



# SIMPLE IRA Custodial Account Agreement

Form 5305-SA (Revised April 2017) under section 408(p) of the Internal Revenue Code ("Code") The Participant named above is establishing a savings incentive match plan for employees of small employers individual retirement account (SIMPLE IRA) under sections 408(a) and 408(p) to provide for his or her retirement and for the support of his or her beneficiaries after death. Pershing LLC, the Custodian, has given the Participant the disclosure statement required by Regulations section 1.408-6. The Participant and the Custodian make the following Agreement:

## Article I

The Custodian will accept cash contributions made on behalf of the Participant by the Participant's employer under the terms of a SIMPLE IRA plan described in section 408(p). In addition, the Custodian will accept transfers or rollovers from other SIMPLE IRAs of the Participant and, after the 2-year period of participation defined in section 72(t) (6), transfers or rollovers from any eligible retirement plan (as defined in section 402(c)(8)(B)) other than a Roth IRA or a Roth designated account. No other contributions will be accepted by the Custodian.

## Article II

The Participant's interest in the balance in the Custodial Account is nonforfeitable.

## Article III

1. No part of the Custodial Account funds may be invested in life insurance contracts, nor may the assets of the Custodial Account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a) (5)).
2. No part of the Custodial Account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins; coins issued under the laws of any state; and certain bullion.

## Article IV

1. Notwithstanding any provision of this Agreement to the contrary, the distribution of the Participant's interest in the Custodial Account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.
2. The Participant's entire interest in the Custodial Account must be, or begin to be, distributed no later than the Participant's required beginning date, April 1 following the calendar year in which the Participant reaches the age of 70½. By that date, the Participant may elect, in a manner acceptable to the Custodian, to have the balance in the Custodial Account distributed in:
  - (a) A single sum or
  - (b) Payments over a period not longer than the life of the Participant or the joint lives of the Participant and his or her designated Beneficiary
3. If the Participant dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
  - (a) If the Participant dies on or after the required beginning date, and:
    - (i) the designated Beneficiary is the Participant's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.

- (ii) the designated Beneficiary is not the Participant's surviving spouse, the remaining interest will be distributed over the Beneficiary's remaining life expectancy as determined in the year following the death of the Participant and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.
  - (iii) there is no designated Beneficiary, the remaining interest will be distributed over the remaining life expectancy of the Participant as determined in the year of the Participant's death and reduced by 1 for each subsequent year.
- (b) If the Participant dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected or there is no designated Beneficiary, in accordance with (ii) below:
  - (i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the Participant's death. If, however, the designated Beneficiary is the Participant's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the Participant would have reached age 70½. But, in such case, if the Participant's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated Beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated Beneficiary.
  - (ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the Participant's death.
- 4. If the Participant dies before his or her entire interest has been distributed and if the designated Beneficiary is not the Participant's surviving spouse, no additional contributions may be accepted in the Account.
- 5. The minimum amount that must be distributed each year, beginning with the year containing the Participant's required beginning date, is known as the "required minimum distribution" and is determined as follows:
  - (a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the Participant reaches age 70½, is the Participant's account value at the close of business on December 31 of the preceding year divided by the distribution period in the Uniform Lifetime table in Regulations section 1.401(a) (9)-9. However, if the Participant's designated Beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Participant's account value at the close of business on December 31 of the preceding year divided by the number in the Joint and Last Survivor table in Regulations section 1.401(a) (9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the Participant's (or, if applicable, the Participant's and spouse's) attained age (or ages) in the year.
  - (b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the Participant's death (or the year the Participant would have reached age 70½, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9 of the individual specified in such paragraphs 3(a) and 3(b)(i)).
  - (c) The required minimum distribution for the year the Participant reaches age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.
- 6. The owner of two or more IRAs (other than Roth IRAs) may satisfy the minimum distribution requirements described above by taking from one IRA the amount required to satisfy the requirement for another in accordance with the regulations under section 408(a)(6).

### Article V

1. The Participant agrees to provide the Custodian with all information necessary to prepare any reports required by sections 408(i) and 408(l)(2) and Regulations sections 1.408-5 and 1.408-6.
2. The Custodian agrees to submit to the Internal Revenue Service (IRS) and Participant the reports prescribed by the IRS.
3. The Custodian also agrees to provide the Participant's employer the summary description described in section 408(l)(2) unless this SIMPLE IRA is a transfer SIMPLE IRA.

### Article VI

Notwithstanding any other articles, which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles inconsistent with sections 408(a) and 408(p) and the related regulations will be invalid.

### Article VII

This Agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the Application.

### Article VIII

#### 1. Definitions

- (a) "Account", "Custodial Account," or "Plan" shall mean the SIMPLE individual retirement custodial account (SIMPLE IRA) established hereunder for the benefit of the Participant and/or his or her Beneficiary or Beneficiaries.
- (b) "Account Application," "Application," or "Adoption Agreement" shall mean the application by which this Account is established by the Agreement between the Participant and the Custodian. The statements contained therein shall be incorporated into this Agreement.
- (c) "Agreement" shall mean this SIMPLE Individual Retirement Custodial Agreement and Disclosure Statement, including the information and provisions set forth in any Application that goes with this

Agreement, as may be amended from time to time. This Agreement, including the Application and the designation of Beneficiary filed with the Custodian, may be proved either by an original copy or a reproduced copy thereof, including, without limitation, a copy reproduced by photocopying, facsimile transmission, electronic imaging, or other means of electronic transmission.

- (d) "Beneficiary" shall mean the person, persons, entity, or entities (for instance, a trust), designated from time to time by a Participant to receive benefit by reason of the death of the Participant, or the person or persons described in Article VIII, section 4b, of the Agreement who would otherwise be entitled to receive such benefit.
- (e) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- (f) "Custodian" must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as custodian. For purposes of this Custodial Account Agreement, the Custodian is Pershing LLC, or BNY N.A., or such other entity identified in the Custodial Account Application.
- (g) "Participant" shall mean person who establishes the Custodial Account.
- (h) "Financial Institution" shall mean the financial organization, introducing broker-dealer, or Registered Investment Advisor who introduced this Custodial Account to the Participant.
- (i) "Mutual Fund Only IRA" shall mean an Account, established hereunder for the benefit of the Participant and/or his or her Beneficiary or Beneficiaries, in which the Participant shall limit the investments in his or her Account to shares issued by a domestic Regulated Investment Company.
- (j) "Transfer SIMPLE IRA" shall mean a SIMPLE IRA if it is not the original recipient of contributions under any SIMPLE plan. The summary description requirements of section 408(l)(2) do not apply to Transfer SIMPLE IRAs.

### 2. Notices and Change of Address

Any required notice regarding this Account will be considered effective when mailed or electronically communicated by the Custodian to the recipient that is on the records of the Custodian. Any notice to be given to the Custodian will be effective when actually received by the Custodian. The last address of the Participant on the records of the Custodian will be the address used for any tax withholding, disbursement, and reporting required by taxing authorities. The Participant will notify the Custodian of any change of address.

### 3. Representations and Responsibilities

The Participant represents and warrants to the Custodian that any information the Participant has given or will give to the Custodian with respect to this Agreement is complete and accurate. Further, the Participant promises that any direction given by the Participant to the Custodian, or any action taken by the Participant will be proper under this Agreement. The Custodian will not be responsible for the Participant's actions or failures to act. Likewise, the Participant shall not be responsible for the Custodian's actions or failures to act; provided however, that the Custodian's duties and responsibilities under this Agreement are limited to those specifically stated in the Agreement, and no other or further duties or responsibilities shall be implied.

### 4. Investment of Contributions

(a) Direction by Participant. All investment instructions of the Participant shall be accepted by the Custodian subject to and in accordance with the Custodian's established customs and procedures. Each Participant shall direct the Custodian with respect to the investment of all contributions to his or her Account and the earnings thereon. Such direction shall be limited to publicly traded securities, covered call options, covered put options, debit spreads, long put and long call options, mutual funds, money market instruments, and other investments, to the extent that they are obtainable through and subject to the custody of the Custodian in the Custodian's regular course of business, and subject to such other limitations as may be agreed to by the Participant and Financial Institution. In the absence of such directions, the

Custodian shall have no investment responsibility. If a Participant selects a Mutual Fund Only IRA, the Participant shall limit investments in the Account to shares issued by a domestic Regulated Investment Company. However, funds in a Mutual Fund Only IRA can be held in a cash or money market account while awaiting investment. In the event the Participant elects a Mutual Fund Only IRA and does not limit investments to mutual funds only, the Custodian in the Custodian's sole discretion and without prior consent of the Participant may convert the Account from a Mutual Fund Only IRA to the appropriate Account type. All transactions directed by the Participant shall be subject to the rules, regulations, customs, and usages of the exchange, market, or clearing house where executed, and to all applicable federal and state laws and regulations, and to internal policies of the Custodian. The Custodian reserves the right not to accept assets intended for deposit to the Account and may at any time require liquidation or transfer of any asset held in the Account if the Custodian determines that maintaining custody of any such asset is not in accordance with the Custodian's administrative or operational requirements and regular business practices. The Participant understands that the Custodian shall attribute earnings only to assets held in the Account while in the custody of the Custodian. The Participant understands that the income from, and gain or loss on, each investment the Participant selects for the Account will affect the value of the Account, and that the growth in value of the Account cannot be guaranteed or projected.

(i) If the Participant directs the Account to acquire an alternative investment, private investment or any other such investment that requires special handling by the Custodian, the Participant agrees that such investments are subject to the Custodian's administrative and operational requirements, including but not by way of limitation, valuation or reconciliation requirements. If the issuer or sponsor of such investment fails to comply with the Custodian's requirements, the Custodian may require the distribution of the investment from the Account. The Participant agrees that a

distribution of the investment is a distribution from the Account, reportable on an IRS Form 1099-R. The Participant agrees that Custodian may use the last known price for reporting purposes, and if no pricing information is available, the Custodian is authorized to value the investment at the original purchase price for reporting purposes.

- (b) **Direction by Beneficiary.** Upon notification of death of the Participant, the Account may be divided into separate shares for each Beneficiary who is entitled to receive a share of the Participant's Account, and each Beneficiary's share will be transferred into a separate Account. This permits each Beneficiary to provide investment and distribution directions as to his or her share of the Account. The transfer to separate Account(s) does not create a taxable event for the Beneficiary(ies). In such event, except as otherwise provided in this Agreement or by applicable law or regulations, all rights, duties, obligations and responsibilities of the Participant under the Agreement will extend to the Beneficiary(ies) following the death of the Participant.

If a distribution upon the Participant's death is payable to a Beneficiary known by the Custodian to be a minor or under a legal disability, the Custodian may in its sole discretion take instruction from the parent, guardian, conservator, or other legal representative of such minor or legally disabled person.

- (c) **No Duty to Review.** The Custodian shall not be under any duty to review or question any direction of the Participant with respect to investments, to review any securities or other property held in trust, or to make suggestions to the Participant with respect to investments. The Custodian will not be liable for any loss that may result by reason of investments made by the Custodian in accordance with the directions of the Participant. Notwithstanding the foregoing, the Custodian may review the investments in a Mutual Fund Only IRA in order to confirm the Participant's compliance with Article VIII, section 4(a), of this Agreement, which limits investments in the Mutual Fund Only IRA to shares issued by a domestic Regulated Investment Company.

- (d) **Delegation of Investment Responsibility.** Regardless of any other provision of this Agreement to the contrary, the Participant may appoint an investment professional or other person to act as the Participant's representative with authority to direct the Custodian with respect to the investment of assets in the Account. The appointment, however, will be effective only if (1) the Custodian has received an executed copy of an agreement between the Participant and the representative in a form and manner acceptable to the Custodian that specifies the authority of the representative to act on behalf of the Participant, and (2) the Custodian does not object to acting on the direction of that person, which objection the Custodian may assert for any reason at any time. If the Participant appoints a representative, as provided for above, references to the Participant in this section ("Investment of Contributions") of this Agreement and in the "Powers, Duties, and Obligations of Custodian" section (Article VIII, section 7) of this Agreement (insofar as pertinent to securities with respect to which the representative has investment authority) are also to that representative. However, all references in this Agreement to the individual whose Account is involved and to the making of contributions and the receipt of distributions are only to the Participant. The Participant may revoke the authority of any representative at any time by notifying the Custodian in a form and manner acceptable to the Custodian and the Custodian shall not be liable in any way for the transactions initiated prior to its receipt of such notice.
- (e) **Uninvested Cash.** The Participant shall direct the Custodian as to the investment of all cash that is not currently invested in assets described in Article VIII, section 4(a), Agreement.

The Participant or his or her legal representative shall direct the Custodian with respect to the investment of the cash pending distribution. In the absence of such direction, the Custodian shall have no investment responsibility for such cash and the Custodian shall not be liable for holding such cash uninvested.



### 5. Withdrawals

- (a) **Withdrawal Request.** The Participant may withdraw all or part of his or her Account balance at any time. All requests for withdrawal shall be in a form and manner provided by or acceptable to the Custodian. Any withdrawals shall be subject to all applicable tax and other laws and regulations, including possible early withdrawal penalties and withholding requirements. If payment is made outside of the United States, special federal income tax withholding rules may apply. Withdrawals from the Account may be made in a single sum, periodic payment, or a combination of both. The Participant authorizes the Custodian to retain such sums as the Custodian may deem necessary for payment of all the Custodian's fees, compensation, costs, and any expenses, including, but not limited to, annual maintenance fees and account termination fees, or for payment of any other liabilities which might constitute a charge to either the Account or the Custodian. The balance of any such reserve remaining after the payment of the above items shall be paid or distributed upon satisfaction of any such charge. The Custodian shall have no duty to ascertain whether any payment or distribution as directed by the Participant is proper under the provisions of the Code, this Agreement, or otherwise.

The Custodian shall not be responsible for the purpose, sufficiency, or propriety of any distribution. The Custodian is only authorized to make distributions in accordance with instructions of the Participant, or after the Participant's death, of his or her Beneficiary, or as otherwise provided for in this Agreement. Such instructions must be given in a form and manner acceptable to the Custodian.

If the Custodian is unable to make a distribution to a Participant, a Beneficiary, or other distributee because the Custodian cannot ascertain such distributee's whereabouts by writing to the last known mailing address shown on the Custodian's records, if any, the Custodian may hold the proceeds in a noninterest-bearing account until such funds escheat by operation of law. The Beneficiary or Beneficiaries are responsible to ensure that distributions are made in accordance with the provisions of Article IV of the Agreement.

- (b) **Required Distributions.** The Custodian shall notify the Participant of the need to take required minimum distributions once he or she reaches age 70½ and, if requested by the Participant, will calculate the required minimum distribution amount for the Account. The Participant shall be responsible for causing the required minimum distribution amount to be withdrawn from his or her Account each year. Notwithstanding anything in Article IV to the contrary, the Custodian shall not, without the consent of the Participant, distribute the value of the Account where the Participant fails to choose any method of distribution by April 1st of the year following the year the Participant reaches age 70½.

- (c) **Beneficiary Distributions.** A Participant may designate a Beneficiary or Beneficiaries of the Account at any time and any such designation may be changed or revoked at any time, by written designation executed by the Participant in a form and manner prescribed by or acceptable to, and filed with, the Custodian. Such designation, change, or revocation shall be effective only upon receipt and acceptance by the Custodian and only if such receipt shall be during the Participant's lifetime. The latest such accepted designation, change, or revocation shall control.

A Beneficiary designation will NOT automatically be revoked or modified due to the Participant's divorce, legal separation, annulment or other dissolution of marriage.

Following the death of the Participant, the balance of the Participant's Account shall be distributed to the Participant's designated Beneficiary or Beneficiaries, if any, in accordance with the provisions of Article IV of the Agreement and in accordance with the Custodian's administrative or operational requirements and regular business practices which may change from time to time. The Participant may request additional information concerning the Beneficiary policies and procedures from the Financial Institution.

If there is no primary Beneficiary living at the time of the Participant's death, the balance of the Participant's Account will be payable to the surviving contingent Beneficiary or Beneficiaries

designated by the Participant. If there is no Beneficiary designation on file with the Custodian, or if no primary or contingent Beneficiaries survive the Participant, the Custodian shall distribute the Account in the following order of preference:

- (i) The Participant's surviving spouse, if any
- (ii) The Participant's children, if any, in equal shares per stirpes
- (iii) The Participant's estate

If the Participant designates more than one primary or contingent Beneficiary but does not specify the percentages to which such Beneficiary or Beneficiaries are entitled, payment will be made to the surviving Beneficiary or Beneficiaries in equal shares.

Unless otherwise designated by the Participant in a form and manner acceptable to the Custodian, if a primary or contingent Beneficiary designated by the Participant predeceases the Participant, the deceased Beneficiary's percentage allocation will be divided among the surviving Beneficiaries in accordance with the ratio of each surviving Beneficiary's percentage allocation relative to the percentage allocation of all other surviving Beneficiaries.

If a Beneficiary does not predecease the Participant but dies before receiving his or her entire interest in the Account, his or her remaining interest in the Account shall be paid to the Beneficiary or Beneficiaries designated by the deceased Beneficiary. If there is no Beneficiary designation of the deceased Beneficiary on file with the Custodian, the Custodian shall distribute the Account to the survivors of the deceased Beneficiary in the following order of preference:

- (i) The deceased Beneficiary's surviving spouse, if any
- (ii) The deceased Beneficiary's children, if any, in equal shares per stirpes
- (iii) The deceased Beneficiary's estate

In instances of distributions to the Beneficiary's estate, the Custodian shall be permitted to rely on direction from the personal representative of

the Beneficiary's estate regarding the appropriate parties to be paid under this designation.

Under no circumstances may a Participant restrict the right of a Beneficiary to name successor Beneficiary(ies) of an inherited Account. Except as otherwise provided in this Agreement or by applicable law or regulations, all rights, duties, obligations and responsibilities of the Participant under the Agreement will extend to spouse and nonspouse Beneficiary(ies) following the death of the Participant.

Custodian reserves the right to take the steps it deems appropriate in validating Beneficiary(ies) after the Participant's death.

- (d) Account Only Source of Benefits. The only source of benefit for the Participant or Beneficiary(ies) of this SIMPLE IRA shall be the Account.

### 6. Transfer

- (a) Transfer. The Custodian shall transfer the Account balance in accordance with the Participant's written instructions and in accordance with this Agreement. The Participant authorizes the Custodian to retain such sums as the Custodian may deem necessary for payment of all fees, compensation, costs, and any expenses, including, but not limited to, annual maintenance fees and account termination fees, or for payment of any other liabilities which might constitute a charge to either the Account or the Custodian. The balance of any such reserve remaining after the payment of the above items shall be transferred upon satisfaction of any such charge. The Custodian shall have no duty to ascertain whether any payment, distribution, or transfer as directed by the Participant is proper under the provisions of the Code, this Agreement, or otherwise.
- (b) Reopening of Account. In the event a security is not transferred to a new trustee or custodian, residual assets are not automatically moved to a new trustee or custodian, or checks representing a total Account distribution are not cashed, the Custodian reserves the right to reopen the Account.

### 7. Powers, Duties, and Obligations of Custodian

- (a) **No Investment Discretion.** The Custodian shall have no discretion to direct any investments of the Account and is merely authorized to acquire and hold the particular investments specified by the Participant. The Custodian will not act as investment advisor or counselor to a Participant and will not advise a Participant or offer any opinion or judgment on any matter pertaining to the nature, value, potential value, or suitability of any investment or potential investment by a Participant.
- (b) **Administrative Powers.** The Custodian may hold any securities acquired hereunder in the name of the Custodian without qualification or description or in the name of any nominee. Pursuant to the Participant's direction, the Custodian shall have the following powers and authority with respect to the administration of the Account:
  - (i) To invest and reinvest the assets of the Account without any duty to diversify and without regard to whether such investment is authorized by the laws of any jurisdiction for fiduciary investments.
  - (ii) To exercise or sell options, conversion privileges, or rights to subscribe for additional securities and to make payments therefore.
  - (iii) To consent to or participate in dissolutions, reorganizations, consolidations, mergers, sales, leases, mortgages, transfers, reregistrations of securities, or other changes affecting securities held by the Custodian.
  - (iv) To make, execute, and deliver as Custodian any and all contracts, waivers, releases, or other instruments in writing necessary or proper for the exercise of any of the foregoing powers.
  - (v) To grant options to purchase securities held by the Custodian or to repurchase options previously granted with respect to securities held by the Custodian.
- (c) **Proxies.** All proxy and solicitation materials, notices of shareholders' meetings, current prospectuses and other annual or regular shareholder reports shall, to the extent furnished to the Custodian by the issuers of the securities in the Account, be sent by the Custodian or the Custodian's delegatee to the Participant.
- (d) **Records and Reports.** The Custodian shall keep accurate records of all contributions, receipts, investments, distributions, disbursements, and all other transactions of the Account. Within 120 days (or such other deadline imposed by applicable law) after the close of each calendar year (or after a distribution or transfer of a Participant's Account or upon the Custodian's resignation or removal), the Custodian shall file with the Participant a written report (which may consist of copies of the Custodian's regularly issued Account statements) reflecting all transactions affecting the Account for the period in question and including a statement of the assets in the Account and their fair market values. Unless the Participant files a written statement of exceptions or objections to the report with the Custodian within 60 days after mailing of the report, the Participant shall be deemed to have approved such report and the Custodian shall be released from all liability to anyone (including any Participant's spouse or Beneficiary) with respect to all matters set forth in the report. No person, other than the Participant or a Beneficiary may require an accounting.
- (e) **Right to Request Judicial Assistance.** The Custodian shall have the right at any time to apply to a court of competent jurisdiction for judicial settlement of the Custodian's accounts or for determination of any questions of construction which may arise or for instructions. The only necessary party defendant to any such action shall be the Participant, but the Custodian may join any other person or persons as a party defendant. The cost, including attorney's fees, of any such proceeding shall be charged as an administrative expense under Article VIII, section 10, of this Agreement.
- (f) **Scope of Custodian's Duties.** The Custodian shall only have the duties which are specifically set forth in this Agreement. The Custodian shall have no duty to ascertain whether contributions or distributions comply with the Agreement or the Code. The Custodian shall not make any



investments or dispose of any investments held in an Account, except upon the direction of the Participant or in accordance with Article VIII, section 11(c), of the Agreement. The Custodian shall not question any such directions of the Participant, review any securities or other property held in the Account, or make suggestions to the Participant with respect to the investment, retention, or disposition of any assets held in the Account. Notwithstanding the foregoing, the Custodian may review the investments in a Mutual Fund Only IRA in order to confirm the Participant's compliance with Article VIII, section 4(a), of this Agreement, which limits investments in the Mutual Fund Only IRA to shares issued by a domestic Regulated Investment Company.

- (g) **Scope of Custodian's Liability.** The Custodian shall not be liable for any loss of any kind that may result from any action taken by the Custodian in accordance with the directions of the Participant or his or her designated agent or attorney in fact or from any failure to act because of the absence of any such directions. The Custodian shall not be responsible for determining whether any contribution or rollover contribution satisfies the requirements of the Code. The Custodian shall not be liable for any taxes (or interest thereon) or penalties incurred by the Participant in connection with the Account or in connection with any contribution to or distribution from the Account.

The Custodian is entitled to act upon any instrument, certificate, or form the Custodian believes is genuine and believes is executed or presented by the proper person or persons, and the Custodian need not investigate or inquire as to any statement contained in such document, but may accept it as true and accurate. The Custodian is not liable for any losses directly or indirectly caused by acts of war, acts of terrorism, labor disputes, exchange, or market decisions, including the suspension of trading, market volatility, trade volume, or by government restriction. The Participant shall duly indemnify and hold harmless the Custodian from any liability which may arise hereunder except liability arising from the gross negligence or willful misconduct of the Custodian.

### 8. Resignation or Removal of Custodian

- (a) **Resignation.** The Custodian may resign as Custodian of this Account, or any asset held in the Account, by mailing or actually delivering notice to the Participant 30 days prior to the resignation. Upon the Custodian's resignation the Custodian may, but shall not be required to, appoint a corporation or other organization as the successor custodian or trustee under this Agreement.

If the Custodian appoints a successor custodian or trustee, the Participant, after the receipt of the resignation, shall have 30 days to appoint an alternative successor custodian or trustee. If the Participant does not appoint an alternative successor custodian or trustee, the Participant will be deemed to have accepted the Custodian's appointed successor custodian or trustee. Upon acceptance of appointment by the successor, the Custodian shall assign, transfer, and deliver to the successor custodian or trustee all assets held in the Account to which such resignation or removal relates. The Custodian is authorized, however, to reserve such amounts as the Custodian deems advisable to provide for the payment of expenses and fees then due or to be incurred in connection with the settlement of the Custodian's account, and any balance remaining after the settlement of the Custodian's account shall be paid to the successor custodian or trustee. At the sole discretion of the Custodian, any successor custodian or trustee appointed by the Custodian may, with the approval of the Custodian, amend the Agreement by giving notice to the Participant.

If the Custodian does not choose to appoint a successor custodian or trustee, the Participant has 30 days after receiving notification of the Custodian's resignation to appoint a qualifying successor custodian or trustee. If the Participant does not appoint a successor custodian or trustee within this time period, the Custodian shall have the right to terminate the Account and distribute the assets directly to the Participant.

The Custodian shall not be liable for the acts or omissions of the Custodian's successor.

- (b) Removal. The Participant shall substitute another custodian or trustee in place of the Custodian upon notification by the IRS that such substitution is required because the Custodian has failed to comply with the requirement of Treasury Regulation section 1.408-2(e), or is not keeping such records, or making such returns, or rendering such statements as are required by that regulation. Custodian's Right to Close Account. If an Account value falls below a certain minimum threshold or has no activity after a certain time period, the Custodian reserves the right to close the Account, and assess appropriate fees. In the event the Financial Institution no longer has a relationship with the Custodian, the Custodian reserves the right to liquidate any investment.

### 9. Amendment and Termination of the Account

- (a) Amendment. Pursuant to Article VII, the Custodian may amend this Agreement at any time to comply with legal and regulatory changes and to modify the Agreement as the Custodian determines advisable. The amendment will be effective on the date specified in the notice to the Participant. At the Participant's discretion, the Participant may direct that the Custodial Account be transferred to another trustee or custodian. The Custodian will not be liable for any losses for any actions or inactions of any successor trustee or custodian.

A Participant may change an election or designation made with respect to the Account, provided such change is made in a form and manner prescribed by and acceptable to the Custodian.

- (b) Notification of Amendment. The Custodian may provide notice of any amendments to this Account by notifying the Participant of such amendment, and posting the amended language and any restated documents, if applicable, on a website maintained by the Custodian. The participant consents to the delivery of the applicable notices using an electronic medium and confirms that the Participant is capable of accessing websites. The Participant may request a written copy of any amendments or any restated documents, if applicable, from the Custodian via a phone number maintained by the Custodian or by sending

a letter to Pershing LLC, Retirement Processing Department, One Pershing Plaza, Jersey City, New Jersey 07399.

- (c) Distribution on Termination. The Account may be terminated for any reason by the Custodian. If the Account is terminated by the Custodian, the balance held in each Account for the benefit of a Participant, or Beneficiary or Beneficiaries shall be distributed by the Custodian, in accordance with Article VIII, section 8, of the Agreement.

### 10. Fees, Expenses, and Indebtedness

- (a) Payment of Fees and Expenses. The annual maintenance, termination, mutual fund conversion and other administration fees shall be charged by the Custodian and/or Financial Institution in accordance with the fee schedule that is then in effect. The fee schedule may be amended by the Custodian and/or Financial Institution from time to time. A portion of the fees collected by the Custodian may be shared with the Financial Institution. Any administrative expenses, including fees for legal and/or accounting services incurred by the Custodian at the request of or necessitated by the actions of the Participant or Beneficiary or Beneficiaries, including, but not by way of limitation, the direction of investment of Account assets in an investment that causes the Account to realize unrelated business taxable income within the meaning of the Code, which are over and above the services set forth in the fee schedule shall be paid by the Participant the Account, as required. Any Custodian's fees and administrative expenses when due may be automatically charged to the Account. Alternatively, the Participant may choose to pay the fees and administrative expenses in a timely manner before the Account has been so charged. The Custodian or the Financial Institution reserves the right to liquidate any assets of the Account to collect any charge for which payment may at any time be past due. In the event the Account is terminated by the Participant, Financial Institution or the Custodian for any reason (including closing the Account and opening a new account with the same Custodian), the Custodian shall be entitled to receive the full termination fee, along with

the full, nonprorated current year maintenance fees, regardless of the date during the year that the Account is terminated. Such amounts will be automatically charged against the Account. Any reimbursement of fees charged against the Account will be recorded as a contribution to the Account and reported to taxing authorities accordingly. Specific fee details are provided in the current fee schedule available from the Financial Institution. In the event the Financial Institution no longer has a relationship with the Custodian, the Custodian reserves the right to charge its standard maintenance and termination fee, which changes from time to time. In the event this Account becomes abandoned property, the Custodian reserves the right to charge its standard maintenance and termination fee, which changes from time to time.

- (b) Taxes. Any taxes of any kind whatsoever that may be levied or assessed upon the Account or that the Custodian may otherwise be charged with the responsibility of collecting or remitting shall be paid from the assets of the Account involved.
- (i) If required, the Custodian is authorized to file the IRS Form 990-T for the Account, and any related tax forms including, but not limited to requests for extension, in the event that an investment(s) in the Account causes the Account to realize unrelated business taxable income within the meaning of the Code. The Custodian shall have the right to retain tax or other professionals to assist in the preparation and filing of any such tax forms, and may charge a fee to the Account or the Participant for such services.

If there is sufficient cash, money market fund or similar funds in the Account, the Custodian is authorized to pay the full amount of any tax liability, interest, fees or penalties. If there is insufficient cash, money market fund, or similar funds in the Account, upon notice from the Custodian or the Participant's Financial Institution, Participant is responsible for directing the Financial Institution on the liquidation of assets in the Account for purposes of paying the applicable tax, interest, fees or penalties.

- (c) Brokerage Commissions. The Account will be charged brokerage commissions and other securities transaction related charges for the transactions in the Account in accordance with the Custodian's usual practice.
- (d) Indebtedness. The Participant shall pay any debit balance or other obligation owing to the Custodian on demand.

### 11. Miscellaneous

- (a) Prohibition Against Assignment of Benefits. Except to the extent otherwise required by law, none of the benefits, payments, or proceeds held in the Account on behalf of any Participant, or Beneficiary shall be subject to the claims of any creditor of such Participant, spouse, or Beneficiary, nor shall any Participant, spouse, or Beneficiary have any right to anticipate, sell, pledge, option, encumber, or assign any of the benefits, payments, or proceeds to which he or she is or may be entitled under the Agreement.
- (b) Applicable Law. The Agreement shall be construed, administered, and enforced according to the laws of the State of New York, except to the extent preempted by federal law. All contributions to the Account shall be deemed to take place in the State of New York. The terms and conditions of the Agreement shall be applicable without regard to the community property laws of any state.
- (c) Liquidation of Assets. If the Custodian or Financial Institution must liquidate assets in order to make distributions, transfer assets, or pay fees, expenses, or taxes assessed against the Account, and the Participant fails to instruct the Custodian as to the liquidation of such assets, assets may be liquidated in the following order to the extent held in the Account: (1) any shares of a money market fund or money market type fund, (2) mutual funds, starting with largest position, (3) securities, (4) other assets. The Custodian shall not be liable for any losses arising out of or as a result of assets liquidated in accordance with the provisions of this Agreement.
- (d) Purpose of Form. Form 5305-SA is a model Custodial Account Agreement that meets the requirements of sections 408(a) and 408(p) and

has been pre-approved by the IRS. A SIMPLE individual retirement account (SIMPLE IRA) is established after the Application is fully executed by the individual (Participant) and entered in the records of the Custodian. This Account must be created in the United States for the exclusive benefit of the Participant and his or her beneficiaries

- (e) Identifying Number. The Participant's Social Security number will serve as the identification number of his or her Custodial Account. An employer identification number is required only for a Custodial Account for which a return is filed to report unrelated business taxable income.
- (f) The Custodian will be deemed to have satisfied its summary description reporting requirements under Section 408(l)(2) of the Code by annually providing the Participant with the Custodian's name, address, and withdrawal procedures to the Participant. The Participant's employer shall be responsible to provide the Participant with all other required information.

### Article IX

**WHEN PERSHING LLC OR ANOTHER FINRA ELIGIBLE MEMBER ACTS AS CUSTODIAN UNDER THIS AGREEMENT, THE FOLLOWING ARBITRATION DISCLOSURES APPLY:**

**THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:**

- **ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.**
- **ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.**
- **THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS, AND OTHER DISCOVERIES ARE GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.**

- **THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD, UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION HAS BEEN SUBMITTED BY ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.**
- **THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.**
- **THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.**
- **THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.**

### ARBITRATION AGREEMENT

**ANY CONTROVERSY BETWEEN ME, FINANCIAL INSTITUTION AND PERSHING SHALL BE SUBMITTED TO ARBITRATION BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA). NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL; (I) THE CLASS CERTIFICATION IS DENIED; (II) THE CLASS IS DECERTIFIED; OR (III) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.**

**THE LAWS OF THE STATE OF NEW YORK GOVERN.**

### SIMPLE IRA Disclosure Statement

The Disclosure Statement provides a general description of the terms, conditions and federal laws associated with this SIMPLE IRA (IRA). Terms used in this Disclosure

Statement are set forth in Article VIII of this Account's Custodial Agreement. This Disclosure Statement is not intended to replace the advice of your own tax and legal advisors. You are encouraged to consult your advisors and/or your state taxing authority concerning any tax and/or compliance questions. You are responsible for complying with the laws that apply to this IRA. The Custodian does not act as your advisor. In addition to the transactions outlined in this SIMPLE IRA Disclosure Statement, the federal government may authorize permissible transactions from time to time. Unless expressly prohibited by the Custodian's policies, such additional federally authorized transactions are hereby incorporated by this reference.

### 1. Right of Revocation By Participant

- (a) You have the right to revoke the Agreement for a period of seven (7) calendar days following the date you sign the Application to establish the Account. To revoke the Agreement, you must mail or personally deliver a written notice of revocation to Pershing LLC, Retirement Products Department, One Pershing Plaza, Jersey City, New Jersey 07399. Pershing LLC must receive your revocation notice no later than 7 days after you signed the Application. If your revocation notice is mailed, the notice will be deemed received as of the date of the postmark (or if sent by certified or registered mail, the date of certification or registration) if it is deposited in the United States mail in an envelope, or other appropriate wrapper, first-class postage prepaid, and properly addressed.
- (b) If the Agreement is revoked, the Custodian will return your entire contribution to you without penalty, service charge, administrative expenses, or any other reduction. The contribution to a SIMPLE IRA that is revoked, and the distribution from a SIMPLE IRA that is revoked, must be reported to the IRS.

### 2. General Requirements of a SIMPLE IRA

A SIMPLE IRA plan is a tax-favored retirement plan that certain small employers may establish for the benefit of their employees. Your employer has chosen to establish a SIMPLE IRA plan and

will make plan contributions on your behalf to your SIMPLE IRA for each year you are eligible. Specific information regarding your eligibility to participate in your employer's SIMPLE IRA plan is included in the summary description provided to you by your employer.

### 3. Requirements of a SIMPLE IRA

- (a) Cash Contributions. Your contribution to your SIMPLE IRA must be in cash, unless it is a rollover or transfer contribution.
- (b) Contribution Type. Contributions under a SIMPLE IRA plan are in the form of employee salary deferrals, employer contributions (either matching or non-elective) and any other type permitted by the Code or Regulations.
- (c) Employee Deferrals. Employee salary deferrals may not exceed the lesser of 100% of your compensation or \$12,000 for 2014 and \$12,500 for 2015. If you are age 50 or older by the close of the plan year, you may make an additional contribution to your SIMPLE IRA. The maximum additional contribution is \$2,500 for 2014 and \$3,000 for 2015.  
  
The maximum employee salary deferral amounts listed above will be increased annually to reflect cost-of-living adjustments, if any.
- (d) Employer Contributions. There are two types of employer contributions: matching or non-elective employer contributions. Your employer will notify you each year of the contribution type and amount. If your employer elects matching contributions, your employer will match your deferrals up to 3% of your compensation. However, in some years, a lesser amount may be contributed. Your employer will notify you if a lesser amount is contributed. Instead of matching contributions, your employer may make non-elective contributions equal to 2% of your compensation.
- (e) Nonforfeitable. Your interest in your SIMPLE IRA is nonforfeitable.
- (f) Commingling of Assets. The assets of your SIMPLE IRA cannot be commingled with other property except in a common trust fund or common investment fund.



- (g) Life Insurance No portion of your SIMPLE IRA may be invested in life insurance contracts.
- (h) Collectibles. You may not invest the assets of your SIMPLE IRA in collectibles as described in section 408(m) of the Internal Revenue Code (Code). A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, specially minted United States gold and silver bullion coins and certain state-issued coins are permissible SIMPLE IRA investments. Platinum coins and certain gold, silver, platinum, or palladium bullion as described in section 408(m)(3) of the Code are also permitted as SIMPLE IRA investments.
- (i) Required Minimum Distributions At Age 70½. You are required to take minimum distributions from your SIMPLE IRA for the year in which you reach age 70½ and for subsequent years. You must take your first year's distribution by April 1 of the calendar year following the year in which you attain age 70½. All subsequent year's distributions must be taken by December 31 of the distribution year.

The minimum distribution for any taxable year is equal to the amount obtained by dividing the account balance at the end of the prior year (by the applicable divisor). The applicable divisor is generally determined using the Uniform Lifetime table under Treasury Regulations 1.401(a)(9)-9. If your spouse is your sole designated beneficiary and is more than ten years younger than you, the required minimum distribution may be calculated using the actual joint life expectancy of you and your spouse obtained from the Joint and Last Survivor Table rather than the life expectancy divisor from the Uniform Lifetime table.

Each year you are subject to the RMD requirements, your Custodian will provide you with a notice. Along with the distribution deadline, the notice will either inform you of your RMD amount or provide you with guidance on how to contact the Custodian for assistance in determining your RMD. Your Custodian is also required to notify the IRS each year you are required to take an RMD. However, the Custodian will make distributions to you or your Beneficiary only upon specific

instructions to do so. If you have more than one IRA, determine the RMD separately for each IRA. However, you may total the RMDs and take the total from any one or more of your IRAs.

If you do not take the required minimum distribution (RMD) or the distribution is not large enough, you may be subject to a 50% excess accumulation penalty tax on the amount not distributed as required. You must report the 50% excess accumulation penalty tax by filing a completed Form 5329 with the IRS along with your payment.

- (j) Distributions to your Beneficiary or Beneficiaries. Any amounts remaining in your IRA at your death will be paid to your Beneficiary(ies). The rules that determine the distribution of the IRA balance after your death depends on your relationship to the Beneficiary (i.e., spouse, nonspouse, or other), whether you died before or after RMDs were required to begin, and if the IRA has a "designated beneficiary" as defined under federal regulations.

**Designated Beneficiary:** A "designated beneficiary" is a person (or a qualified trust that "looks through" to a beneficiary that is a person) that is a Beneficiary as of the date of your death, and has a balance in the IRA as of September 30th of the year following the year of your death. Any person who is a Beneficiary as of the date of your death and dies during the period between the date of your death and September 30th of the year following the year of your death is also a designated beneficiary. A IRA will be treated as not having a designated beneficiary if a Beneficiary that is not a person, or a qualified trust that "looks through" to a beneficiary that is a person is a Beneficiary as of the date of your death and continues to have a balance in the IRA as of September 30th of the year following the year of your death. The rules concerning qualified trusts are complex and set forth in applicable Treasury Regulations.

**If You Die On or After RMDs Are Required to Begin:** If you die on or after April 1 following the year you attain age 70½, the Beneficiary(ies) must continue taking distributions from your IRA. The longest timeframe for receiving payouts is over

the remaining life expectancy of the applicable designated beneficiary or based on your remaining life expectancy factor, had you not died, whichever period is longer. Distributions must commence by December 31 of the calendar year following your death. If your IRA is treated as having no designated beneficiary, your IRA must be distributed to your Beneficiary or Beneficiary(ies) using your single life expectancy (had you not died) reduced by one each year.

If your surviving spouse is the sole designated beneficiary of your IRA, he or she may elect to treat your IRA as his or her own IRA by redesignating your IRA as his or her own IRA, failing to take a required distribution as a Beneficiary, or by making a contribution.

Regardless of whether your spouse is the sole designated beneficiary, he or she may be eligible to roll distributions from your IRA into his or her own IRA within 60 days of receipt, and subject to any applicable limitations.

If your Beneficiary(ies) does not withdraw the required amount within the prescribed timeframe, he or she may be subject to the 50% excess accumulation penalty tax on the amount that should have been withdrawn but was not distributed. The 50% excess accumulation penalty tax must be reported by filing a completed Form 5329 with the IRS along with the penalty payment.

**If You Die Before RMDs Are Required To Begin:** If you die before April 1 following the year you reach age 70½ and your Beneficiary(ies) is a person or a qualified trust that “looks through” to a beneficiary that is a person, the Beneficiary may generally elect a distribution method. Your Beneficiary(ies) may elect to deplete the IRA by the end of the fifth calendar year following your death (i.e., “the five-year rule”) or to receive payments based on the designated beneficiary(ies)’s life expectancy. If life expectancy payments are elected, the payments must generally begin by December 31 of the first calendar year following your death. However, if your surviving spouse is your sole designated beneficiary, the first distribution is not

required until December 31 of the year you would have attained age 70½ if later. The Beneficiaries must generally elect between the five-year rule option and the life expectancy payment option by December 31 of the year following the year of your death. However, if your spouse is your sole designated beneficiary, he or she must elect between the five-year rule option and the life expectancy payment option by the earlier of December 31 of the year containing the fifth anniversary of your death, or December 31 of the year you would have attained age 70½. If timely elections are not made, the Beneficiary is required to take distributions according to the default distribution option which is the life expectancy payment option. A Beneficiary that is not a person (except of a qualified trust that “looks through” to a beneficiary that is a person) must take distributions according to the five-year rule.

If your IRA is treated as not having a designated beneficiary, for purposes of the IRS regulations, all Beneficiary(ies) must take distributions according to the five-year rule.

If your surviving spouse is the sole designated beneficiary of your IRA, he or she may elect to treat your IRA as his or her own IRA by redesignating your IRA as his or her own IRA, failing to take a required distribution as a Beneficiary, or by making a contribution.

Regardless of whether your spouse is the sole designated beneficiary, he or she may be eligible to roll distributions from your IRA into his or her own IRA within 60 days of receipt, and subject to any applicable limitations.

If your Beneficiary(ies) does not withdraw the required amount within the prescribed timeframe, he or she may be subject to the 50% excess accumulation penalty tax on the amount that should have been withdrawn but was not distributed. The 50% excess accumulation penalty tax must be reported by filing a completed Form 5329 with the IRS along with the penalty payment.

### 4. Income Tax Consequences of Establishing a SIMPLE IRA

- (a) **SIMPLE IRA Deductibility.** You may not take a deduction for the amounts contributed to your SIMPLE IRA as either employee elective deferrals or employer contributions. However, employee elective deferrals to a SIMPLE IRA will reduce your taxable income. Further, employer SIMPLE IRA contributions, including earnings, will not be taxable to you until you receive a distribution from your SIMPLE IRA. Participation in your employer's SIMPLE IRA plan renders you an active participant for purposes of determining whether or not you can deduct contributions to a Traditional IRA.
- (b) **Tax Credit for Contributions.** You may be eligible for a tax credit for your SIMPLE IRA contribution if you are age 18 or older, not a dependent of another taxpayer, and not a full-time student. The maximum annual tax credit is \$1,000 (unless modified by Congress). If you are eligible for the credit, it will reduce your federal income tax you owe dollar for dollar.
- (c) **Tax Deferred Earnings.** The investment earnings of your SIMPLE IRA are generally not subject to federal income tax until distributions are made (or, in certain instances, when distributions are deemed to be made).
- (d) **Excess Contributions.** An excess may be created from your salary deferrals or from your employer's contributions (either matching or nonelective).
- (e) **Tax Treatment of Distributions.** In general, distributions from your SIMPLE IRA are taxed as ordinary income in the year you receive them. Some amounts are not taxable. Examples include rollovers, direct transfers and corrections of certain excess contributions.

In addition, certain distributions may be subject to additional penalties as explained below. If you have made nondeductible contributions to a Traditional IRAs, a portion of each distribution from your SIMPLE IRA is nontaxable. The nontaxable amount is the pro rata portion of the distribution that represents your remaining nondeductible contributions based upon the value of all your IRAs. For assistance in determining the nontaxable

portion, consult your tax advisor, instructions to IRS Forms 1040 and 8606, and IRS Publication 590-B.

- (f) **Early Distribution Penalty.** If you are under the age of 59½ and receive an IRA distribution, an additional tax of 10% may apply to amounts includible in gross income, unless the distribution is made on account of death, disability (as defined by the Code), a qualifying rollover, a direct transfer, the timely withdrawal of an excess contribution, or if the distribution is part of a series of substantially equal periodic payments (at least annual payments) made over your life expectancy or the joint life expectancy of you and your Beneficiary. Payments for medical expenses (under certain conditions) that are more than the applicable percentage of your adjusted gross income and distributions to pay for health insurance if you have separated from employment and received unemployment compensation under a federal or state program for at least 12 weeks are also generally exempt from the 10% tax. In addition, distributions to cover certain qualified education expenses, distributions to buy, build, or rebuild a first home (up to a lifetime maximum of \$10,000), distributions due to a levy issued by the IRS, and qualified reservist distributions (as defined by the Code) are also generally exempt from the 10% tax.

If less than two years have passed since you first participated in a SIMPLE IRA plan sponsored by your employer, the early distributions penalty shall increase from 10% to 25%.

You may have to report the IRS early distribution penalty tax and/ or exemption from this penalty by filing a completed Form 5329 with the IRS along with your payment.

- (g) **Rollovers.** Generally, a rollover is a movement of cash or assets from one retirement plan to another. If you are required to take minimum distributions because you are age 70½ or older, you may not roll over any required minimum distributions. Both the distribution and the rollover contribution are reportable when you file your income taxes. You must irrevocably elect to treat such contributions as rollovers.

**IRA-to-IRA Rollover.** You may withdraw, tax free, all or a portion of your SIMPLE IRA if you contribute the amount withdrawn within 60 days from the date you receive the distribution into the same or another SIMPLE IRA (or a Traditional IRA) as a rollover. To complete a rollover of a SIMPLE IRA distribution to a Traditional IRA, at least two years must have elapsed from the date on which you first participated in any SIMPLE IRA Plan maintained by the employer, and you must contribute the distribution within 60 days from the date you receive it. Only one IRA distribution within any 12-month period may be rolled over in an IRA-to-IRA rollover transaction. The 12-month waiting period begins on the date you receive an IRA distribution that you subsequently roll over, not the date you complete the rollover transaction.

If you roll over the entire amount of a SIMPLE IRA distribution (including any amount withheld for federal, state, or other income taxes that you did not receive), you do not have to report the distribution as taxable income. Any amount not properly rolled over within the 60-day period will generally be taxable in the year distributed (except for any part that represents basis) and may be, if you are under age 59½, subject to the premature distribution penalty tax.

**SIMPLE IRA-to-Employer Retirement Plan Rollover.** If your employer's retirement plan accepts rollovers from IRAs, you may complete a direct or indirect rollover of your SIMPLE IRA assets to your employer retirement plan if at least two years have elapsed from the date on which you first participated in any SIMPLE IRA Plan maintained by the employer. If you are required to take minimum distributions because you are age 70½ or older, you may not roll over any required minimum distributions. Employer Retirement Plan-to-SIMPLE IRA Rollover Not Permitted. Distributions from your employer's retirement plan are not eligible to roll over to your SIMPLE IRA.

- (h) **SIMPLE IRA to Roth IRA Conversions.** Generally, if after you have been a SIMPLE IRA plan participant for two years, you may convert all or a portion of your SIMPLE IRA to a Roth IRA provided you meet

any applicable eligibility requirements as defined in the Code and Regulations. Except for amounts that represent basis, amounts converted are generally treated as taxable distributions. However, the premature distribution penalty that typically applies to taxable withdrawals taken prior to age 59½, does not apply to amounts converted from a SIMPLE IRA to a Roth IRA. Required minimum distributions may not be converted. SIMPLE IRA-to-Roth IRA conversions are not subject to the 12-month rollover restriction that typically applies to rollovers between IRAs.

- (i) **Recharacterize a Conversion.** You may "recharacterize" a conversion made from your SIMPLE IRA to a Roth IRA. Both the conversion amount along with the net income attributable to the conversion must be transferred. If there was a loss, the amount of any loss will reduce the amount you recharacterize. The deadline for completing a recharacterization is your tax return due date (including any extensions) for the year in which the distribution that was converted was withdrawn.

Recharacterization requests must be made in a form and manner acceptable to the Custodian. Report recharacterizations to the IRS by attaching a statement to your Form 1040. You may also need to file Form 8606. For assistance with a recharacterization, refer to IRS Publication 590-A and/or your tax advisor.

- (j) **Reconversion.** A reconversion occurs when you convert SIMPLE IRA assets that have been previously converted and recharacterized. A reconversion must occur in a subsequent year to the conversion, or if later, after 30 days has elapsed since the prior recharacterization.
- (k) **Transfers.** You may move your SIMPLE IRA from one trustee or custodian to a SIMPLE IRA maintained by another trustee or custodian by requesting a direct transfer. Because the transfer is done directly between IRA trustees or custodians and no distribution is made to you, the transfer is neither taxable nor reportable. Federal law does not limit the number of transfers you may make during any one year.

- (l) **Transfers Incident to Divorce.** In a form and manner acceptable to the Custodian, under a valid divorce decree, separate maintenance decree, or other valid court order, all or part of your SIMPLE IRA may be transferred to your ex-spouse or you may receive all or part of your ex-spouse's SIMPLE IRA.
- (m) **Repayment of Qualified Reservist Distributions.** If you are a qualified reservist called to active duty and you have taken penalty-free qualified reservist distributions from your SIMPLE IRA, you may be able to contribute (repay) those amounts to an IRA generally within a two-year period from your date of return. For further detailed information, you may wish to obtain IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs) and IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs) from the IRS.
- (n) **Disaster Relief.** If you qualify (e.g., sustain an economic loss or are otherwise affected by certain disasters designated by the IRS), you may be eligible for favorable tax treatment on certain IRA transactions as prescribed by the Internal Revenue Code, regulations or the IRS. Favorable tax treatment may include (but is not necessarily limited to) relief from the early distribution penalty tax, the option to include a distribution in your gross income ratably over a prescribed number of years, repayment of distributions, and the ability to roll over distributions without regard to rollover restrictions (e.g. 60-day roll over rule). Additional information regarding tax relief for IRA-related transactions due to qualifying disasters including information on how to identify qualifying disasters, may be found in Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs), and Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), as well on the IRS's website at [www.irs.gov](http://www.irs.gov).
- (b) **Estate Tax.** Generally, for federal estate tax purposes, amounts held in your IRA are included in your gross estate when you die. However, if your spouse is your Beneficiary, the IRA may qualify for the marital deduction. Consult your tax and/or legal advisors for specific guidance.
- (c) **No Special Tax Treatment.** IRA distributions are not eligible for capital gains treatment or lump-sum income averaging.
- (d) **Federal Income Tax Withholding.** Any withdrawal from your SIMPLE IRA, except a direct transfer to another IRA or a direct rollover to a qualified plan, may be subject to federal income tax withholding. You may, however, elect not to have withholding apply to your SIMPLE IRA withdrawal. If withholding is applied to your withdrawal, no less than 10% of the amount withdrawn must be withheld for federal income tax purposes. Special federal income tax withholding rules may apply if the distribution is sent outside of the United States.
- (e) **Prohibited Transactions.** If you (or, following your death, Beneficiaries) engage in a "prohibited transaction" with your SIMPLE IRA, the IRA will be disqualified and the entire balance in your IRA will be treated as a distribution. If you are under age 59½, the early distribution penalty tax may apply. Prohibited transactions are defined in Internal Revenue Code section 4975. Examples include borrowing money from the IRA, selling property to the IRA, receiving unreasonable compensation for managing the IRA, or buying property with IRA funds for your personal use.
- (f) **Pledging IRA.** If you pledge any portion of your SIMPLE IRA as collateral for a personal loan, the amount so pledged will be treated as a distribution. If you are under age 59½, the amount pledged may also be subject to the early distribution penalty tax.

### 5. Limitations and Restrictions

- (a) **Gift Tax.** Transfer of your IRA assets to a named Beneficiary or Beneficiaries made during your life and at your request may be subject to federal gift tax under section 2501 of the Code. However, the naming of a Beneficiary or Beneficiaries generally will not subject you to gift tax liability.

### 6. Other

- (a) **IRS Form.** The form of Agreement used to establish this SIMPLE IRA is the model government form provided by the IRS and is known as Form 5305-SA. The IRS approval is a determination only as to the form. It is not an endorsement of the plan in operation or of the investments offered.



- (b) **Additional Information.** You may obtain further information on SIMPLE IRAs from your District Office of the Internal Revenue Service or by visiting the IRS web site at [www.irs.gov](http://www.irs.gov). In particular, you may wish to obtain IRS Publication 590-A, Contributions to Individual Retirement Arrangements (IRAs), IRS Publication 590-B, Distributions from Individual Retirement Arrangements (IRAs), and IRS Publication 560, Retirement Plans for Small Businesses. Additional information may be found in the summary description provided by your employer.
- (c) **Customer Identification Program.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial organizations to obtain, verify, and record information that identifies each person who opens an account. When you open an account, you are required to provide your name, residential address, date of birth, and identification number. We may require other information that will allow us to identify you.
- (d) **Tax Filing.** You are responsible for filing the applicable IRS forms to report certain activities, taxable income and/or penalties associated with your SIMPLE IRA.
- (e) **Custodian.** The custodian of your SIMPLE IRA must be a bank, a federally insured credit union, a savings and loan association, or an entity approved by the IRS to act as custodian.

### 7. Additional Financial Information

- (a) **Account Fees.** If not accompanied by this Disclosure Statement and SIMPLE Individual Retirement Custodial Account Agreement, a schedule of fees will be provided by the financial institution that introduced the account to you. The annual maintenance, termination, and other administration fees shall be charged by the Custodian or the financial institution that introduced the account to you for its services hereunder in accordance with the current fee schedule that is in effect. At the discretion of the Custodian or the financial institution that introduced the account to you, you may receive a separate invoice or invoice instructions on your statement for the account maintenance and other related fees that are due and payable upon receipt. Fees when due shall

be automatically charged against the IRA or as you direct in writing, charged against another account held by the Custodian over which you have investment authority. You may not reimburse your IRA for account fees including fee-based account fees, once they have been charged to your IRA. Any reimbursement of annual maintenance or other administrative fees charged to your IRA must be considered a contribution to your IRA and reported to the IRS accordingly. Alternatively, you may choose to pay the fees in a timely manner before the account has been charged. If you do prepay the account maintenance fee, you will see a corresponding debit and credit offset on your account statement. The financial institution that introduced the account to you will notify you prior to changing the fee schedule. In the event of account termination either by you or by the Custodian for any reason, the Custodian shall be entitled to receive the full termination fee, along with the full, nonprorated current year maintenance fee, regardless of the date during the year of the termination of the account.

- (b) **Brokerage Commissions.** Commissions and other securities transaction-related charges shall be as charged by the financial institution that introduced the account to you. Such commissions must be paid from assets held within your SIMPLE IRA and may not be reimbursed.
- (c) **Other Expenses.** Taxes of any kind, which may be imposed with respect to the SIMPLE IRA, and any expenses incurred by the Custodian in the management of your SIMPLE IRA, together with any fees referred to above, shall be paid by you (as permissible), charged against your account, or as directed in writing by you, charged against another account over which you have authority.
- (d) **Earnings.** The earnings of each separate account shall be allocated only to that account. The Custodian will attribute earnings only to the assets held in the account in the custody of the Custodian according to the Custodian's ordinary business practices and in accordance with the Custodian's established customs and procedures.
- (e) **Growth in Value.** Growth in value of your account will depend entirely on the investment decisions made by you and is neither guaranteed nor projected.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEC 06 2011

Pershing LLC  
One Pershing Plaza  
Jersey City, NJ 07399

EIN: 13-2741729  
Ladies and Gentlemen:

On May 31, 1984, the Internal Revenue Service issued to Donaldson Lufkin & Jenrette Securities Corporation a letter approving it to act as an active trustee or custodian for individual retirement arrangements (IRAs). The Service issued another letter, dated July 31, 1990, allowing Donaldson Lufkin & Jenrette Securities Corporation to act as a nonbank custodian of plans qualified under section 401(a) of the Internal Revenue Code. In a third letter dated April 20, 1995, the Service approved Donaldson Lufkin & Jenrette Securities Corporation to act as a nonbank custodian of accounts described in section 403(b)(7).

Donaldson Lufkin & Jenrette Securities Corporation converted, on January 17, 2003, into a Delaware limited liability company named Pershing LLC. Upon the conversion of Donaldson Lufkin & Jenrette Securities Corporation into Pershing LLC, the officers and directors of Donaldson Lufkin & Jenrette Securities Corporation became Pershing LLC's Board of Managers and the employees and assets of Donaldson Lufkin & Jenrette Securities Corporation became the employees and assets of Pershing LLC.

Section 401(f)(1) of the Code provides that a custodial account shall be treated as a qualified trust under this section if such custodial account would, except for the fact it is not a trust, constitute a qualified trust under this section. Section 401(f)(2) provides that the custodian must be a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will hold the assets will be consistent with the requirements of section 401. Section 401(f) also provides that in the case of a custodial account treated as a qualified trust, the person holding the assets of such account shall be treated as the trustee thereof.

Section 403(b)(7)(A) of the Code requires, in part, that for amounts paid by an employer to a custodial account to be treated as amounts contributed to an annuity contract for his employee, the custodial account must satisfy the requirements of section 401(f)(2). That section also requires, in order for the amounts paid by an employer to be treated as amounts contributed to an annuity contract for his employee, that the amounts are to be invested in regulated investment company stock to be held in the custodial account, and under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, has a severance from employment, becomes disabled (within the meaning of section 72(m)(7)), or in the case

Pershing LLC

of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

Section 408(a)(2) of the Code requires that the trustee of an IRA be a bank (as defined in section 408(n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of section 408.

Section 408(h) of the Code provides that a custodial account shall be treated as a trust under this section if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an IRA described in subsection (a). Section 408(h) also provides that, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

Section 408A of the Code provides, in general, that a Roth IRA shall be treated in the same manner as an individual retirement plan. Section 7701(a)(37)(A) defines an individual retirement plan as an IRA described in section 408.

The Income Tax Regulations at section 1.408-2(e) contain the requirements that such other person must comply with in order to act as trustee or custodian, for purposes of sections 401(f), 403(b)(7), 408, and 408A of the Code. One of the requirements of section 1.408-2(e) of the regulations states that such person must file a written application with the Commissioner demonstrating, as set forth in that section, its ability to act as a trustee or custodian.

Based on all the information and representations Donaldson Lufkin & Jenrette Securities Corporation submitted to this office in its written application and the nonbank trustee/custodian investigation on Pershing LLC for continued compliance with the nonbank trustee regulations at section 1.408-2(e), we have concluded that Pershing LLC meets the requirements of section 1.408-2(e) of the regulations and, therefore, is approved to act as a passive or non-passive nonbank custodian of plans qualified under section 401(f) or accounts described in section 403(b)(7), passive or non-passive nonbank trustee or custodian for IRAs established under sections 408, and 408A (dealing with Roth IRAs).

This Notice of Approval authorizes Pershing LLC to act as a passive or non-passive nonbank trustee or custodian. When Pershing LLC acts as a passive nonbank trustee or custodian (within the meaning of section 1.408-2(e)(6)(i)(A) of the regulations), it is authorized only to acquire and hold particular investments specified by the trust instrument or custodial agreement. It may not act as a passive trustee or custodian if



## Pershing LLC

under the written trust instrument or custodial agreement it has discretion to direct investments of the trust (or custodial) funds.

Pershing LLC may not act as a trustee or custodian unless it undertakes to act only under trust instruments or custodial agreements that contain a provision to the effect that the grantor is to substitute another trustee or custodian upon notification by the Commissioner that such substitution is required because Pershing LLC has failed to comply with the requirements of section 1.408-2(e) or is not keeping such records, or making such returns or rendering such statements as are required by forms or regulations. For example, one such form is Form 990-T for IRAs that have \$1000 or more of unrelated business taxable income that is subject to tax by section 511(b)(1) of the Code.

Pershing LLC is required to notify the Commissioner of Internal Revenue, Attn: SE:T:EP:RA, Internal Revenue Service, Washington, D.C. 20224, in writing, of any change that affects the continuing accuracy of any representations made in its application. Further, the continued approval of Pershing LLC to act as a passive or non-passive nonbank custodian of plans qualified under section 401(f) or accounts described in section 403(b)(7), passive or non-passive nonbank trustee or custodian for IRAs established under sections 408, and 408A (dealing with Roth IRAs) is contingent upon the continued satisfaction of the criteria set forth in section 1.408-2(e) of the regulations.

This Notice of Approval is not transferable to any other entity. An entity that is a member of a controlled group of corporations, within the meaning of section 1563(a) of the Code, may not rely on a Notice of Approval issued to another member of the same controlled group. Furthermore, any entity that goes through an acquisition, merger, consolidation, or other type of reorganization may not necessarily be able to rely on the Notice of Approval issued to such entity prior to the acquisition, merger, consolidation, or other type of reorganization. Such entity may have to apply for a new Notice of Approval in accordance with section 1.408-2(e) of the regulations.

This Notice of Approval constitutes a notice that Pershing LLC may act as a passive or non-passive nonbank custodian of plans qualified under section 401(f) or accounts described in section 403(b)(7), passive or non-passive nonbank trustee or custodian for IRAs established under sections 408, and 408A (dealing with Roth IRAs) and does not bear upon its capacity to act as a trustee or custodian under any other applicable law. This is not an endorsement of any investment. The Internal Revenue Service (Service) does not review or approve investments.

In order to protect the accounts Donaldson Lufkin & Jenrette Securities Corporation handled as nonbank trustee or custodian from May 31, 1984, through its conversion to Pershing LLC, this Notice of Approval is retroactively effective to May 31, 1984. This

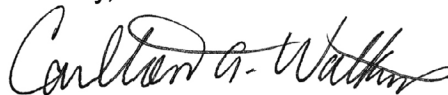
Pershing LLC

Notice of Approval will remain in effect until withdrawn by Pershing LLC or revoked by the Service.

In accordance with the power of attorney on file in this office, a copy of this notice is being sent to your authorized representative.

If you have any questions, please contact Mr. Calvin Thompson (Badge No. 1000221590) at (202) 283-9596.

Sincerely,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

