



AVIATION WORKING GROUP

August 17, 2012

Kathryn Thomson
Chief Counsel
800 Independence Avenue, SW
Federal Aviation Administration
Washington, DC 20591

Re: **Non-Citizen Trust / Proposed Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustees**

Dear Katie:

On behalf of the AWG Industry Consultative Group (“ICG”), we would again like to thank you and the rest of the FAA team for extending the time to file supplemental comments regarding Non-Citizen Trusts (“NCTs”). We also wish to thank you and your colleagues again for agreeing to hold the public meeting in Oklahoma City on June 6, 2012, which we hope the FAA viewed as mutually beneficial.

During the public meeting, the FAA raised several issues regarding NCTs that have yet to be resolved. In an effort to address these issues and further elaborate on the industry’s position, we have prepared the attached supplemental submission. This submission is intended to be read in conjunction with ICG’s previous submissions and presentations made to the FAA.

We are authorized to express the support of the organizations and companies listed on the Schedule to this letter (the *Supporting Entities*) for this submission.

We continue to believe that the FAA and the industry would benefit from a smaller gathering with members of our steering group to review any final suggested language. The supporting entities of the AWG ICG stand ready to continue working with the FAA to reach a mutually-agreeable policy regarding NCTs. We thank you very much for taking our views into account.

Sincerely yours,

Jeffrey Wool
Secretary General
Aviation Working Group

CC: M. Gilligan, M. Warren, J. Standell, FAA
CC: Each of the Supporting Entities Noted Above
CC: S Scherer (Boeing) and C. Brandes (Airbus), AWG Co-Chairs
CC: J. Pritchard (Holland & Knight), A. Brantner (GECAS), and K. Quinn (Pillsbury), Industry Group Representatives

Supporting Entities
(listed in alphabetical order)

Associations:

Air Carrier Association of America
Airlines for America
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 / Law Firms:

A&L Goodbody
Adams Aviation Services, Inc.
AerCap Holdings N.V.
Aircastle Limited
Aircraft Guaranty Title & Trust
Aircraft Title Insurance Agency
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
Barbera & Watkins, LLC
Bell Helicopter Textron Inc.
Boeing Capital Corporation
Bombardier Aerospace Structured Finance
Cadwalader, Wickersham & Taft LLP
Cessna Aircraft Company
Cessna Finance Corporation
Cirrus Aircraft
Clifford Chance US LLP
Cooling & Herbers, P.C.
Crowe & Dunlevy
Crowell & Moring LLP
Dassault Falcon Jet Corp.
Daugherty, Fowler, Peregrin, Haught & Jenson
DeBee Gilchrist
Embraer S.A.
Fafinski Mark & Johnson, P.A.
Fellers Snider Blankenship Baily & Tippens, P.C.
Fulbright & Jaworski L.L.P.
Garofalo Goerlich Hainbach PC
GE Capital Aviation Services
GE Capital Corporate Aircraft Finance

Global Jet Delivery LLC
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.
Husch Blackwell LLP
International Lease Finance Corporation (ILFC)
Jackson Adams PC
Jackson Square Aviation, LLC
Jet RVSM Services, LLC
K&L Gates LLP
Katten Muchin Rosenman LLP
Kaye Scholer LLP
Lane Powell PC
Law Offices of Paul A. Lange LLC
McAfee & Taft, P.C.
Michael L. Dworkin and Associates
Milbank, Tweed, Hadley & McCloy LLP
Morris James LLP
Pillsbury Winthrop Shaw Pittman LLP
Pratt & Whitney
Rapp & Krock, PC
Ray Quinney & Nebeker P.C.
RBS Asset Finance, Inc.
Smith, Gambrell & Russell, LLP
Stewart H. Lapayowker, P.A.
Textron Financial Corporation
Vedder Price P.C.
Wells Fargo Bank Northwest, NA
Wells Fargo Delaware Trust Company
Wilmington Trust Company
White & Case LLP
Zuckert Scoutt & Rasenberger, L.L.P.

AWG Industry Consultative Group (“ICG’s”) Supplemental Comments to FAA Proposed Policy Clarification (“PPC”) on Non-Citizen Trusts (“NCTs”)

I. Executive Summary:

During the June 6, 2012 public meeting in Oklahoma City, OK (“**Public Meeting**”) the FAA representatives raised issues for response by the public, including the ICG. The ICG respectfully offers the following responses, and in connection therewith, provides further recommended changes to the NCT Trust Agreement (“**NCT TA**”) provisions (attached) (“**NCT TA Provisions**”). This submission should be read in conjunction with the ICG’s prior submissions and presentations made to the FAA. Capitalized terms used herein and not otherwise defined herein take their meanings in the ICG’s submission to the FAA of May 23, 2012 in relation to the PPC. “**Operating Agreements**” as used herein takes its meaning in the NCT TA Provisions.

The ICG submissions must be considered in the context of the aviation industry as a whole, including the availability and sources of funding for aircraft, the ability of manufacturers to sell aircraft worldwide, jobs provided by maintenance organizations that repair and maintain aircraft, and the needs of US companies that may, at times, not meet all of the statutory citizenship requirements to register and operate business aircraft. As with many other large ticket items (whether commercial jet aircraft, business aircraft or any other general aviation), the entities that may own or finance aircraft are very often not the same as those that actually operate them.

Since the FAA Aircraft Registry is an owner, not operator, registry with citizenship requirements, the use of NCTs has grown to facilitate financing and sustain the global aviation industry. NCTs are critical to U.S.-based companies, including many public companies, which routinely face citizenship issues because they may be unable to confirm that 75% of the voting stock is owned by U.S. citizens or their president may not be a U.S. citizen. Please see the ICG’s submission of May 26, 2011 for a detailed explanation of the value of NCTs in supporting the industry. The practical realities of separating ownership and operation drive the need for an FAA approach that focuses on operators when it comes to safety.

As such, the ICG respectfully submits that the FAA should rely on the operator to provide timely, complete, and reliable information, records, and access to aircraft, without attempting to create mandatory obligations via a policy “clarification.” Any final policy clarification may propose that any Operating Agreement shall provide that Trustees, Trustors and other parties claiming by, through or under them include “cascading” agreements to that effect in downstream operating agreements, leases or other transactional documents. These parties should, and are likely to, reasonably cooperate in an expeditious manner with appropriate FAA requests made pursuant to existing regulations and policies, whether required by private party contracts or otherwise.

If any final policy clarification includes the submission of Operating Agreements as part of the registration packet for NCTs, there must be a process for the treatment of such agreements by the FAA thereafter, including a mechanism for removing the same from any public registry file. Further, if the aircraft would be subject to truth-in-leasing requirements under Part 91 of the FARs, Operating Agreements for such aircraft should be exempt from FOIA disclosure (as with

leases that are not filed for recordation) and not held by the FAA Aircraft Registry in any public files.

The inclusion of a third-party U.S. citizen for use in connection with the removal of a Trustee, as suggested by the FAA, is unworkable due to increased complexity and costs, potential conflicts of interest, or greater influence of Trustors. In an effort to address the concerns about removal referenced in the PPC, ICG proposes that the “for specific cause” reasons for which a Trustor may remove a Trustee be made more stringent and better defined. In doing so, the limitation on no more than 25% of control over removal being vested in a non-citizen of the United States is satisfied by “other means” and can be eliminated as a specific, separate requirement for removal.

II. Concerns for Non-Operators.

FAA’s Position:

At the Public Meeting, the FAA confirmed its intent to create a “policy clarification,” focusing solely on NCTs, “principally” on the issues of safety and oversight, but indicated it intends to preserve fully the NCT model, and does not want to fundamentally change the role of lessors, lessees, or other parties to this relationship.¹ Further, the FAA acknowledged that it now understands industry’s concerns regarding reputational risks, and of unintended consequences, and does not intend to create any basis of tort liability by addressing NCT concerns.² The ICG endorses this approach and observes the following for a better understanding of the important, yet non-operational nature of trust ownership and finance.

AWG/ICG’s Response:

1. Role of Finance Parties. The importance of the role played by trustees, investors, lessors and lenders (collectively, “**Finance Parties**”) in the aviation industry cannot be overstated. These parties all provide liquidity and services to support the aviation industry from manufacturing to airlines to business aviation and other general aviation. Against this backdrop, industry members are especially concerned that the FAA understands that Trustees, like other non-operator or operational owners of aircraft, are limited in their powers to respond to demands made of them when they are neither operating an aircraft nor otherwise actively involved in operational matters. Although we agree that “an owner is an owner,” the ICG submits that the FAA would better achieve its objectives of expeditiously receiving requested safety information by looking to the party actually operating the aircraft (i.e., the party responsible for manipulating the controls and directing maintenance) for the necessary information. Looking to the Finance Party for operator compliance with a regulatory requirement or related FAA demand or requiring that one of these Finance Parties assume responsibility for collecting and

¹ Mr. Warren at Transcript page 173, lines 3-12; “The intent, as Katie said, is to do a policy clarification. A policy clarification. And we want to focus solely on Non-Citizen Trusts, and, principally, on the issue of safety and safety oversight. We want to preserve the Non-Citizen Trust model. We don’t want to be unduly disruptive, unduly directed. We don’t want to fundamentally change the role of the lessor, lessees, or other parties to this relationship.”

² Mr. Warren at Transcript page 173, lines 13-17; “We were reminded today -- and I appreciate that -- to continue to be mindful of reputational risks, and of unintended consequences. We don’t intend to create any basis of tort liability as we do that. So I really appreciate those points.”

holding operational information and records, is not the best approach to ensuring compliance and the flow of necessary safety information. These Finance Parties are not equipped to generate or produce such information. To require them to do so would bring about unintended and unacceptable liability concerns despite the FAA's position that the PPC was not meant to make the Finance Parties liable under tort for the operation of aircraft³. Such obligations would serve as a disincentive to Finance Parties to participate in the acquisition and financing of aircraft, and adversely impact the market both domestically and globally. This point has been made clear by prior ICG submissions and at the Public Meeting by members of several prominent institutions with significant involvement in the aviation industry (all members of the ICG):

“We've seen in the press, and it's important [to] note that financial institutions also have an obligation to mitigate reputational risks. And my concern with the two-or five-day strict compliance period is that news of any enforcement action against a trustee by the FAA -- because there is a standard that we certainly understand that we can't comply with -- will get banks to review both the reputational and regulatory risks of having this business, and would likely result in driving the large responsible and responsive trustees out of the marketplace.” *Mr. Croasmun of Wells Fargo Bank Northwest, N.A. see Transcript; page 76,*

“I think that I would just like to echo and re-enforce the position of John from Wells Fargo, is that our bank is extremely conservative when it comes to reputational risk. And some things, such as this . . . would have to have us seriously consider exiting the business from a Non-Citizen Trust perspective, because it's just something that [we] cannot not afford to undertake from shareholder perspective.” *Mr. Perkins of Wilmington Trust Company and M&T Bank, see Transcript pages 81-82.*

“I want to reiterate that GE is in support of the positions that have already been articulated by John Pritchard and Jeffrey Wool, and also with respect to the non-operating trustees, also would be in support of responding as expeditiously as possible. And, obviously, the reputational issues are of extreme importance to GE Capital. And we will always behave as a good corporate citizen to get the information that the FAA requests as promptly as possible, but the time constraints of two and five days would be problematic.” *Ms. McCarthy of GE Capital, see Transcript; pages 82-83.*

“If [a Trustor's or non-operating owner's] sense of things is that they're going to have liability . . . either to third parties or responsibility to the government, where there's something that they have to answer for, whether it's a fine, or some other sanction, or losing registration, or . . . [a] bad article in the newspaper, you will lose liquidity.” *Mr. Gross of Vedder Price P.C., see Transcript; page 149.*

³ Ms. Thomson at Transcript page 151, lines 5-8; “If we're talking about tort liability, this policy clarification has nothing to do that.” and Transcript pages 152-153, lines 25, 1-2; “We're not talking about [the] latter. We're talking strictly about how do we get access as quickly as possible to complete reliable information.”

Similarly, as noted in the United States International Trade Commission’s Business Jet Aircraft Industry: Structure and Factors Affecting Competitiveness Investigation (No. 332-526; Publication 4314, April 2012; the “**USTIC Report**”), according to the **Equipment Leasing and Finance Association (“ELFA”)**⁴:

“U.S. financing providers often require noncitizens to register their aircraft [in the U.S.], necessitating the use of NCTs, which provide collateral value benefits; a diminished risk of unrecorded liens; and more remedies for repossession, deregistration, and disposition. The FAA, however, has *raised doubts about the validity of existing and future NCT-registered aircraft, which would create a significant barrier to new business jet financings that require the NCT structure . . .*”⁵

III. Facilitate Information Flow, and Access to Records and Aircraft.

FAA’s Position:

The FAA is considering the extent to which a Trustee, as registered owner of an aircraft, has obligations that should serve as a basis for policy clarifications regarding the role of a Trustee and a Trustor in ensuring that the FAA, as a “safety agency,” is getting complete and reliable information as promptly as possible if and when needed by the FAA to fulfill its legal responsibilities on an expeditious basis.

AWG/ICG’s Responses:

1. Information Regarding the Operator. A final policy clarification could require each NCT TA to include a requirement that the Trustor provide to the Trustee the identity and contact information for the operator of the aircraft under any lease, operating agreement or bailment agreement entered into from time to time, by Trustor or by Trustee at Trustor’s direction (if granting possession and operational control of the aircraft for an extended period of time) if Trustor has such information or receives it (note that per paragraph III 2(d) below operators downstream from an Operating Agreement would be contractually obligated to provide Trustor with such information). Unless the Trustee receives written notice to the contrary, it may assume that (i) all of this information is accurate and remains unmodified; and (ii) it is authorized by the operator to provide such information to the FAA if and when requested.
2. Related NCT TA Modifications. As covered in our previous submission, a final policy clarification could require the NCT TA Provisions, and related leases, Operating Agreements or bailment agreements, to include some or all of the following modifications:

⁴ ELFA represents more than 500 financial services companies and manufacturers in the U.S. equipment finance sector, including most of the major financing providers to the business jet industry. Such companies facilitate the growth and expansion of the business jet industry by providing financing for sales of these aircraft and other aviation equipment and in 2011 the equipment finance volume of the companies that make up ELFA reached \$628 billion. See USTIC Report, Appendix D at pages D-10-11.

⁵ See USTIC Report, Appendix D at pages D-10-11; *emphasis added*.

(a) Trustee and Trustor's Responses to FAA Requests. Add covenants to the NCT TA or Operating Agreement by each of the Trustee and Trustor that such party will respond as expeditiously as reasonably practicable to any request by the FAA for information related to the aircraft or the operation of the aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft, and to provide or cause to be provided to the FAA such information to the extent previously received, or received upon request, from the operator or from any other source; but with the understanding that neither the Trustee or Trustor (so long as it is not also the operator) shall be liable or responsible under the NCT TA for any failure by any other party, whether the operator or any other source, to provide accurate information, including if requested pursuant to the NCT TA, whether in a timely manner or at all.

(b) Notice Regarding Trustor's Conveyances. Add covenants to the NCT TA or Operating Agreement in connection with a transfer (other than in respect of a collateral assignment) of the Trustor's beneficial interest in the trust that require the Trustor to provide the Trustee with the identity and contact information with respect to the new Trustor and to update the Trustee (if changed) as to the identity and contact information for the operator of the aircraft under any lease, operating agreement or bailment agreement as contemplated above in paragraph III 1 above.

(c) Notice Regarding Operational Transfers. Add covenants to the NCT TA or Operating Agreement requiring the inclusion of certain transfer requirements in each lease, operating agreement or other bailment agreement (to the extent not already covered in such agreements)⁶, entered into from time to time, whether by the Trustor or by the Trustee at the Trustor's direction, in each case if granting possession and operational control of the aircraft for an extended period of time. Pursuant to such covenants, the counterparty granted possession and operational control would agree that:

- (i) further transfers of possession and operational control of the aircraft to a transferee or operator be promptly notified to the Trustor and the Trustee by the transferor of such rights,
- (ii) the transferor will provide the Trustor and the Trustee the identity and contact information with respect to such proposed transferee or operator; and
- (iii) the transferor, transferee and operator will promptly provide the Trustor and the Trustee any changes to such information and confirm to them such information at any time upon request by the Trustee.

(d) Cascading Responsibilities. In respect of Operating Agreements, the above-referenced transfer requirements would cascade down through all subsequent or downstream leases, operating agreements or other bailment agreements, entered into from

⁶ Many commercial and business aircraft leases and related documents between the Trustee and an airline or other operator already have similar transfer restrictions and information requirements. The ICG is not proposing to override or change current industry practice for new agreements that already meet these standards; rather to suggest that any new agreements without such industry practice include such provisions.

time to time that grants possession and operational control of the aircraft for an extended period of time, thereby requiring each such transferor of possessory and operational rights to both (i) provide this information to the Trustee and include such requirements in any subsequent similar agreements by the counterparty granted possession and operational control and (ii) promptly update or confirm such information at any time upon demand by the Trustee or the Trustor.

Additionally, the transferee under each such lease, operating agreement or other bailment agreement, entered into from time to time that grants possession and operational control of the aircraft for an extended period of time would agree to:

- (i) provide its reasonable cooperation to the FAA in an expeditious manner with respect to any legally entitled request by the FAA or other applicable aviation authority made pursuant to existing regulations and policies for information about the operator and/or aircraft; and
- (ii) authorize, upon a legally entitled request, (x) the FAA to access the records for the aircraft and (y) the FAA or other any other duly authorized air authority representatives of the U.S. or, at the legally entitled request of the FAA, the government where it is habitually based or operated, to inspect the aircraft.

IV. Submission and Non-Disclosure of Operating Agreements.

FAA's Position:

During the Public Meeting, discussions revolved around the submission of Operating Agreements with the application for registration by an NCT Trustee and what the FAA would do with such documents after submission, such as whether Operating Agreements are added to the "ancillary files" for an aircraft (maintained by the FAA Aircraft Registry) and whether the Operating Agreements can be treated as confidential by the FAA (subject to exemption from FOIA requests).⁷ ICG raised concerns that (1) Operating Agreements made part of the ancillary files will be a cloud on title to the aircraft without a recognized mechanism for removal upon termination or expiration⁸ and (2) the Operating Agreements may contain confidential information (not relevant to the FAA or any other governmental entity) and that the FAA should treat certain Operating Agreements as qualified for exemption from FOIA requests as provided under the truth-in-leasing regulations⁹. The FAA demonstrated appreciation for these concerns at the Public Meeting, but with respect to the confidential treatment of Operating Agreements,

⁷ See Transcript; pages 97 - 110. Mr. Binkley at Transcript page 100, lines 18-22; "[The trust agreement] goes in what's called an ancillary file. The operating agreement would go in the ancillary file as well, just like other documents are attachments associated with the trust itself."

⁸ See Transcript; pages 100 - 101.

⁹ See Transcript; pages 101 - 110. See also FAR §91.23(d).

the FAA sought justifications for having Operating Agreements qualify for exemption from FOIA requests.¹⁰

AWG/ICG’s Response:

The ICG does not object to submitting the Operating Agreements to the FAA as part of the registration packet, but is concerned about where the Operating Agreement is placed at the FAA and how it is treated after such submission. The FAA indicated at the Public Meeting that its expectation is that the Operating Agreement would be filed with the Trust Agreement in the ancillary files, which are public files, as an agreement affecting the trust. To address the concerns raised by the ICG around the future impact of such filings and confidentiality issues, we suggest three possible treatments for Operating Agreements submitted to the FAA in connection with an NCT registration, which could be determined by the filing parties at the time of registration and notified to the FAA Aircraft Registry:

- (i) the standing assumption is that the Operating Agreement is filed in the “ancillary files” at the FAA Aircraft Registry, together with the NCT TA;¹¹
- (ii) if, however, an aircraft is subject to the truth-in-leasing requirements, and the parties notify the FAA Aircraft Registry they are filing the Operating Agreement in accordance with the truth-in-leasing requirements, the FAA Aircraft Registry will identify the Operating Agreement as such and the parties will furnish it to the FAA Technical Section in satisfaction of the requirement in Section 91.23(c)(1) of the FAR (and it will be accorded confidential treatment as granted by Section 91.23(d) of the FAR to all leases filed for truth-in-leasing purposes); or
- (iii) if the parties file the Operating Agreement (likely to be a “lease”) with the FAA Aircraft Registry for recordation under Section 49.17 of the FAR, including with any permitted redactions, then the Operating Agreement, as so redacted, could be placed in the ancillary files.

1. Mechanisms for Removal and Confidential Treatment: If the parties decide to file an Operating Agreement for recordation (should it qualify as a “lease”), mechanisms already exist for redacting confidential business information and terminating such recordation when the lease is terminated by its terms or otherwise. However, for the other two treatments, a little more is required. In addition, should the FAA reject the suggestions in items (ii) and (iii) above, it is imperative that the issues discussed below be addressed by the FAA in respect of all Operating Agreements filed in the ancillary files.

(a) Removal of an Operating Agreement from the ancillary files. Some members of the Association of Aviation Title Lawyers take the position that the inclusion of an Operating Agreement in the ancillary files for an aircraft is something that they may include as an encumbrance on title (as they would a lease, security agreement or other encumbrance) in connection with giving a title report because it reflects a party’s claim of

¹⁰ See Transcript; page 108.

¹¹ Mr. Binkley at Transcript; page 107, lines 15 – 17; “We, typically, retain that stuff, whether we put it in the record or keep it in other sort of file.”

rights to possession of the aircraft.¹² Accordingly, before the FAA determines that the treatment for submitted Operating Agreements is to include them in the ancillary files for aircraft, the FAA must develop a mechanism that allows for the removal or termination of Operating Agreements from the those files upon termination or expiration of the agreement. As not all terminations of Operating Agreements will be on a consensual basis, the FAA's removal mechanism must take that into account as well (e.g. allowing pre-agreed acknowledgments of termination or authority to have the Operating Agreement removed from the ancillary files).

(b) Confidential Treatment for aircraft that qualify for truth-in-leasing treatment. For truth-in-leasing purposes, the FAA should treat Operating Agreements as leases because the Trustee is compensated by the Trustor to serve in a trustee capacity and to furnish the aircraft to the Trustor (thereby providing the compensation the FAA considers as necessary to a "lease"). Operating Agreements in respect of large aircraft that qualify for truth-in-leasing treatment under Section 91.23 of the FAR should "not be made available by the FAA for public inspection or copying under 5 U.S.C. 552(b)(4) unless recorded with the FAA under part 49 of this chapter" as required by Section 91.23(d) of the FAR. The copy of the Operating Agreement submitted with the registration packet to the FAA Aircraft Registry should also be accorded the same confidential treatment.

V. Removal of Trustee for Specific Cause

FAA's Position: In discussing the ICG's deletion of the 25% limitation in Section [3.02 *Removal*],¹³ the FAA asked if any way exists to involve a third-party U.S. citizen in the removal process.

AWG/ICG's Response:

1. Adding a third party U.S. citizen ("Third Party") to the removal process is impractical. Introducing a Third Party into the NCT process for purposes of removal does not resolve the issues that the FAA has with NCTs as a whole and adds a layer of expense and bureaucracy that will be difficult to bear by transaction parties. The NCT structure already involves the hiring of a U.S. citizen for purposes of obtaining U.S. registration. The suggestion of adding another U.S. citizen for hire seems a bit incongruous, if not also fraught with potential issues. For example, if the Third Party is an entity that the Trustor selects and pays for, it would seem to put more "power" in the Trustor to control the mechanism for removal, and if the Third Party is an entity that the Trustee selects and pays for, there could be a conflict of interest (the Trustee pays the fees of the entity that can decide to remove it). In either case, an acceptable method for a Third Party to influence the removal process would have to be created. In addition, a Third Party would charge for its services, adding expense to the structure. This added complexity and expense could, among other changes related to the PPC, drive up the cost of the structure and have a chilling effect on the industry.

¹² See Transcript; page 101.

¹³ See Transcript; pages 116 – 124.

As an adjunct of that discussion, the ICG reiterates that the FAA addressed this issue in the past as set forth in an ACC opinion issued in 2002.¹⁴ That opinion stated that trust agreements submitted under 14 CFR 47.7(c) must restrict removal rights to situations involving “cause” as opposed to a simple permissive “may” remove for cause. In explaining the position, the opinion stated that “... a person’s ability to remove a trustee [is] 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.” (*emphasis added*) Based on this opinion, on which the industry has relied, the FAA has already provided a clarification related to the requirement of cause as sufficient “other means” for meeting the Section 47.7 requirements. The PPC has suggested strengthening this “other means” further by requiring specific cause. The ICG has agreed to this higher standard (greater restriction) and suggested language that both establishes specific causes and clarifies certain causes that would not constitute sufficient cause for removal. The FAA need not go further in the final policy clarification to address this issue, other than the removal of the 25 percent limitation the FAA proposed in Section [3.02 *Removal*] in the form trust agreement attached to the PPC (see the NCT TA Provisions as marked in the ICG May 23, 2012 Submission).

VI. Revised NCT TA Provisions

Based on our responses in this submission, the ICG has also made some further revisions to the NCT TA Provisions provided with the May 23, 2012 Submission and attach the provisions here clean, as well as marked to show the changes made since the May 23, 2012 Submission and also marked to show the cumulative changes against the same provisions from the PPC.

¹⁴ See Annex 4 to the May 26, 2011 Response Paper submitted to the FAA.

TRUST AGREEMENT
[ONLY SECTIONS RELEVANT TO NCT TA PROVISIONS]

ARTICLE [1]¹

DEFINITIONS

"Lessee" means any counterparty to Owner Trustee under any Lease.

"Lease" means any agreement (including an Operating Agreement) from time to time entered into by Owner Trustee and Lessee that transfers the right to possess, use and operate the Aircraft to such Lessee.

"Operating Agreement" means any agreement (including a lease) that transfers the right to possess, use and operate the Aircraft from Owner Trustee to Trustor.

ARTICLE [3]

THE OWNER TRUSTEE

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. For purposes of this Section, "for cause" means willful misconduct or gross negligence [or PARTIES MAY ADD OTHER SPECIFICALLY DESCRIBED CAUSES SUBJECT TO FAA REVIEW], but "for cause" will not include the refusal by Owner Trustee to act or refrain from acting in a manner that (1) would violate the laws, regulations, court orders or lawful directions of a government agency, (2) is outside the scope of Owner Trustee's authority, (3) is contrary to its obligations under Article [4, *Trust Estate*] or [9, *Limitations on Control*]¹ of this Agreement, or (4) is the subject of a mere disagreement between Owner Trustee and 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.

¹ References to Article Numbers are illustrative and refer to the articles on the Trust Estate and on Limitations on Control, which may bear different Article Numbers in any actual Trust Agreement.

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 *Successor Owner Trustee*], whereupon all powers, rights and obligations of the resigning Owner Trustee under this Agreement (except the rights set forth in Section [3.08 *Fees, Compensation*]) shall cease and terminate.²

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:

[(b)] to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA or, in the case of sub-clause (v), submitting to the FAA for review, (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any Operating Agreement and any other document or instrument required to so effectuate such registration;

[(e)] to respond as expeditiously as reasonably practicable to any request by the FAA for information related to or the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft including, if applicable, the information described in Section [4.04(i) and (ii) *Trustor's Duties*] below, and to provide the FAA with such information to the extent that Owner Trustee has such information or actually receives such information from Trustor, the operator or from any other source; Owner Trustee shall not be liable or responsible under this Agreement for any failure by Trustor, the operator or any other source to provide accurate information under this Agreement whether in a timely manner or at all;

[(f)] to forward as expeditiously as reasonably practicable any emergency airworthiness directive in connection with the Aircraft from the FAA received by Owner Trustee to Trustor and/or the operator of the Aircraft unless Owner Trustee knows that Trustor and/or operator receive such directives directly from the FAA.

[(g)] to notify the FAA Aircraft Registry as expeditiously as reasonably practicable of Owner Trustee's resignation under Section [3.03 *Resignation*] or removal under [3.02 *Removal*], or of the termination of the trust under Section [7.01 *Termination Date*].

² Parties to a trust may choose to allow an owner trustee to resign without a successor, but any such language and conditions would be up to the parties to determine.

[(h)] to consent to any request from the FAA or any other duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, which the FAA or such other governmental entity is legally entitled to make to inspect the Aircraft under law applicable to Owner Trustee or the Aircraft.

Section [4.04] Trustor's Duties. Trustor hereby covenants and agrees:

(a) upon a request by the FAA for information related to the Aircraft and the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft, which is issued to Trustor or to Owner Trustee (and forwarded by Owner Trustee to Trustor), as the case may be, to provide as expeditiously as reasonably practicable to Owner Trustee or the FAA, as the case may be, with all such requested information to the extent that Trustor has such information or actually receives such information from the operator or from any other source, including, if applicable, (i) information in relation to the operation, maintenance, location or base of operation of the Aircraft, and (ii) contact information of (a) the operator of the Aircraft and (b) any other person to whom the FAA may look to gather information related to crew members for the Aircraft, the Aircraft's operations on specific dates, the location of the Aircraft, and maintenance and other aircraft records for the Aircraft; Trustor (so long as it is not also the operator) shall not be liable or responsible under this Agreement for any failure by Owner Trustee, the operator or any other source to provide accurate information requested under this Agreement whether in a timely manner or at all;

(b) in connection with any transfer of Trustor's beneficial interest in the Trust (other than a collateral assignment thereof), to provide Owner Trustee the identity and contact information with respect to the new Trustor and to update the operator information provided pursuant to Section 4.04(c) and 4.04(d) to the extent Trustor has such information or actually receives such information from the operator or from any other source;

(c) to provide to Owner Trustee the identity and contact information for the operator of the Aircraft under any Lease, Operating Agreement or bailment agreement entered into from time to time at Trustor's direction, in each case if granting possession and operational control of the Aircraft for an extended period of time, to the extent that Trustor has such information or actually receives such information from the operator or from any other source; unless Owner Trustee receives written notice to the contrary, it may assume that (i) all of this information is accurate and remains unmodified; and (ii) it is authorized by the operator to provide such information to the FAA if and when requested;

(d) to require that any Operating Agreement shall provide the following or similar provisions to the same effect:

(i) that all further transfers of the rights to possession and operational control of the Aircraft to a transferee (other than in respect of a

collateral assignment) or an operator be promptly notified to Owner Trustee and Trustor by the transferor of such rights, providing the identity and contact information with respect to such transferee or operator and any other person to whom the FAA may be legally entitled to look to gather information related to crew members of the Aircraft, the Aircraft's operations on specific dates, the location of the Aircraft, and the maintenance and other aircraft records for the Aircraft to Owner Trustee and Trustor and promptly providing each of them any changes to such information, and that any such information be promptly confirmed to Owner Trustee and Trustor at any time upon request by either of them;

- (ii) that each such further transferee or operator (x) shall provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (y) shall authorize the FAA or other any other duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, upon any request which the FAA or such other governmental entity is legally entitled to make under law applicable to such transferee, operator or the Aircraft, to inspect the Aircraft; and
- (iii) that each such further transferee or operator agrees that the above-referenced information and inspection requirements would be made and agreed in all subsequent or downstream leases, operating agreements and bailment agreements thereby requiring each such subsequent transferee or operator (x) to provide such contact information in the event that there has been a transfer of possession and operation to another party, to update such information when any changes occur, and to promptly confirm such information at any time upon request by Owner Trustee or Trustor, (y) to provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (z) to authorize the FAA or such other governmental entity to inspect the Aircraft to the extent that it is legally entitled to make such request under law applicable to Owner Trustee, Trustor, the relevant counterparty to any such subsequent or downstream agreement or the Aircraft.

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], Trustor will have no rights or powers to direct, influence or control Owner Trustee in the performance of Owner Trustee's duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft. [In all matters involving the performance of Owner Trustee's duties under this Agreement in connection with the ownership and operation of the Aircraft, Owner Trustee shall have absolute and complete discretion in connection therewith and shall be free of any kind of influence or control whatsoever by Trustor.]³ Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft as Owner Trustee, 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 Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which Owner Trustee might otherwise have to Trustor; provided, however, that subject to the foregoing limitations, Owner Trustee shall exercise this discretion in all matters arising under this Agreement involving the ownership and operation of the Aircraft with due regard for the interests of 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, Owner Trustee shall be permitted to seek the advice of Trustor before taking, or refraining from taking, any action with respect thereto. Owner Trustee shall notify Trustor of its exercise of rights and duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft.

(b) Certain Exceptions. Subject to the requirements of the preceding paragraph (a), Owner Trustee agrees that it will not, without the prior written consent of Trustor, sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto, or amend any Lease or other document (other than a document over which the Owner Trustee has the absolute and complete discretion established under Section [9.01(a) *Limitation on Control*] of this Agreement) or give any consents thereunder except as otherwise expressly provided for herein.

(c) Purpose. The purpose of this Section [9.01] is to assure that (i) the Aircraft shall be controlled with respect to such matters as are described in Section 9.01(a) of this Agreement by a Citizen of the United States and (ii) Trustor shall have no power to influence or control the exercise of Owner Trustee's authority with respect to

³ Proposing to FAA to delete as redundant of the provisions of the 1st and 3rd sentences.

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. Section [9.01] shall be construed in furtherance of the foregoing purpose.

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

If persons who are neither U.S. citizens or resident aliens have the power to direct or remove (other than for cause set forth in Section [3.02, *Removal*]) 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 (other than for such cause) Owner Trustee.

Section [9.03] Priority. In creating and accepting the Trust, Trustor, and Owner Trustee each acknowledges that (i) in case of conflict, the limitations in Article [9] of this Agreement are paramount and superior to any other terms and conditions in this Agreement; or in any other document or documents (including, without limitation, under a Lease or an Operating Agreement) to which Trustor and Owner Trustee are a party in respect of the Trust and (ii) any such conflicting variations to the limitations in Article [9] of this Agreement (including, without limitation, if set forth within a Lease or an Operating Agreement) shall be *void ab initio*, unless, in respect of both clauses (i) and (ii), such variations have been approved by the FAA.

Revised NCT TA Provisions attached to AWG-ICG August 17, 2012 Submission
Marked to show changes from the NCT TA Provisions attached to
AWG-ICG May 23, 2012 Submission

TRUST AGREEMENT
[ONLY SECTIONS RELEVANT TO NCT TA PROVISIONS]

ARTICLE [1]¹

DEFINITIONS

"Lessee" means any counterparty (~~other than Trustor~~) to Owner Trustee under any Lease.

"Lease" means any agreement (including an ~~operating agreement~~Operating Agreement) from time to time entered into by Owner Trustee and Lessee that transfers the right to possess, use and operate the Aircraft to such Lessee.

"Operating Agreement" means any agreement (including a lease) that transfers the right to possess, use and operate the Aircraft from Owner Trustee to Trustor.

ARTICLE [3]

THE OWNER TRUSTEE

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. For purposes of this Section, "for cause" means willful misconduct or gross negligence [or PARTIES MAY ADD OTHER SPECIFICALLY DESCRIBED CAUSES SUBJECT TO FAA REVIEW], but "for cause" will not include the refusal by Owner Trustee to act or refrain from acting in a manner that (1) would violate the laws, regulations, court orders or lawful directions of a government agency, (2) is outside the scope of Owner Trustee's authority, (3) is contrary to its obligations under Article [4, *Trust Estate*] or [9, *Limitations on Control*]¹ of this Agreement, or (4) is the subject of a mere disagreement between Owner Trustee and 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

¹ References to Article Numbers are illustrative and refer to the articles on the Trust Estate and on Limitations on Control, which may bear different Article Numbers in any actual Trust Agreement.

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 *Successor Owner Trustee*], whereupon all powers, rights and obligations of the resigning Owner Trustee under this Agreement (except the rights set forth in Section [3.08 *Fees, Compensation*]) shall cease and terminate.²

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:

[(b)] to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA or, in the case of sub-clause (v), submitting to the FAA for review, (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any Operating Agreement and any other document or instrument required to so effectuate such registration;

[(e)] to respond as expeditiously as reasonably practicable to any request by the FAA for information related to or the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft including, if applicable, the information described in Section [4.04(i) and (ii) ~~Trustor's *Duty to Respond to Forwarded Requests from Owner Trustee*~~*Duties*] below, and to provide the FAA with such information to the extent that Owner Trustee has such information or actually receives such information from Trustor, the operator or from any other source; Owner Trustee shall not be liable or responsible under this Agreement for any failure by Trustor, the operator or any other source to provide accurate information under this Agreement whether in a timely manner or at all;

[(f)] to forward as expeditiously as reasonably practicable any emergency airworthiness directive in connection with the Aircraft from the FAA received by Owner Trustee to Trustor and/or the operator of the Aircraft unless Owner Trustee knows that Trustor and/or operator receive such directives directly from the FAA.

[(g)] to notify the FAA Aircraft Registry as expeditiously as reasonably practicable of Owner Trustee's resignation under Section [3.03 *Resignation*] or removal

² Parties to a trust may choose to allow an owner trustee to resign without a successor, but any such language and conditions would be up to the parties to determine.

under [3.02 *Removal*], or of the termination of the trust under Section [7.01 *Termination Date*].

[(h)] to ~~not prohibit or exclude relevant~~, consent to any request from the FAA or any other duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, ~~from inspecting~~ which the FAA or such other governmental entity is legally entitled to make to inspect the Aircraft under law applicable to Owner Trustee or the Aircraft.

Section [4.04] ~~Trustor's Duty to Respond to Forwarded Requests from Owner Trustee~~ Duties. Trustor hereby covenants and agrees ~~that,~~ :

(a) upon a request by the FAA for information related to the Aircraft and the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft, which is issued to Trustor or to Owner Trustee (~~as and~~ forwarded by Owner Trustee to Trustor), as the case may be, ~~Trustor will~~ to provide as expeditiously as reasonably practicable to Owner Trustee or the FAA, as the case may be, with all such requested information to the extent that Trustor has such information or actually receives such information from the operator or from any other source, including, if applicable, (i) information in relation to the operation, maintenance, location or base of operation of the Aircraft, and (ii) contact information of (a) the operator of the Aircraft and (b) any other person to whom the FAA may look to gather information related to crew members for the Aircraft, the Aircraft's operations on specific dates, ~~where the location of~~ the Aircraft ~~will be located on a specific date in the future or, and~~ maintenance and other aircraft records for the Aircraft. ~~Neither,~~ Trustor (so long as it is not also the operator) ~~nor Owner Trustee~~ shall not be liable or responsible under this Agreement for any failure by ~~Trustor (in respect of the~~ Owner Trustee ~~only)~~, the operator or any other source to provide accurate information requested ~~hereunder~~ under this Agreement whether in a timely manner or at all;

(b) in connection with any transfer of Trustor's beneficial interest in the Trust (other than a collateral assignment thereof), to provide Owner Trustee the identity and contact information with respect to the new Trustor and to update the operator information provided pursuant to Section 4.04(c) and 4.04(d) to the extent Trustor has such information or actually receives such information from the operator or from any other source;

(c) to provide to Owner Trustee the identity and contact information for the operator of the Aircraft under any Lease, Operating Agreement or bailment agreement entered into from time to time at Trustor's direction, in each case if granting possession and operational control of the Aircraft for an extended period of time, to the extent that Trustor has such information or actually receives such information from the operator or from any other source; unless Owner Trustee receives written notice to the contrary, it may assume that (i) all of this information is accurate and remains unmodified; and (ii) it is authorized by the operator to provide such information to the FAA if and when requested;

(d) to require that any Operating Agreement shall provide the following or similar provisions to the same effect:

- (i) that all further transfers of the rights to possession and operational control of the Aircraft to a transferee (other than in respect of a collateral assignment) or an operator be promptly notified to Owner Trustee and Trustor by the transferor of such rights, providing the identity and contact information with respect to such transferee or operator and any other person to whom the FAA may be legally entitled to look to gather information related to crew members of the Aircraft, the Aircraft's operations on specific dates, the location of the Aircraft, and the maintenance and other aircraft records for the Aircraft to Owner Trustee and Trustor and promptly providing each of them any changes to such information, and that any such information be promptly confirmed to Owner Trustee and Trustor at any time upon request by either of them;
- (ii) that each such further transferee or operator (x) shall provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (y) shall authorize the FAA or other any other duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, upon any request which the FAA or such other governmental entity is legally entitled to make under law applicable to such transferee, operator or the Aircraft, to inspect the Aircraft; and
- (iii) that each such further transferee or operator agrees that the above-referenced information and inspection requirements would be made and agreed in all subsequent or downstream leases, operating agreements and bailment agreements thereby requiring each such subsequent transferee or operator (x) to provide such contact information in the event that there has been a transfer of possession and operation to another party, to update such information when any changes occur, and to promptly confirm such information at any time upon request by Owner Trustee or Trustor, (y) to provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (z) to authorize the FAA or such other governmental entity to inspect the Aircraft to the extent that it is legally entitled to

make such request under law applicable to Owner Trustee, Trustor, the relevant counterparty to any such subsequent or downstream agreement or the Aircraft.

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], Trustor will have no rights or powers to direct, influence or control Owner Trustee in the performance of Owner Trustee's duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft. [In all matters involving the performance of Owner Trustee's duties under this Agreement in connection with the ownership and operation of the Aircraft, Owner Trustee shall have absolute and complete discretion in connection therewith and shall be free of any kind of influence or control whatsoever by Trustor.]³ Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft as Owner Trustee, 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 Trustor and any such action by the Owner Trustee shall not be considered malfeasance or in breach of any obligation which Owner Trustee might otherwise have to Trustor; provided, however, that subject to the foregoing limitations, Owner Trustee shall exercise this discretion in all matters arising under this Agreement involving the ownership and operation of the Aircraft with due regard for the interests of 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, Owner Trustee shall be permitted to seek the advice of Trustor before taking, or refraining from taking, any action with respect thereto. Owner Trustee shall notify Trustor of its exercise of rights and duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft.

(b) Certain Exceptions. Subject to the requirements of the preceding paragraph (a), Owner Trustee agrees that it will not, without the prior written consent of Trustor, sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto, or amend any Lease or other document (other than a document over which the Owner Trustee has the absolute and complete discretion established under Section [9.01(a) *Limitation on Control*] of this Agreement) or give any consents thereunder except as otherwise expressly provided for herein.

³ Proposing to FAA to delete as redundant of the provisions of the 1st and 3rd sentences.

(c) Purpose. The purpose of this Section [9.01] is to assure that (i) the Aircraft shall be controlled with respect to such matters as are described in Section 9.01(a) of this Agreement by a Citizen of the United States and (ii) Trustor shall have no power to influence or control the exercise of 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. Section [9.01] shall be construed in furtherance of the foregoing purpose.

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

If persons who are neither U.S. citizens or resident aliens have the power to direct or remove (other than for cause set forth in Section [3.02, *Removal*]) 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 (other than for such cause) Owner Trustee.

Section [9.03] Priority. In creating and accepting the Trust, Trustor, and Owner Trustee each acknowledges that (i) in case of conflict, the limitations in Article [9] of this Agreement are paramount and superior to any other terms and conditions in this Agreement; or in any other document or documents (including, without limitation, under [a Lease or](#) an Operating Agreement) to which Trustor and Owner Trustee are a party in respect of the Trust and (ii) any such conflicting variations to the limitations in Article [9] of this Agreement (including, without limitation, if set forth within [a Lease or](#) an Operating Agreement) shall be *void ab initio*, unless, in respect of both clauses (i) and (ii), such variations have been approved by the FAA.

Document comparison by Workshare Compare on Friday, August 17, 2012
10:14:45 AM

Input:	
Document 1 ID	file://G:/Legal/anbr/Non-Citizen Trust/Policy Clarification/ICG NCT TA Provisions.docx
Description	ICG NCT TA Provisions
Document 2 ID	file://G:/Legal/anbr/Non-Citizen Trust/Policy Clarification/final submission/Revised ICG NCT TA Provisions final.docx
Description	Revised ICG NCT TA Provisions final
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	33
Deletions	16
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	49

Revised NCT TA Provisions attached to AWG-ICG August 17, 2012 Submission
marked to show changes against the same provisions from the PPC

TRUST AGREEMENT
[ONLY SECTIONS RELEVANT TO NCT TA PROVISIONS]

ARTICLE [1]¹

DEFINITIONS

"Lessee" means any ~~lessee~~counterparty to Owner Trustee under any Lease, ~~or any operator under any Operating Agreement.~~

"Lease" means any agreement (including an Operating Agreement) from time to time entered into ~~with respect to the Aircraft by the~~by Owner Trustee, ~~as Lessor, and a third party Lessee, whether or not at the direction of the Trustor~~Lessee that transfers the right to possess, use and operate the Aircraft to such Lessee.

"Operating Agreement" means any agreement ~~entered into between the Owner Trustee and the Trustor, or between a third party Lessee and the Trustor, transferring to the Trustor~~(including a lease) that transfers the right to possess, use, and operate ~~or manage~~ the Aircraft from Owner Trustee to Trustor.

ARTICLE [3]

THE OWNER TRUSTEE

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, ~~subject to the regulatory limitation that a non-U.S. citizen not hold more than 25 percent of the aggregate power to remove a trustee. [~~For purposes of this Section, "for cause" shall mean~~means~~ willful misconduct or gross ~~neglect so as to endanger the [Trust estate]. Mere disagreements~~negligence [or PARTIES MAY ADD OTHER SPECIFICALLY DESCRIBED CAUSES SUBJECT TO FAA REVIEW], but "for cause" will not include the refusal by Owner Trustee to act or refrain from acting in a manner that (1) would violate the laws, regulations, court orders or lawful directions of a government agency, (2) is outside the scope of Owner Trustee's authority, (3) is contrary to its obligations under Article [4, Trust Estate] or [9, Limitations on Control]¹ of this Agreement, or (4) is the subject of a mere disagreement between Owner Trustee and Trustor ~~shall not constitute a cause warranting removal.]~~. 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

¹ References to Article Numbers are illustrative and refer to the articles on the Trust Estate and on Limitations on Control, which may bear different Article Numbers in any actual Trust Agreement.

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;~~[3.04 Successor Owner Trustee], whereupon all powers, rights and obligations of the resigning Owner Trustee under this Agreement (except the rights set forth in Section [3.08 Fees, Compensation]) shall cease and terminate.²

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:

[(b)] to effect the registration of the Aircraft with the FAA by duly executing and filing or causing to be filed with the FAA or, in the case of sub-clause (v), submitting to the FAA for review, (i) the Aircraft Registration Application, (ii) the Affidavit, (iii) the FAA Bill of Sale, (iv) an executed counterpart of this Agreement, and (v) any Operating Agreement and any other document or instrument required ~~therefore including any Operating Agreement~~ to so effectuate such registration;

~~(e) — upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information within 2 business days of the request (or immediately in an emergency identified by the FAA): (i) the identity and contact information (address, phone number, email) of person or entity normally operating, or maintaining the operations of the aircraft; (ii) where that person or entity resides or is incorporated and has its principal place of business; (iii) the location of the aircraft maintenance and other records; and; (iv) where the aircraft is normally based and operated.)~~

~~(f) — upon request by FAA, and with the cooperation of Trustor, to provide the FAA with the following information within 5 business days of the request (or immediately in an emergency identified by the FAA): (i) information about the operator, crew (names and pilot certificate numbers) and aircraft operations on specific dates; (ii) information about where the aircraft will be on a specific date in the future and (iii) maintenance and other aircraft records.~~

² Parties to a trust may choose to allow an owner trustee to resign without a successor, but any such language and conditions would be up to the parties to determine.

[(e)] to respond as expeditiously as reasonably practicable to any request by the FAA for information related to or the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft including, if applicable, the information described in Section [4.04(i) and (ii) *Trustor's Duties*] below, and to provide the FAA with such information to the extent that Owner Trustee has such information or actually receives such information from Trustor, the operator or from any other source; Owner Trustee shall not be liable or responsible under this Agreement for any failure by Trustor, the operator or any other source to provide accurate information under this Agreement whether in a timely manner or at all;

~~[(g) — upon receipt of an emergency airworthiness directive from the FAA, to immediately]~~ f)] to forward the as expeditiously as reasonably practicable any emergency airworthiness directive to the Trustor and/or Lessee by the most expeditious means available.] in connection with the Aircraft from the FAA received by Owner Trustee to Trustor and/or the operator of the Aircraft unless Owner Trustee knows that Trustor and/or operator receive such directives directly from the FAA.

[(hg)] to notify the FAA Aircraft Registry by the most expeditious means available of trustee as expeditiously as reasonably practicable of Owner Trustee's resignation under Article Section [3.03 *Resignation*] or removal under 3.02, [3.02 *Removal*], or of the termination of the trust under 7.01, Section [7.01 *Termination Date*].

[(h)] to consent to any request from the FAA or any other duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, which the FAA or such other governmental entity is legally entitled to make to inspect the Aircraft under law applicable to Owner Trustee or the Aircraft.

Section [4.04] Trustor's Duties. Trustor hereby covenants and agrees:

(a) upon a request by the FAA for information related to the Aircraft and the operation of the Aircraft that the FAA is legally entitled to receive from an owner or operator of an aircraft, which is issued to Trustor or to Owner Trustee (and forwarded by Owner Trustee to Trustor), as the case may be, to provide as expeditiously as reasonably practicable to Owner Trustee or the FAA, as the case may be, with all such requested information to the extent that Trustor has such information or actually receives such information from the operator or from any other source, including, if applicable, (i) information in relation to the operation, maintenance, location or base of operation of the Aircraft, and (ii) contact information of (a) the operator of the Aircraft and (b) any other person to whom the FAA may look to gather information related to crew members for the Aircraft, the Aircraft's operations on specific dates, the location of the Aircraft, and maintenance and other aircraft records for the Aircraft; Trustor (so long as it is not also the operator) shall not be liable or responsible under this Agreement for any failure by Owner Trustee, the operator or any other source to provide accurate information requested under this Agreement whether in a timely manner or at all;

(b) in connection with any transfer of Trustor's beneficial interest in the Trust (other than a collateral assignment thereof), to provide Owner Trustee the identity and contact information with respect to the new Trustor and to update the operator information provided pursuant to Section 4.04(c) and 4.04(d) to the extent Trustor has such information or actually receives such information from the operator or from any other source;

(c) to provide to Owner Trustee the identity and contact information for the operator of the Aircraft under any Lease, Operating Agreement or bailment agreement entered into from time to time at Trustor's direction, in each case if granting possession and operational control of the Aircraft for an extended period of time, to the extent that Trustor has such information or actually receives such information from the operator or from any other source; unless Owner Trustee receives written notice to the contrary, it may assume that (i) all of this information is accurate and remains unmodified; and (ii) it is authorized by the operator to provide such information to the FAA if and when requested;

(d) to require that any Operating Agreement shall provide the following or similar provisions to the same effect:

~~(i) to authorize U.S. and foreign government officials to inspect the aircraft.~~

(i) that all further transfers of the rights to possession and operational control of the Aircraft to a transferee (other than in respect of a collateral assignment) or an operator be promptly notified to Owner Trustee and Trustor by the transferor of such rights, providing the identity and contact information with respect to such transferee or operator and any other person to whom the FAA may be legally entitled to look to gather information related to crew members of the Aircraft, the Aircraft's operations on specific dates, the location of the Aircraft, and the maintenance and other aircraft records for the Aircraft to Owner Trustee and Trustor and promptly providing each of them any changes to such information, and that any such information be promptly confirmed to Owner Trustee and Trustor at any time upon request by either of them;

(ii) that each such further transferee or operator (x) shall provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (y) shall authorize the FAA or other any other duly authorized, air authority representatives of the U.S. or, at the request of the FAA, the government where it is habitually based or operated, upon any request which the FAA or such other governmental entity is legally

entitled to make under law applicable to such transferee, operator or the Aircraft, to inspect the Aircraft; and

- (iii) that each such further transferee or operator agrees that the above-referenced information and inspection requirements would be made and agreed in all subsequent or downstream leases, operating agreements and bailment agreements thereby requiring each such subsequent transferee or operator (x) to provide such contact information in the event that there has been a transfer of possession and operation to another party, to update such information when any changes occur, and to promptly confirm such information at any time upon request by Owner Trustee or Trustor, (y) to provide its reasonable cooperation to Owner Trustee, Trustor and the FAA in an expeditious manner with respect to any request from the FAA or other applicable governmental entity for information and access to records of the Aircraft which it is legally entitled to receive made pursuant to existing regulations and policies, and (z) to authorize the FAA or such other governmental entity to inspect the Aircraft to the extent that it is legally entitled to make such request under law applicable to Owner Trustee, Trustor, the relevant counterparty to any such subsequent or downstream agreement or the Aircraft.

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~~ [9.01], 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, ~~including in connection with~~ matters involving the ownership and operation of the Aircraft. [In all matters ~~arising involving the performance of Owner Trustee's duties~~ under ~~the~~ this Agreement, ~~including in connection with~~ the ownership and operation of the Aircraft ~~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.]³ ~~The~~ Owner Trustee shall exercise its duties under this Agreement in connection with matters involving the ownership and operation of the Aircraft, ~~as the~~ Owner Trustee, 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

³ Proposing to FAA to delete as redundant of the provisions of the 1st and 3rd sentences.

~~OTTF DRAFT -- 7/21/11~~

discretion in all matters arising under ~~the~~this Agreement, ~~including involving~~ the ownership and operation of the Aircraft 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.

(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, sell, mortgage, pledge or otherwise dispose of the Aircraft or other assets held in the Trust Estate relating thereto, or amend any Lease or other document (other than a document over which the Owner Trustee has the absolute and complete discretion established under Section [9.01(a) Limitation on Control] of this Agreement) or give any consents thereunder except as otherwise expressly provided for herein.

(c) Purpose. The purpose of this Section [9.01] is to assure that (i) the Aircraft shall be controlled with respect to such matters as are described in Section 9.01(a) of this Agreement 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~~(other than for cause set forth in Section [3.02, Removal]) 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~~(other than for such cause) Owner Trustee.

Section [9.03] Priority. In creating and accepting the Trust, Trustor, and Owner Trustee each acknowledges that (i) in case of conflict, the limitations in Article [9] of this Agreement are paramount and superior to any other terms and conditions in this Agreement; or in any other document or documents to which Trustor and Owner Trustee are a party in respect of the Trust and (ii) any such conflicting variations to the limitations in Article [9] of this Agreement (including, without limitation, if set forth within a Lease or an Operating Agreement) shall be void ab initio, unless, in respect of both clauses (i) and (ii), such variations have been approved by the FAA.

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Description	PPC Revised TA provisions
Document 2 ID	file://G:/Legal/anbr/Non-Citizen Trust/Policy Clarification/final submission/Revised ICG NCT TA Provisions final.docx
Description	Revised ICG NCT TA Provisions final
Rendering set	standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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