

April 30, 1997

Mr. Tony Romero
CIC Capital
888 Brickell Ave., 5th Floor
Miami, FL 33131

Re: Deposit Brokering
(Your Letter Postmarked January 22, 1997)

Dear Mr. Romero:

You have asked several questions related to a federally insured credit union accepting deposits from a custodian who is acting on behalf of other credit unions and the insurance coverage of those deposits by the National Credit Union Share Insurance Fund (NCUSIF).

You presented the following example. A credit union issues a 3-year, \$1 million share certificate registered in nominee name to a custodian. The custodian is a commercial bank or trust company. A broker sells participations in the share certificate to credit unions in increments of not more than \$100,000. The custodian issues confirmations to the participating credit unions and is responsible for the receipt and remittance of interest. On maturity, the credit union that issued the share certificate returns the funds to the custodian who remits them to the participating credit unions.

Your first question is whether each participating credit union's \$100,000 deposit is fully insured by the NCUSIF. Depending on the conditions discussed below, each participating credit union's deposit of \$100,000 would be fully insured.

As a preliminary point, we note that only member funds are insured by the NCUSIF. While the term member includes nonmember credit unions and nonmember public units and political subdivisions, the amount of all public unit and nonmember accounts of a federal credit union (FCU) cannot exceed the greater of 20% of its shares or \$1.5 million. 12 U.S.C. §1752(5); 12 C.F.R. §701.32(b).

Please note that, in your example, if a credit union issues a share certificate registered only "in nominee name," and accepts funds from a non-member custodian, there would be no insurance. This is because only member funds are insured and a registration only "in nominee name" provides no insurance to a non-member nominee. If the credit union issuing the share certificate has a low-income designation, and, therefore, can accept funds from non-members, the funds would be partially insured. There would only be \$100,000 coverage for the non-member custodian. To avoid this problem, the funds from the participating credit unions must be pooled and then the share certificate issued at the time the funds are deposited.

Insurance coverage in your example is governed by 12 C.F.R. §745.2(c) of the NCUA Rules and Regulations and will depend on two conditions. First, the records of the issuing credit union must indicate that the custodian is holding the certificate for the true owners. Registering the certificate in nominee name alone will not suffice. The certificate or credit union records must disclose the party is holding as nominee on behalf of others by using "as nominee" or similar language. Second, the records of either the issuing credit union or the participating credit union must establish who the true owners are and the extent of their ownership. The confirmation issued by the custodian, if maintained by the investing credit union in good faith and in the regular course of business, would likely meet this condition.

You also asked whether a credit union issuing share certificates could accept deposits from nonmember,

out-of-state custodian entities. Whether the custodian is a nonmember or is out-of-state does not affect the insurance coverage for the participating credit union.

Finally, you asked whether participations sold by the broker to entities other than credit unions would be insured. In general, insured participations would be available only to the issuing credit union's members, other credit unions, and public units. An NCUA regulation defines public unit as including the United States, states, political subdivisions, and Indian tribes. 12 C.F.R. §745.1(c). If a federal credit union has a low-income designation under 12 C.F.R. §701.34, insured participations would be available to other nonmember entities. Again, the total amount of an FCU's nonmember accounts are limited to the greater of 20% of the total shares of the FCU or \$1.5 million.

Sincerely,

Sheila A. Albin
Associate General Counsel

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