

April 27, 1999

William L. Buchanan, Chief
Financial Branch
Office of Policy/Litigation Support
Packers and Stockyards Programs
United States Department of Agriculture
STOP 3646
1400 Independence Avenue, SW
Washington, D.C. 20250-3646

Re: Insurance Coverage of Custodial Accounts Maintained by Market Agencies.

Dear Mr. Buchanan:

You ask whether a custodial account maintained by a market agency for the benefit of livestock consignors is insured by the National Credit Union Share Insurance Fund (NCUSIF). The custodial account will receive NCUSIF coverage if all the livestock consignors are members of the credit union in which the custodial account is established and maintained.

The United States Department of Agriculture (USDA) defines a market agency as "any person engaged in the business of (1) buying or selling in commerce livestock on a commission basis or (2) furnishing stockyard services." 7 U.S.C. §201(c). In the situation you describe, a market agency sells the livestock of a livestock consignor on a commission or agency basis. The funds received by a market agency from the sale of livestock owned by the livestock consignors are considered trust funds by the USDA. 9 C.F.R. §201.42(a). The trust funds must be deposited into a separate account established and maintained by a market agency titled "Custodial Account for Shippers' Proceeds" until the funds are disbursed to the various livestock consignors. 9 C.F.R. §201.42(b). You state that, if a market agency were to open a custodial account at a credit union, some of the livestock consignors with funds in the account might not be members of the credit union.

A "Custodial Account for Shippers' Proceeds" would be set up as an agent account at a credit union. In an agent account, the funds are considered owned by a principal although deposited in an account in the name of an agent or nominee. 12 C.F.R. §745.3(2). For an agent account to be insured, the owner of the funds -- the principal -- must be a member of the credit union or otherwise eligible to maintain an insured account. 12 C.F.R. §745.1(b). If an agent account contains the funds of several different principals, then all of the principals must be members of the credit union or otherwise eligible to maintain an insured account for the account to be insured.

William L. Buchanan, Chief

Page Two

In a "Custodial Account for Shippers' Proceeds" established by a market agency, the livestock consignors are the owners of the funds deposited in the custodial account. If all the livestock consignors, as owners of the funds, are members of the credit union, the custodial account could be established and would receive NCUSIF coverage. See Letter from Richard Schulman to Elyse Rogers, dated September 17, 1996 (attached).

In addition, if a custodial account could be properly established and insured at a credit union, the funds of each consignor would be added to any individual accounts owned by the livestock consignors and insured up to \$100,000 in the aggregate. 12 C.F.R. §745.3(3). Further, the credit union's records would have to disclose that the market agency is holding the funds in the custodial account as an agent of the livestock consignors and the records of either the credit union or the livestock consignors would have to disclose the interest of each livestock consignor. 12 C.F.R. §745.2(c)(1)-(2).

Sincerely,

Sheila A. Albin
Associate General Counsel

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cc: Gregory W. Tschider, Jr., Esq.
Eleanor M. Taylor, Region V