



June 30, 2011

Marc Warren
Acting Chief Counsel
Federal Aviation Administration
Washington, DC

Re: **Non-Citizen Trust / Meeting of June 1, 2011 – Supplemental Submission by AWG Industry Consultative Group**

Dear Marc,

We thank the FAA for the June 1, 2011 meeting on the topic of Non-Citizen Trust issues. A number of people from the AWG Industry Consultative Group attended the meeting, and have reported that there was a good exchange of information and views.

The group felt it would be helpful to prepare a supplemental submission addressing some of the issues discussed at the meeting. Attached is a document setting out that supplemental submission.

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 July 1, 2011 cut-off for submissions on this issue.

Once again, the Supporting Entities stand ready to help, 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,

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	Fulbright & Jaworski L.L.P.
Adams Aviation Services	GE Capital Aviation Services
AerCap Holdings N.V.	GE Capital Corporate Aircraft Finance
Airbus Financial Services	Greenberg Traurig, P.A.
Aircastle Limited	Harper Meyer Perez Hagen O'Connor Albert & Dribin LLP
Aircraft Guaranty Title & Trust	Hawker Beechcraft Corporation
Aircraft Title Insurance Agency	Hinckley, Allen & Snyder, LLP
Alaska Airlines, Inc.	Hogan Lovells US LLP
Allen & Overy LLP	Holland & Knight LLP
Asset Finance Legal Counsel, LLP	Horizon Air Industries, Inc.
Avcorp Registrations	Jet RVSM Services, LLC
Aviation Capital Group Corp.	Katten Muchin Resenman LLP
Aviation Legal Group, P.A.	Kaye Scholer LLP
AWAS	Lane Powell PC
Bank of Utah	McAfee & Taft, P.C.
Bell Helicopter Textron Inc.	Michael L. Dworkin and Associates
Boeing Capital Corporation	Milbank, Tweed, Hadley & McCloy LLP
Bombardier Aerospace Structured Finance	ORIX Aviation Systems Limited
Cessna Aircraft Company	Pillsbury Winthrop Shaw Pittman LLP
Cessna Finance Corporation	Pratt & Whitney
Cirrus Aircraft	Ray Quinney & Nebeker P.C.
Cooling & Herbers, P.C.	RBS Asset Finance, Inc.
Crowe & Dunlevy	Smith, Gambrell & Russell, LLP
Crowell & Moring LLP	Stewart H. Lapayowker, P.A.
Dassault Falcon Jet Corp.	Textron Financial Corporation
Daugherty, Fowler, Peregrin, Haught & Jenson	Vedder Price P.C.
DeBee Gilchrist	Wells Fargo Bank Northwest, NA
Embraer S.A.	Wilmington Trust Company
Fafinski Mark & Johnson, P.A.	White & Case LLP
Fellers Snider Blankenship Baily & Tippens, P.C.	

**INTRODUCTION TO NCT - AWG INDUSTRY
CONSULTATIVE GROUP SUPPLEMENTAL PAPER DATED
JUNE 30, 2011 TO JUNE 1, 2011 FAA PUBLIC MEETING IN OKLAHOMA CITY**

The 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 and other service providers and FAA users. The Consultative Group submitted an initial response paper to the FAA on May 26, 2011 (the “*Initial Paper*”) to the questions posed by the FAA in the Notice of (June 1) Public Meeting (the “*Notice of Meeting*”) set forth in the April 26, 2011 Federal Register regarding U.S. Registration of Aircraft in the Name of Owner Trustees. That submission (as is this supplemental submission) was specifically endorsed by a large number of companies, trade groups and organizations from across the commercial aviation, business aviation and general aviation industry. Representatives of the Consultative Group attended the June 1, 2011 public meeting held by the FAA in Oklahoma City (the “*OKC Meeting*”), made a presentation of the Initial Paper, responded to additional questions raised by the FAA personnel in attendance and generally engaged in constructive dialog with FAA personnel. This supplemental submission (this “*Supplemental Paper*”) is meant to both (i) acknowledge and constructively address what the Consultative Group believes to be some perceived concerns of the FAA in respect of the use of non-citizen trusts (referred to herein as either “*non-citizen trusts*” or “*NCTs*”) based on the FAA’s questions and reactions to the responses provided at the OKC Meeting and (ii) reiterate the Consultative Group’s willingness to collaborate with the FAA in a balanced way to address the legitimate safety and security concerns of the FAA while preserving the use of non-citizen trusts that help further important economic and commercial objectives of the aviation industry. This Supplemental Paper is supplemental to, and should be read in conjunction with the Initial Paper and the presentations made by the Consultative Group at the OKC Meeting, including as referenced herein.

DISCUSSION

One concern of the FAA, voiced at the OKC Meeting by Acting Chief Counsel, Marc Warren, is the perception that the use of NCTs thwarts the FAA’s ability to carry out its oversight responsibilities in respect of aviation safety. The Consultative Group understands and appreciates that the FAA needs the ability to meaningfully oversee the operation of U.S.-registered aircraft (wherever based or operated) and that NCTs should not be available as a particular means to thwart FAA oversight in respect of aviation safety. In the Initial Paper and this Supplemental Paper, the Consultative Group explains why the availability of NCT registration, and the related practices engaged in by most of the aviation industry, do not encourage NCT use as a vehicle to circumvent or frustrate FAA oversight. We also provide constructive suggestions on further tightening the NCT structure so as to make more information about the aircraft, its operator and its maintenance available to the FAA, and thereby facilitate FAA operational oversight.

It is important to consider that the information gathering and enforcement concerns about NCT-registered aircraft based and primarily operated outside of the U.S. are not unique to NCTs, but rather exist under any situation in which the registered owner of the aircraft is not the operator, whether that owner is a trustee (for a U.S. citizen or non-citizen beneficiary) or an

owner/lessor. These concerns arise due to and are inherent in the nature of the U.S. aircraft registry as an owner registry and are not limited to NCT-registered aircraft primarily based and operated outside the U.S. Any U.S. citizen may register an aircraft in the U.S. and elect to primarily base and operate the aircraft outside of the U.S., including by permitting the same to be done by an affiliated or unaffiliated operator. The concerns that the FAA may have with aircraft based abroad should not be equated with a fundamental problem with NCT-registered aircraft.

DOCUMENTARY REVISIONS AND OTHER RECOMMENDATIONS ENABLING OVERSIGHT

In the introductory remarks by the FAA at the OKC Meeting, it was noted that many concerns of the FAA were of a housekeeping nature with regard to the language in the form of the FAA-approved non-citizen trust agreement (see Annex 3 to Initial Paper, the “*Form NCT Trust Agreement*”), including improving the clarity of certain of its essential provisions. The Consultative Group agrees with the FAA that through select changes to the Form NCT Trust Agreement, and other related changes to Operational Agreements¹ many of the goals of the FAA and industry can be achieved. This Supplemental Paper includes the Consultative Group’s general propositions for resolving the perceived issues and offers the assistance and commitment of the Consultative Group to continue to work with the FAA on an informal basis to achieve these mutual goals.

I. TRUSTOR/BENEFICIARY & OPERATOR INFORMATION

Made clear by both the FAA’s questions in the Notice of Meeting and the FAA’s questions and reactions during the OKC Meeting, the FAA is concerned about the information that a trustee has and can obtain about its trustor/beneficiary and the operator of the aircraft. We believe that a number of these concerns can be addressed through the types of drafting changes put forth in Annex 7 to the Initial Paper (Core Conditions of Proposed FAA Memorandum on NCT Trust Agreements) and the drafting changes and other suggestions put forth in this Supplemental Paper.

We propose the inclusion in the Form NCT Trust Agreement and, as appropriate, in Operational Agreements, provisions formalizing certain market accepted due diligence practices already being undertaken by many trustees regarding their trustors/beneficiaries, and requiring certain other undertakings by parties to such NCT trust agreements and/or Operational Agreements. Such contractually imposed undertakings could require (i) that each of the trustor/beneficiary and any operator in contractual privity with the trustee through an Operational Agreement provide the trustee with contact information, including a primary contact person, (ii) that trustors/beneficiaries are required to provide information to the trustee on transfers by the trustors/beneficiaries of their interests in the trust and (iii) that operators (including trustors/beneficiaries) in contractual privity with the trustee through an Operational Agreement must (a) provide information to the trustee regarding downstream transfers under Operational

¹ For the purpose of this Supplemental Paper, an “Operational Agreement” is an agreement providing for the granting of the right to the possession and control of an aircraft, such as a lease agreement or an operating agreement.

Agreements for periods exceeding 180 consecutive days² and (b) also include in such downstream Operational Agreements provisions requiring the delivery to the trustee of information of the type specified in the foregoing clauses (i), (ii) and (iii). With the inclusion in NCT trust agreements and any Operational Agreements of the foregoing suggested provisions, trustees will be better equipped to respond to requests of the FAA for information about trustors/beneficiaries and operators of an aircraft.

II. AIRCRAFT & MAINTENANCE RECORD INFORMATION

The FAA asked for the Consultative Group's position as to whether a trustee has the capacity, and any related obligation, to obtain and provide information about the aircraft and maintenance records required by the FAA. The FAA made clear that among its concerns is that certain NCT-registered aircraft (especially those which are based and primarily operated outside of the U.S.) may not be in compliance with FAA airworthiness requirements. Additionally, the FAA indicated that it is not always able to exercise satisfactory oversight of its U.S. and ICAO responsibilities over NCT-registered aircraft in situations where the operator and the aircraft are primarily based outside of the U.S.

Providing "FAA Requested Information"

We understand the FAA's need to have a meaningful contact point for information about the operation, maintenance or location of an aircraft with respect to which the FAA is legally entitled to request and receive pursuant to the relevant FARs ("*FAA Requested Information*"). Whether an aircraft is NCT-registered or otherwise, unless the owner of that aircraft is also the operator, the operator of the aircraft is in the best position to provide the FAA with this FAA Requested Information. Accordingly, the Consultative Group proposes to include provisions in the Form NCT Trust Agreement and in Operational Agreements obligating the trustor/beneficiary and any operator thereunder to respond to requests for FAA Requested Information forwarded by the trustee to such trustor/beneficiary or operator for compliance pursuant to the applicable FARs.

Role of Registered Owner in FAA Compliance

When a registered owner (whether a trustee or otherwise) provides an aircraft to another party, the registered owner requires the operator to operate the aircraft in full compliance with all applicable laws and regulations. In virtually all instances, the registered owner also places full responsibility for the maintenance of the aircraft on the operator, either directly or indirectly. This allocation of responsibility between the parties reflects the fact that the operator and not the owner will have possession and control of the aircraft and therefore will be in the position to ensure compliance. However, because the owner is not involved in the day-to-day operation and maintenance of the aircraft, it is not in a position to force the operator to take any particular action and cannot guarantee that the operator will always be in compliance. As a result, the FAA should continue to hold operators accountable for any non-compliance with these operational and maintenance requirements because such non-compliance, especially in matters having an impact

² The mandatory tracking of transfers of aircraft operation for periods of less than 180 days is not commercially practical in business aviation, general aviation or commercial aviation.

on safety, is attributable to the operator's acts or omissions. Such an approach by the FAA is also consistent with the Congressional intent underlying 49 U.S.C. §44112 which exculpates investors, financing providers and lessors from liability for aircraft incidents provided that the aircraft is not in the actual possession or control of these interest holders when such an aircraft incident occurs.

Better Enable Oversight for NCT-Registered Aircraft

In addition to the Form NCT Trust Agreement and Operational Agreement provisions suggested above, the Consultative Group suggests that the FAA consider new informational requirements to be followed by operators operating under an Operational Agreement having a term exceeding 180 consecutive days³, and not otherwise required to be submitted under the truth-in-leasing requirements set forth in §91.23 (“*Non-TIL Agreements*”). The mechanics of collection of such information by the FAA could track, substantially, mechanics contained in NBAA Exemption No. 7897D, that permits operators of small aircraft to avail themselves of the benefits of operating under Part 91, Subpart F. Specifically, any non-air carrier operator operating under a Non-TIL Agreement would be required to (i) notify the geographically responsible Flight Standards District Office (FSDO) (whether inside or outside the U.S.) of the operation, (ii) provide that FSDO with a copy of the Operational Agreement (including the aircraft registration number) and (iii) advise that FSDO of the inspection program used to maintain the aircraft. We think that regardless of the location of operation of the aircraft, the use of such a mechanism, which has already proven effective, will enable the FAA to obtain directly from operators enough information to effectively exercise its oversight responsibilities. NBAA Exemption No. 7897D reflects the type of industry-government effort that maximizes operational flexibility and facilitates FAA oversight. The Consultative Group seeks to do the same here to better enable the FAA to carry out its aircraft oversight responsibilities.

III. TRUSTEE'S RIGHT TO RESIGN FOR TRUSTOR/BENEFICIARY NON-COMPLIANCE

To better assist the FAA in obtaining FAA Requested Information, the Consultative Group suggests, in the limited instance where a trustor/beneficiary fails to comply with the FAA's request for FAA Requested Information, that the FAA lift its prohibition against allowing resignation by a trustee without such trustee first being replaced by a successor trustee. The FAA effects such requirement by insisting upon the inclusion of a requirement that such resignation take effect only on the appointment of a successor trustee in all FAA-approved NCT trust agreements (see Section 3.03 of the Form NCT Trust Agreement). This requirement makes resigning no real remedy, given that candidates to serve as successor trustee to a trustor/beneficiary failing to provide FAA Requested Information would be scant. Providing the trustee with the right to resign without a successor trustee in response to a trustor's/beneficiary's non-compliance in respect of FAA Requested Information eliminates this problem, and therefore should ensure a greater likelihood of compliance with such obligations.

This right of the trustee, however, must be elective as between the commercial parties, given concerns of the industry around preservation of a financing party's security and priority interests and insurance coverages in respect of the aircraft that might result from an invalid

³ The rationale for the 180 day period set forth in footnote 2 applies here as well.

aircraft registration due to the trustee's resignation. We are confident though, that a process can be devised that will allow the trustee and any affected financing parties to work in concert to address non-compliance in a way that does not unduly disrupt the industry, but still provides the trustee with some clout over a non-compliant trustor/beneficiary to encourage compliance.

IV. SUPREMACY CLAUSE TO PREVENT IMPACT OF "SIDE AGREEMENTS"

Although at the OKC Meeting neither the FAA nor members of industry could agree on what documents "legally affect[ing] a relationship under the trust" for purposes of compliance with § 47.4(c)(2)(i) of Part 47 of the Federal Aviation Regulations, it was clear that the FAA is concerned about the instance where there are documents in a transaction not filed with the FAA that do affect the relationship between the trustee and the trustor/beneficiary under the trust. Of most concern to the FAA were side agreements not filed with the FAA that either directly conflict with or even purposely circumvent the U.S. citizen "control" provisions of the Form NCT Trust Agreement (most of which are quite often found in Article 9 of FAA-approved NCT trust agreements) (the "*Control Provisions*"). Such side agreements are referred to herein as "*Side Agreements*."

Recognizing both the FAA's legitimate concern about the existence of Side Agreements and the difficulty for any party involved in an NCT transaction (including the FAA) to know with certainty whether a document legally affects a relationship under the trust and therefore needs to be filed with the FAA, we recommend including a supremacy clause in the Form NCT Trust Agreement. The effect of the supremacy clause is to actively and effectively override any other provisions contained in any other document or documents to which the trustor/beneficiary and the trustee are a party (or might in the future be a party) that in any way alter the Control Provisions or trustee removal provisions of the NCT trust agreement.

COLLABORATION

The Consultative Group continues to appreciate the FAA's willingness to work with industry on developing an appropriate and jointly acceptable resolution regarding the use of NCTs. With such collaboration in mind, the Consultative Group recommends that the FAA prepare a draft of an FAA Aeronautical Center Counsel memorandum or opinion on NCTs as proposed in the Initial Paper in response to the FAA's Questions #6 and #7 (summarizing acceptable practices on establishing and maintaining NCTs for U.S. registration of aircraft, including in respect of the Control Provisions and trustee removal provisions to be included in NCT trust agreements), with industry providing constructive feedback (the Consultative Group could play a central role in facilitating such feedback and, if desired by the FAA, could work closely with the FAA over the coming months to craft such memorandum or opinion). Similarly, following the FAA providing guidance on the conceptual revisions to the Form NCT Trust Agreement proposed in this Supplemental Paper, the Consultative Group would be happy to work with the FAA on a redraft of the Form NCT Trust Agreement to provide specific language for those conceptual revisions.

FAA'S SOLUTIONS TO BE COMPATIBLE WITH THE CONSULTATIVE GROUP'S CORE ISSUES

It is vitally important to the U.S. aviation industry that whatever actions the FAA elects to take to address its concerns about NCTs, the FAA recognize the importance of the need for NCTs for U.S. registration of aircraft and that its action not undermine the valuable role played by NCTs, the vast majority of which likely raise none of the issues and concerns expressed by the FAA and addressed in this Supplemental Paper.

Along those lines, until the FAA's concerns about NCTs are addressed with finality through this collaborative process, the Consultative Group requests that the FAA keep in place its "status quo" treatment of NCTs so that the aviation industry can continue to have certainty in the registration process. Any piecemeal, interim requirements in connection with the use of NCTs would have a chilling effect on liquidity for aircraft financing transactions, cause delays in deliveries from aircraft manufacturers and disrupt the aircraft operations that are vital to the conduct of business of many companies.

Lastly, it is important that the FAA, in implementing its solutions to NCT issues, not make such solutions retroactively applicable to aircraft already registered through the use of an NCT. The documentation in existing NCT transactions may not contemplate or allow for the FAA's solutions and the impact of not being able to so comply (causing an aircraft's registration to be invalid, if not deregistered) will have the unintended effect of calling into question the continued priority and perfection of security interests of financiers in such aircraft and the calling into question of the effectiveness of both liability and hull insurance for such aircraft, which could be financially catastrophic for many involved in the aviation industry.

CONTINUED FACILITATION

The Consultative Group has done its best since the OKC Meeting to synthesize the varied concerns and issues from across the industry spectrum. Although it was impractical to achieve unanimity on all issues, the industry members comprising this broad-based Consultative Group have reached a consensus regarding the issues and suggested solutions set forth in the Initial Paper and this Supplemental Paper. Also, the Consultative Group will continue to facilitate mutually acceptable resolutions among the FAA and industry members, whether comprising the Consultative Group or otherwise.

By e-mail and hand

May 10, 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. 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 could cause defaults under the relevant agreements and result in 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. 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 10, 2010
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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. In the interim, we respectfully request the FAA to (i) continue the standard industry practice of allowing the use of Non-Citizen Trusts and (ii) confirm that any future decisions as to the validity of such trusts will not have retroactive effect.

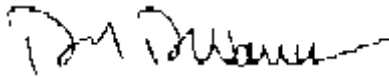
Sincerely,



Jeffrey Wool
Secretary and General Counsel
Aviation Working Group



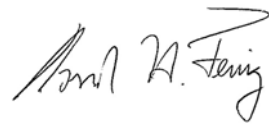
Ed Bolen
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David Warner
General Counsel
National Aircraft Finance Association
Pacific Northwest Business Aviation Association



Susan L. Sheets
President
National Aircraft Resale Association



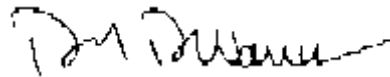
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Peter J. Bunce
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David Warner
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cc: Peggy Gilligan
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