you propose a rather complex arrangement in order to achieve the required limitation on the degree of control which CNB may exercise over the owner-trustee. We do not express any opinion as to whether this proposed arrangement would be effective to ensure the continued eligibility for U.S. registration of aircraft subject to the relevant leases. An alternative arrangement, discussed in recent telephone conversations between you and a member of this staff, however, would appear to better serve your purpose and, in my opinion, meet the requirements of Section 47.7(c) of the Federal Aviation Regulations.

Section 47.7(c) was intended to clarify trustee registration eligibility with respect to trusts wherein "some or all of the beneficial interest is held by foreign investors." 44 Fed. Reg. 65 (1979). FAA practice, as reflected in Section 47.7(c) is "to ignore the scope of economic participation of foreign beneficiaries if the trust is an active trust and if the trustee exercises totally independent judgment with respect to all decisions involving the aircraft Conversely, . . . where the trustee is strongly controlled by the foreign investor, . . . the beneficiaries are the true owners of the aircraft for administrative purposes, and . . . the aircraft is not eligible for registration under Section 501(b)(1)(A)(i)." Id.

Consequently, the FAA will register an aircraft in the name of the U.S. citizen trustee of a trust wherein CNB is the only beneficiary, provided that CNB does not have the power to direct or remove the trustee. Because the owner trust in question must be a passive trust, CNB cannot relinquish its ~~decision~~ as making authority with respect to its beneficial interests as

owner-participant to the owner-trustee. In order to achieve the necessary limitation on CNB's voting power, CNB may assign in trust to a designated trustee all CNB's voting powers under the owner trust with respect to all matters including, without limitation, the ownership and operation of the aircraft. The designated trustee must be a "citizen of the United States". In addition, the designated trustee must execute an affidavit stating that the trustee is not aware of any relationship involving CNB as a result of which CNB would have the power to influence or limit the exercise of the trustee's authority. Of course, the trust under which the designated trustee acts must be valid under applicable state law.

Provided that suitable documents, incorporating the requirements outlined herein, and substantially identical in all other respects to those furnished with your letter of July 9, 1981, are submitted to the FAA aircraft registry, and subject to our review thereof, it is our opinion that the aircraft in question will not cease to be eligible for registration in the United States by reason of CNB's change in citizenship status.

Sincerely,

15/
JOHN T. STEWART, Jr.
Assistant Chief Counsel
International Affairs
and Legal Policy
Office of the Chief Counsel

IHOWEE:mp:AGC-7:9/18/81

cc: AGC-7(Howie),AGC-7df

MC: AGC-7-81/188