



2. Registered with the Secretary of Agriculture as a market agency to sell livestock in commerce on a commission basis until June 6, 2011.

## II.

(a) Section 201.42 of the regulations (9 C.F.R. § 201.42), issued by the Secretary of Agriculture under the Act, requires market agencies selling livestock on commission to maintain a custodial account for shippers' proceeds (custodial account). A custodial account is a trust account that protects funds that are owed to individuals and firms who consign livestock for sale at an auction market. The proceeds from livestock sales at regulated auction markets must be deposited into custodial accounts. If the proceeds receivable from livestock sales cannot be collected and deposited into a market's custodial account by the close of the seventh day after the sale, then the market must make up the shortfall and reimburse the custodial account for the unpaid receivables.

(b) On July 8, 2010, Packers and Stockyards Program, Grain Inspection, Packers and Stockyards Administration (GIPSA) notified Respondents, via certified mail, that operating the Wyalusing Livestock Market with a custodial account shortage violated the Act and section 201.42 of the regulations (9 C.F.R. § 201.42). Notwithstanding this notice, Respondents continued to operate the Wyalusing Livestock Market with a custodial account shortage.

## III.

During the period of November 1, 2010, through October 3, 2011, Respondents failed to properly use and maintain the custodial account at Wyalusing Livestock Market

thereby endangering the faithful and prompt accounting of shippers' proceeds and the payments due the owners or consignors of livestock, in that:

(a) As of November 1, 2010, the custodial account at the Wyalusing Livestock Market had outstanding checks drawn on the account in the amount of \$151,591.86 and had to offset such checks a balance in the custodial account of \$76,190.79, deposits in transit of \$21,598.78, and proceeds receivable of \$43,775.75, resulting in a custodial account shortage in the amount of \$17,026.54.

(b) As of January 10, 2011, the custodial account at the Wyalusing Livestock Market had outstanding checks drawn on the account in the amount of \$165,538.69 and had to offset such checks a balance in the custodial account of \$58,380.94, deposits in transit of \$38,126.42, and proceeds receivable of \$51,518.25, resulting in a custodial account shortage in the amount of \$17,513.08.

(c) The shortages in the custodial account at the Wyalusing Livestock Market were due, in part, to Respondents' failure to deposit into the account an amount equal to the proceeds receivable from the sale of consigned livestock within the time prescribed by section 201.42 of the regulations (9 C.F.R. § 201.42).

#### IV.

(a) On May 5, 2011, Respondents received a notice of default from GIPSA, dated April 19, 2011, notifying them that they had failed to file an annual report for the Wyalusing Livestock Market for the fiscal year ending December 31, 2010. The notice of default specified that their registration under the Act would expire, as provided in section 201.10 of the regulations (9 C.F.R. § 201.10), if Respondents failed to file an annual report

within 30 days. Respondents were further notified that operating the Wyalusing Livestock Market without registration could result in civil penalties.

(b) Respondents failed to file an annual report for the Wyalusing Livestock Market within 30 days of receiving the default notice. On June 13, 2011, Respondents were notified by certified letter that their registration to lawfully conduct business under the Act had expired as a result of their failure to comply with federal regulations. Respondents were further notified that they must immediately cease their activities subject to the Act and that failure to do so could result in the filing of a complaint against them. Respondents were also notified that if they wished to continue operating as a market agency that they must submit a new application for registration along with any delinquent annual reports.

(c) On June 13, 2011, Respondents submitted an annual report for 2010 to GISPA. On June 14, 2011, Respondents submitted a new application for registration to operate as a market agency selling on commission. On August 19, 2011, Respondents submitted a corrected annual report for 2010 to GIPSA and a special report on August 23, 2011.

#### V.

Respondents failed to keep and maintain accounts, records, and memoranda which fully and accurately disclose the true nature of their operations subject to the Act, in that Respondents failed to keep and maintain custodial account reconciliations with outstanding check lists.

## VI.

By reason of the facts alleged in paragraphs II and III, Respondents have willfully violated section 312(a) of the Act (7 U.S.C. § 213(a)) and section 201.42 of the regulations (9 C.F.R. § 201.42).

By reason of the facts alleged in paragraphs II through IV, Respondents' partnership is unfit to engage in the business of a market agency selling on commission under the Act.

By reason of the facts alleged in paragraph V, Respondents have willfully violated section 401 of the Act (7 U.S.C. § 221).

WHEREFORE, it is hereby ordered that this Complaint and Notice to Show Cause be served on Respondents for the purpose of determining whether Respondents have willfully violated the Act and regulations and for the purpose of determining whether Respondents' application for registration as a market agency should be denied. Respondents shall file an answer with the Hearing Clerk, Room 1031-South Building, United States Department of Agriculture, 1400 Independence Avenue, S.W., Washington, DC 20250-9200, in accordance with the Rules of Practice governing proceedings under the Act (7 C.F.R. § 1.130 *et seq.*). Failure to file an answer shall constitute an admission of all the material allegations of this Complaint and Notice to Show Cause.

GIPSA requests:

1. That unless Respondents fail to file an answer within the time allowed therefore, or file an answer admitting all the material allegations of this Complaint and

Notice to Show Cause, this proceeding be set for oral hearing in accordance with the Rules of Practice governing proceedings under the Act and 9 C.F.R. § 201.10(b).

2. That an order be issued requiring Respondents to cease and desist from the violations found to exist and assessing such civil penalties as are authorized by the Act and warranted under the circumstances; and that an order be issued finding that Respondents' are unfit to be registered as a market agency selling on commission and that their application for registration be denied.

Done at Washington, D.C.

this 17<sup>th</sup> day of February 2012

  
per Alan R. Christian  
Deputy Administrator,  
Packers & Stockyards Program

Charles E. Spicknall  
Attorney for Complainant  
Office of the General Counsel  
United States Department of Agriculture  
Regulatory Division  
1400 Independence Avenue, S.W.  
Room 2320, South Building  
Washington, D.C. 20250  
Telephone: (202) 720-8564