Dealer Statutory Trust | Common Industry Questions

What is a Dealer Trust?
A Dealer Trust would improve financial recovery for unpaid cash sellers in the event of a dealer default. The trust would give unpaid sellers (farmers, ranchers, markets and other dealers) of livestock first priority to recover livestock a dealer has not yet paid for. If the dealer has resold the livestock, the unpaid sellers would have priority in the receivables or proceeds from those livestock.

Why is this needed?
Under current law, a person selling to a dealer can be left unpaid and unable to reclaim livestock. Often times, a dealer's bank gets paid while the farmer or rancher who raised the livestock or a market who sold the livestock on a small commission does not. This is patently unfair.

What assets would be in the dealer statutory trust?
A Dealer Trust would give unpaid sellers first priority in livestock for which a dealer has not yet paid. If the dealer has resold the livestock, the unpaid sellers would have first priority to the receivables or proceeds from the livestock. If a dealer also has a separate cattle business, such a cow-calf or stocker operation, and those livestock have been paid for, a default on a dealer transaction would not pull those cattle shown to be separate from the dealer operation into the trust.

Does this require a separate account of pool of funds?
The funds would come from the unpaid for livestock or, if resold, the proceeds/receivables from these livestock. The Dealer Trust would not need to be "funded" by a pool of government or industry funds. As long as a dealer is paying for livestock, money continues to move as it does today. The Dealer Trust would not require dealers to keep a separate account.

How would the establishment of a Dealer Trust affect preferential transfer?
Case law and the USDA study confirm if Dealer Trust became law, previous payments from the now-bankrupt dealer made to sellers would be considered trust funds and **not** eligible to be pulled into a bankruptcy through a preferential transfer claim. Without Dealer Trust, a preferential transfer claim can be used for a bankruptcy trustee to demand the sellers of livestock, such as a producers or auction markets, remit an amount equal to all payments that seller received in the last 90 days from the defaulting dealer prior to the bankruptcy.

How would this affect someone buying from a dealer?
A good faith purchaser for value from a dealer will continue to take clear title to the livestock. At this point, trust assets would be proceeds/receivables not the livestock.

How would the dealer statutory trust be administered?
The law would require the dealer provide trust funds first to unpaid cash sellers. If the dealer fails to do this, USDA would have the authority to appoint an independent trustee to administer the trust.

Will this affect a dealers financing?
The USDA feasibility study of Dealer Trust found it would be unlikely to significantly impact credit availability or lender behavior. Additionally, a number of LMA dealer members have

discussed the concept with their lenders to confirm it would not change their lending relationship.

Who is protected?
The trust would protect all cash (not credit) sellers of livestock who sell to a livestock dealer. This includes farmers and ranchers selling directly, markets, or dealers selling to another dealer.

What if people do not want to participate?
If the Dealer Trust is not a desired tool for some, they could enter into a credit agreement. Dealer Trust would only cover cash (not credit) sales of livestock.

Why don't you increase dealer bond amounts?
Many alternative solutions to this issue were thoroughly explored. A Dealer Trust is the option that would improve recovery in defaults while making the least amount of change to day-to-day business. While current dealer bonds are insufficient, the cost of larger bonds (surety companies require as much as 9-10 times the bankruptcy proof assets of the bond amount) could push some dealers out of business if the bond amounts were significantly increased.

Why don't you instead require the dealers to pay quicker?
The Packers and Stockyards Act (P&S Act) currently allows a check in the mail by the close of the next business day as a prompt payment option for dealers. This is the most common method of payment used. For many dealers, they must resell cattle prior to being able to pay for them. Changing this method of payment would be a significant shift in the way the livestock industry functions today and likely cause many small and medium sized dealers to go out of business or significantly reduce their volume.

What is the difference in a dealer and an order buyer?
A livestock dealer pays for the livestock they buy and then resells them. An order buyer acts as an agent for his principal. The principal pays and the order buyer receives a buying commission. The Packers and Stockyard Act defines livestock dealer as well as market agency buying on commission (order buyer) and requires that buyers register with USDA as dealers and/or market agencies buying on commission.

Why is this focused only on dealers?
The P&S Act covers packers, markets, order buyers, and dealers. Order buyers do not pay for the cattle they purchase. In the case of packers, the P&S Act already provides for a statutory trust. In the case of markets, the P&S Act already requires the use of custodial accounts, which is a trust account. Historically, most major defaults have been in the dealer segment. Sellers are also at the most risk with this default type because the cattle typically have already been resold.

How can I learn more?
To learn more, got to www.lmaweb.com/policy under the Dealer Trust tab or watch this YouTube video of LMA Attorney Ernie VanHooser explaining Dealer Trust - https://tinyurl.com/dealertrust.