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NATIONAL CREDIT UNION ADMINISTRATION

Washington, D.C. 20456

April 3, 1989

Office of General Counsel

C.S. Smebakken
Regional Supervisor
Packers and Stockyards Administration
U.S. Department of Agriculture
208 Post Office Building
Box 8
South St. Paul, MN 55075

Re: Insurance of Market Agency Accounts (Your
February 13, 1989, Letter)

Dear Mr. Smebakken:

You have asked for an interpretation of the insurance coverage applicable to custodial accounts established by a market agency. Such accounts can be established at a Federal credit union ("FCU") by a market agency only if all the principals (the shippers) can establish member accounts there. This type of account would be insured pursuant to Section 745.3(a)(2) of NCUA's Rules and Regulations (12 C.F.R. 745.3(a)(2)). If funds of the market agency are deposited in the same account, the market agency must also be a member of the FCU. Funds deposited by a market agency on its own behalf will be insured pursuant to Section 745.6 of NCUA's Rules and Regulations (12 C.F.R. 745.6).

BACKGROUND

This background information is taken from a 1947 letter issued by the Federal Deposit Insurance Corporation. It is the only information you provided to us. We have assumed that the factual background remains accurate.

A market agency is a commission firm at a stockyard under the Packers and Stockyards Act. For a commission, the market agency sells livestock consigned to it by livestock shippers. The market agency deposits the proceeds from the sale of the shippers' livestock into a bank or credit union account. The

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Secretary of Agriculture has ruled that the market agency holds the shippers' funds as trust funds.

Following the sale of a shipper's livestock, the market agency draws a check or share draft payable to the order of the shipper on the account for the net amount of the sale. The market agency also draws checks or share drafts on this account to pay for transportation and stockyard charges and for its sales commission.

There is an alternative method of handling shippers' funds. Under the alternative procedure, a market agency will deposit in the shippers' proceeds account only the net proceeds due the shipper. Other items of marketing expense will be paid for out of a general account in which the market agency will deposit the check representing gross proceeds from the buyer. Otherwise, the account is handled and maintained in the manner outlined above.

ANALYSIS

Insurance Coverage of Accounts

The NCUA Board only insures FCU "member accounts" (see Section 201 of the FCU Act, 12 U.S.C. 1781(a)). Such accounts are insured by the National Credit Union Share Insurance Fund ("NCUSIF"). (See Section 203 of the FCU Act.) In general, in order to establish a member account, the depositor or owner of the funds must fall within the field of membership of the FCU. The FCU's field of membership is set forth in its charter.

A custodial account is an account held by an agent or nominee on behalf of a principal(s). All principals must be able to establish member accounts for this type of account to be insured. Custodial accounts are insured under Section 745.3(a)(2) of the NCUA Rules and Regulations (12 C.F.R. 745.3(a)(2)). This section provides as follows:

Funds owned by a principal and deposited in one or more accounts in the name or names of agents or nominees shall be added to any individual account of the principal and insured up to \$100,000 in the aggregate.

This insurance coverage is applicable to share, share draft and share certificate accounts.

Application to Market Agency Accounts

A market agency account can be established as a custodial account in an FCU provided the shipper on whose behalf the funds are deposited is a member of the FCU. The account will be insured pursuant to Section 745.3(a)(2). If funds of the market agency are deposited in the account, the market agency must also be a member of the FCU. Funds of the market agency will be insured pursuant to Section 745.6 of NCUA's Rules and Regulations (12 C.F.R. 745.6) providing:

Accounts of a corporation, partnership, or unincorporated association engaged in any independent activity shall be insured up to \$100,000 in the aggregate. The account of a corporation, partnership, or unincorporated association not engaged in an independent activity shall be deemed to be owned by the person or persons owning such corporation or comprising such partnership or unincorporated association and, for account insurance purposes, the interest of each person in such an account shall be added to any other account individually owned by such person and insured up to \$100,000 in the aggregate. For purposes of this section, "independent activity" means an activity other than one directed solely at increasing insurance coverage.

In the event of an insurance payout, the FCU's records must adequately reflect the custodial arrangement. We draw your attention to Section 745.2(c) of NCUA's Rules and Regulations (12 C.F.R. 745.2(c)), which provides in part:

(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

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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.

Sincerely,

Hattie M. Ulan

HATTIE M. ULAN
Assistant General Counsel

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