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

Joseph R. Standell, Esq.  
Assistant Chief Counsel  
for the Aeronautical Center  
Federal Aviation Administration  
6400 South MacArthur Boulevard  
Oklahoma City, OK 73125

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

Dear Mr. Standell:

You recently advised us that the FAA had been reviewing the use of Non-Citizen Trusts<sup>1</sup> in connection with aircraft registration and had identified certain issues presented by those trusts. You indicated that some of the issues could call into question the valid registration of aircraft in certain circumstances and could apply retroactively to aircraft currently registered under Non-Citizen Trusts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,  
ASSOCIATION OF AIRCRAFT TITLE LAWYERS