

April 9, 2003

Francois G. Henriquez, II
Senior Vice President and General Counsel
U.S. Central Credit Union
9701 Renner Blvd., Suite 100
Lenexa, Kansas 66219

Re: Insurance Coverage for “Transferable Shares.”

Dear Mr. Henriquez:

You have asked for an opinion on the account insurance coverage for a proposed “transferable share” program that U.S. Central Credit Union (U.S. Central) proposes to offer to its corporate credit union members. As explained below, if certain conditions are met, the shares will be insured up to \$100,000 per beneficial owner.

Under the proposed “transferable share” program, U.S. Central will sell transferable shares to its corporate members. As part of the transaction, the transferable shares must be delivered to U.S. Central as custodian for safekeeping. The corporate member may then elect to sell its transferable shares to a credit union member for which it in turn provides safekeeping services. That transferable share would then be held in safekeeping by corporate as custodian for its credit union member; however, U.S. Central would continue to hold the transferable share as custodian for the corporate.

U.S. Central is a state-chartered, federally-insured credit union whose member accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF). 12 U.S.C. §1781(a)(1). Member accounts include, for purposes of insurance, “those [accounts of] nonmembers permitted under the Act to maintain accounts in an insured credit union, including nonmember credit unions.” 12 C.F.R. §745.1(a) and (b); see 12 U.S.C. §1752(5). OGC legal opinion 96-0808, dated August 16, 1996, states that state-chartered credit unions must also look to state law to determine their authority to make deposits in other credit unions.

You have indicated that under Kansas law, U.S. Central is permitted to accept deposits from nonmember insured credit unions. K.S.A. 17-2204(f). Nonmember credit union accounts are permitted under Kansas law and are, therefore, considered member accounts under NCUA’s insurance regulations. It is only because U.S. Central is permitted to accept nonmember credit union deposits, and have them treated for insurance purposes as member accounts, that this program is permissible. 12 C.F.R. §745.1(b).

We do not know what U.S. Central’s bylaws provide concerning the transferability of shares, but the federal corporate bylaws only permit the transfer of shares between members. Corporate Federal Credit Union Bylaws, Article III, Section 4. Since the natural person credit union that purchases the shares from its corporate is not a member of the issuer, U.S. Central, we note that this program would not be permissible for a federal corporate without a nonstandard bylaw amendment.

The issue of the insurability of the transferable shares depends on whether the conditions for “additional insurance” are met. Our account insurance regulation provides:

(1) The account records of the insured credit union shall be conclusive as to the existence of any

relationship pursuant to which the funds in the account are deposited and on which a claim for insurance coverage is founded. Examples would be trustee, agent, custodian, or executor. No claim for insurance based on such a relationship will be recognized in the absence of such disclosure.

(2) If the account records of an insured credit union disclose the existence of a relationship which may provide a basis for additional insurance, the details of the relationship and the interest of other parties in the account must be ascertainable either from the records of the credit union or the records of the member maintained in good faith and in the regular course of business.

12 C.F.R. §745.2(c). This account with two levels of ownership is a “multi-tiered fiduciary relationship.” NCUA’s regulations do not address “multi-tiered fiduciary relationships” specifically, so we have looked to the Federal Deposit Insurance Corporation’s regulations for guidance on recordkeeping requirements. 12 C.F.R. §330.5(b)(3)(ii). FDIC’s regulations would require that: U.S. Central’s account records indicate there are multiple levels of fiduciary relationships; the records of the subsequent parties disclose the existence of additional levels of fiduciary relationships; and the records disclose at each of the levels, the name and interest of the person on whose behalf the party at that level is acting. Id.

U.S. Central’s account records must indicate that U.S. Central is holding the shares as custodian with multiple levels of fiduciary relationships. As currently proposed, this requirement is not met because the certificate would only indicate that U.S. Central is acting as custodian for one of its corporate members. U.S.

Central’s account records must indicate, in addition to indicating that the certificate is issued to it as custodian for a corporate, that there are multiple tiers of fiduciary relationships. In addition, the records of the corporate must indicate

the name and interest of natural person credit union on whose behalf the corporate is acting as custodian. The records of either U.S. Central or the beneficial owner “maintained in good faith and in the regular course of business” must identify the beneficial owner and the extent of the beneficial owner’s interest. 12 C.F.R. §745.2(c)(2). OGC legal opinion 97-0909, dated February 6, 1998, states that, if the beneficial owner has an agreement with the custodian to maintain custody of the beneficial owner’s records, “NCUA would consider those records to be ‘records of the member’ within the meaning of 12 C.F.R. §745(c)(2).”

Our understanding is that U.S. Central as custodian uses an integrated database to create custody records for its corporate members and to distribute payment streams received by U.S. Central from issuers of investments held by U.S. Central as custodian. Our further understanding is that this database will identify at each level in the two-tiered custodial arrangement the name and interest of the party on whose behalf there is a custodial relationship. U.S. Central has agreements with its corporates to act as custodian of their records and the corporates have agreements with their credit union members to act as custodian of their records. The records of the corporate, which U.S. Central maintains as custodian, will also show that the corporate is holding the transferable shares as custodian for its natural person credit union member that is the beneficial owner. The credit union that is the beneficial owner will receive a monthly statement from the corporate showing the investments held in safekeeping by the corporate for the credit union.

In summary, U.S. Central’s titling of its account records must indicate that it is holding the shares as custodian with multiple levels of fiduciary relationships. U.S. Central’s records as custodian for the corporate, the corporate custodian’s records, as well as the beneficial credit union owners’ records maintained in the regular course of business, will indicate the beneficial owner and the extent of the owner’s interest in the transferable shares held by U.S. Central as custodian. We conclude that, if the accounts are maintained in the manner indicated above, the transferable shares are insured up to \$100,000 per beneficial owner.

Sincerely,

Sheila Albin
Associate General Counsel

GC/MFR/SAA:bhs
03-0147