

**ROLLOVER**

ADOPTION AGREEMENT AND PLAN DOCUMENT



*Individual Retirement Account*

**ADOPTION AGREEMENT  
AND PLAN DOCUMENT**

## **TRADITIONAL INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT**

Form 5305-A (Revised March 2002) under Section 408(a) of the Internal Revenue Code (Code)

The Depositor whose name appears on the Adoption Agreement is establishing a Traditional Individual Retirement Account (IRA) under Section 408(a) 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 Depositor the disclosure statement required under Regulations Section 1.408-6.

The Depositor and the Custodian make the following agreement (the "Agreement"):

### **ARTICLE I**

Except in the case of a rollover contribution described in Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an employer contribution to a simplified employee pension plan as described in Section 408(k), or a recharacterized contribution described in Section 408A(d)(6), the Custodian will accept only cash contributions up to \$3,000 per year for tax years 2002 through 2004. That contribution limit is increased to \$4,000 for tax years 2005 through 2007 and \$5,000 for 2008 and thereafter. For individuals who have reached age 50 before the close of the tax year, the contribution limit is increased to \$3,500 per year for tax years 2002 through 2004, \$4,500 for 2005, \$5,000 for 2006 and 2007, and \$6,000 for 2008 and thereafter. For tax years after 2008, the above limits will be increased to reflect a cost of living adjustment, if any.

### **ARTICLE II**

The Depositor'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 Depositor'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 Depositor's entire interest in the Custodial Account must be, or begin to be, distributed no later than the Depositor's required beginning date, April 1 following the calendar year in which the Depositor reaches age 70½. By that date, the Depositor 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 Depositor or the joint lives of the Depositor and his or her designated Beneficiary.
3. If the Depositor dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:
    - (a) If the Depositor dies on or after the required beginning date, and:
      - (i) The designated Beneficiary is the Depositor'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 one 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 Depositor'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 Depositor and reduced by one 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 Depositor as determined in the year of the Depositor's death and reduced by one for each subsequent year.
    - (b) If the Depositor 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 Depositor's death. If, however, the designated Beneficiary is the Depositor's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the Depositor would have reached age 70½. But, in such case, if the Depositor'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 Depositor's death.
  4. If the Depositor dies before his or her entire interest has been distributed, and if the designated Beneficiary is not the Depositor'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 Depositor'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 Depositor reaches age 70½, is the Depositor'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 Depositor's designated Beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the Depositor'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 Depositor's (or, if applicable, the Depositor'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 Depositor's death [or the year the Depositor 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 Depositor reached 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 Traditional IRAs may satisfy the minimum distribution requirements described above by taking from one Traditional IRA the amount required to satisfy the requirement for another in accordance with the regulations under Section 408(a)(6).

#### ARTICLE V

1. The Depositor agrees to provide the Custodian with all information necessary to prepare any reports required by Section 408(i) and Regulations Sections 1.408-5 and 1.408-6.
2. The Custodian agrees to submit to the Internal Revenue Service (the "IRS") and Depositor the reports prescribed by the IRS.

#### 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 Section 408(a) 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 "IRA" shall mean the Traditional Individual Retirement Custodial Account established hereunder for the benefit of the Depositor 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 Depositor and the Custodian. The statements contained therein shall be incorporated into this Agreement.
- (c) "Agreement" shall mean the Pershing LLC Traditional 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 Account 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 or Participant's surviving spouse to receive benefits by reason of the death of the Participant or of such spouse, or the person or persons described in Article VIII, Section 5b, of the Plan who would otherwise be entitled to receive such benefits.
- (e) "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.
- (f) "Custodian" shall mean Pershing LLC.
- (g) "Depositor" shall mean Participant as defined herein below.

- (h) "Participant" shall mean the Depositor and an individual who adopts the Plan and who makes contributions or on whose behalf contributions are made to his or her Account pursuant to the Plan. If a Spousal Account is established, "Participant" shall also mean the spouse on whose behalf such Account is established, where the context so requires, and the Beneficiary of a Participant or Beneficiary following the death of the Participant.
- (i) "Plan" shall mean the Pershing LLC Traditional Individual Retirement Custodial Account Plan, as it may be amended from time to time, in accordance with Article VII of the Plan.
- (j) "Rollover Account" shall mean an Account established by a Participant in which amounts are deposited in accordance with Article VIII, Section 3c, of the Plan.
- (k) "Simplified Employee Pension Account" shall mean an Account established by a Participant whose employer has adopted a simplified employee pension plan pursuant to Section 408(k) of the Code.
- (l) "Spousal Account" shall mean an Account established by a Participant on behalf of the Participant's nonemployed spouse or by an eligible divorced or legally separated spouse.

## 2. Notices and Change of Address

- (a) Any required notice regarding this Account will be considered effective when mailed by the Custodian to the last address of the intended 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.
- (b) **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 failure 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.

## 3. Contributions

- (a) **Maximum Age for Contributions.** No contributions to an Account shall be made for the taxable year in which the Participant attains age 70½ or any later year.
- (b) **Excess Contributions.** The Depositor is responsible for the determination of any excess contributions and the timely withdrawal thereof. If the IRS or the Depositor notifies the Custodian in writing that the contributions to the Account have exceeded the contribution limitations described in Article I of the Plan, the Custodian shall distribute from the Account to the Depositor the amount of such excess contribution and, as determined by the Depositor, any income attributable thereto. The Depositor may revoke such notice in writing if the IRS has not notified the Custodian of its determination that the excess contribution was willfully made by the Depositor. The Custodian, at the request of the Depositor, may credit as a contribution for the current taxable year, the amount shown in the notice of the Depositor revoking his or her prior notification.
- (c) **Rollover Contributions.**
  - (i) If directed by the Depositor, the Custodian shall open and maintain a separate Account for each rollover contribution described in Section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16) of the Code, or any other applicable section of the Code.
  - (ii) If a Depositor desires to rollover or transfer assets other than cash to his or her IRA, the Custodian shall accept such assets only if they are compatible with the Custodian's administrative or operational requirements and regular business practices.

Unless otherwise directed by the Participant, any rollover contribution made by a Participant may be combined with any other of the Participant's Accounts and further contributions may be made to that Account.

- (d) **Regular IRA Contributions Deadlines.** The last day to make annual IRA contributions for a particular tax year is the deadline for filing the Participant's federal income tax return, not including extensions, or such later date as may be determined by the Department of Treasury or the Internal Revenue Service for the taxable year for which the contribution relates. The Participant shall designate, in a form and manner acceptable to the Custodian, the taxable year for which such contribution is made.

## 4. Investment of Contributions

- (a) **Direction by Participant.** All investment instructions of the Participant shall be accepted by the Custodian in accordance with its 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, 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 its regular course of business, and subject to such other limitations as may be agreed to by the Participant and Introducing Broker-Dealer. In the absence of such directions, the Custodian shall have no investment responsibility. 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 Custodial 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 effect the value of the Account, and that the growth in value of an Account cannot be guaranteed or projected.
- (b) **Direction by Beneficiary.** In the event that the Participant dies before part or all of his or her interest in this Account is distributed to him or her, the remaining assets in the Account shall be invested as directed by the Participant's Beneficiary or Beneficiaries; provided, however, that (1) if the Beneficiary is a trust, such investment directions shall be given by the trustee of such trust, and (2) if the Beneficiary is the Participant's estate, such investment directions shall be given by the personal representative of such estate. In such event, the Beneficiary or Beneficiaries shall be treated as the Participant for all purposes as though he or she were the signatory to the Agreement.
- (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 it in accordance with the directions of the Participant.
- (d) **Delegation of Investment Responsibility.** Regardless of any other provision of this Agreement to the contrary, the Participant may also 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 Custodial 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 which 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 the "Investment of Contributions"

section of this Agreement and in the “Powers, Duties, and Obligations of the Custodian” section 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 Custodial 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), of the Plan. 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

The Depositor may withdraw all or part of his or her Custodial 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. Distributions under the IRA may be made in a single sum, periodic payment, or a combination of both.

- (a) **Required Distributions.** Beginning in 2003, the Custodian shall, if requested by the Participant, be responsible for computing the required minimum distribution amount in accordance with Article IV of the Plan, and for notifying the Participant accordingly. 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 IRA where the Participant fails to choose any method of distribution by April 1st of the year following the year the Participant reaches age 70½.

- (b) **Beneficiaries.** Following the death of the Participant, the balance of the Participant’s Custodial Account shall be distributed to the Participant’s designated Beneficiary or Beneficiaries, if any, in accordance with the provisions of Article IV of the Plan and in accordance with the Custodian’s administrative or operational requirements and regular business practices. A Participant may designate a Beneficiary or Beneficiaries of the Custodial 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 by the Custodian and only if such receipt shall be during the Participant’s lifetime. The latest such designation, change, or revocation shall control. If there is no Beneficiary designation on file with the Custodian, or if the designated Beneficiary has not survived the Participant, the Custodian shall distribute the Custodial Account to the survivors of the Participant 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 is 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 Account will be divided equally among the surviving Beneficiary or Beneficiaries. Unless otherwise designated by the Participant in a form and manner acceptable to the Custodian, if there is no primary

Beneficiary or Beneficiaries living at the time of the Participant’s death, payment of the Participant’s Account upon his or her death will be made to the surviving contingent Beneficiary or Beneficiaries designated by the Participant. Unless otherwise specified in the Participant’s Designation of Beneficiary, if a Beneficiary does not predecease the Participant but dies before receiving his or her entire interest in the Custodial Account, his or her remaining interest in the Custodial 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 Custodial 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

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 non-interest-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 Plan.

- (c) **Account Only Source of Benefits.** The only source of benefit for the Participant, Spouse, or Beneficiary of the Account under this Plan shall be the Custodial Account.
- (d) **Qualifying Terminable Interest Property (QTIP) and Qualified Domestic Trust (QDOT).** The provisions of this Section 5(d) of Article VIII of the Plan shall apply if the Participant has designated a QTIP or a QDOT for the benefit of his or her spouse (which trust is intended to satisfy the conditions of Section 2056(b)(7) or 2056A of the Code) as Beneficiary of this IRA (hereafter referred to as the “Spousal Trust”), but only if the Participant, the trustee of the Spousal Trust, or the executor of the estate of the deceased Participant notifies the Custodian in a written document acceptable to the Custodian of such individual’s intention to have this Section apply. After the death of the Participant, and upon written direction of the trustee of the Spousal Trust, the Custodian shall distribute to the trustee of the Spousal Trust an amount equal to the greater of (1) all of the income of the Account for the year or (2) the amount required to be distributed under Section 401(a)(9) of the Code and the regulations thereunder annually or at more frequent intervals. No person shall have the power to appoint any part of the Account to any person other than the Spousal Trust. If the Participant dies on or after his or her required beginning date, the Section 401(a)(9) amount shall be the amount required to be distributed under the distribution method that applied to the Participant at his or her death. If the Participant dies before the required beginning date, the Section 401(a)(9) amount shall be the amount required under the payment method described in Article IV, Section 3(a)(i), (that is, the life expectancy of the spouse option), with payments commencing no later than the end of the year following the year of the Participant’s death. If requested by the trustee of the Spousal Trust, the Custodian shall pay additional amounts from the Account’s principal to the Spousal Trust. The trustee of the Spousal Trust or the Participant’s surviving spouse has the right to direct the Custodian to convert nonproductive property into productive property. After the death of the Participant’s surviving spouse, the Custodian shall pay any amounts remaining in the Account in accordance with written instructions given to it by the trustee of the Spousal Trust. To the extent permitted by Section 401(a)(9) of the Code, as determined by the trustee of the Spousal Trust, the surviving spouse of the Participant who has designated a Spousal Trust as his or her Beneficiary may be treated as the Participant’s Beneficiary for purposes of the distribution requirement of Section 401(a)(9) of the Code. The Custodian shall have no responsibility to determine whether such treatment is appropriate.

- (e) 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, 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.

## 6. Transfer

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- (a) **Transfer.** In the event that the Participant terminates his or her Custodial Account, the Custodian shall distribute or 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 its 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, distributed, or 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) **Transfer on Divorce.** A Participant may transfer any portion or all of his or her interest in an Account to a former spouse under a written instrument incident to divorce or under a divorce decree containing transfer instructions acceptable to the Custodian and compliant with the Custodian's administrative or operational requirements and regular business practices, whereupon such Account, or the transferred portion of such Account, shall be held for the benefit of such former spouse subject to the terms and conditions of the Plan.

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

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- (a) **No Investment Discretion.** The Custodian shall have no discretion to direct any investments of an 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 each 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, registrations 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 prospectus, 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 its delegate 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 a Participant, the spouse of a Participant, or 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 its 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 Plan. The Custodian shall have no duty to ascertain whether contributions or distributions comply with the Plan 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(d), of the Plan. The Custodian shall not question any such directions of the Participant, review any securities or other property held in an Account, or make suggestions to the Participants with respect to the investment, retention, or disposition of any assets held in an Account.
- (g) **Scope of Custodian's Liability.** The Custodian shall not be liable for any loss of any kind which may result from any action taken by it 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 any 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 it 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

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- (a) **Resignation.** The Custodian may resign as Custodian hereunder as to any Account by mailing or actually delivering notice to the Participant 30 days prior to the resignation. Upon its resignation the Custodian may, but shall not be required to, appoint a corporation or other organization as the successor custodian under this Agreement. Each Participant, after the receipt of the resignation, shall have 30 days to appoint an alternative successor custodian. If no alternate is chosen, the Participant will be deemed to have accepted the Custodian's appointed successor custodian. Upon acceptance of appointment by the successor, the

Custodian shall assign transfer, and deliver to the successor all assets held in the Account to which such resignation or removal relates. The Custodian is authorized, however, to reserve such amounts as it deems advisable to provide for the payment of expenses and fees then due or to be incurred in connection with the settlement of its account, and any balance remaining after the settlement of its account shall be paid to the successor custodian or trustee. At the sole discretion of the Custodian, any successor custodian 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, the Participant has 30 days after receiving notification of the Custodian's resignation to appoint a qualifying successor custodian. If the Participant does not appoint a successor custodian within this time period, the Custodian shall have the right to terminate the Custodial Account and distribute the assets directly to the Participant.

- (b) **Removal.** The Participant shall substitute another custodian in place of the Custodian upon notification by the Internal Revenue Service 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.
- (c) The Custodian shall not be liable for the acts or omissions of its successor.

#### 9. Amendment and Termination of the Plan

- (a) **Amendment or Termination.** The Custodian may amend or terminate this Plan or this Account at any time consistent with the provisions of applicable law without obtaining the consent of the Participant, the spouse of the Participant, or Beneficiary. No amendment of the Plan, however, shall deprive any Participant, spouse of a Participant, or Beneficiary of any benefit to which he or she was entitled under the Plan from contributions made prior to the amendment unless the amendment is necessary to conform the Plan to the current or future requirements of Section 408 of the Code, or other applicable law, regulation, or ruling, in which case the Custodian is expressly authorized to make amendments that are necessary for such purposes retroactively to the later of the effective date of the Plan or the effective date of any future legal requirements. A Participant may change an election or designation made with respect to the Adoption Agreement, provided such change is made in a form and manner prescribed by and acceptable to the Custodian.
- (b) **Distribution on Termination.** If the Account is terminated for any reason by the Custodian, the balance held in each Account for the benefit of a Participant, spouse of a Participant, or Beneficiary shall be distributed by the Custodian to a successor custodian or trustee, in accordance with Article VIII, Section 8, of the Plan.

#### 10. Fees, Expenses, and Indebtedness

- (a) **Payment of Fees and Expenses.** The Custodian's annual maintenance, termination, and other administration fees shall be charged by the Custodian for its services hereunder in accordance with the current fee schedule of the Custodian that is in effect from time to time as it may be amended by the Custodian. 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 designated Beneficiary, including, but not by way of limitation, the direction of investment of Custodial Account assets in an investment that causes the Custodial Account to realize unrelated business taxable income within the meaning of Section 512 of the Code, that are over and above the services set forth in the Custodian's fee schedule shall be paid by the Participant and the Participant hereby covenants and agrees to pay the same. The Custodian's fees and expenses shall be automatically charged to the Custodial Account unless the Participant chooses to pay the fee directly to the Custodian in a timely manner before the Custodial Account has been so charged and fees or other administrative expenses that are not paid by the Participant directly to the Custodian when due may be charged to the Custodial Account. The Custodian reserves the right to liquidate any assets of the Custodial Account to collect any charge for which payment may at any time be past due.

In the event of account termination by the Participant or the Custodian for any reason, 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 IRA at the time the Participant terminates the IRA. Any reimbursement of fees charged against an 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 Custodian or from the financial organization that has introduced your Account to the Custodian.

- (b) **Taxes.** Any taxes of any kind whatsoever that may be levied or assessed upon any Custodial Account or that the Custodian may otherwise be charged with the responsibility of collecting shall be paid from the assets of the Custodial Account involved.
- (c) **Brokerage Commissions.** The Account will be charged brokerage commissions and other securities transaction related charges for the transactions in the Custodial 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) **Prohibited Transactions.** No Participant, spouse of a Participant, or Beneficiary shall be entitled to use a Participant's Account, or any portion thereof, as security for a loan or borrow from the Account. Neither the Custodian, the Participant, nor any other person or organization shall engage in any prohibited transaction, within the meaning of Section 4975 of the Code, with respect to any Participant's Account.
- (b) **Prohibition Against Assignment of Benefits.** Except to the extent otherwise required by law, none of the benefits, payments, or proceeds held in an Account on behalf of any Participant, spouse of a Participant, or Beneficiary shall be subject to the claims of any creditor of such Participant, spouse of a participant, or Beneficiary, nor shall any Participant, spouse of a participant, 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 Plan.
- (c) **Applicable Law.** The Plan 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 Custodial Account shall be deemed to take place in the State of New York. The terms and conditions of the Plan shall be applicable without regard to the community property laws of any state.
- (d) **Liquidation of Assets.** If the Custodian must liquidate assets in order to make distributions, transfer assets, or pay fees, expenses, or taxes assessed against a Participant's Account, and the Participant fails to instruct the Custodian as to the liquidation of such assets, assets will 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) securities, (3) 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.
- (e) **Purpose of Form.** Form 5305-A is a model Custodial Account Agreement that meets the requirements of Section 408(a) of the Code and has been automatically approved by the IRS. An Individual Retirement Account is established after the Adoption Agreement is fully executed by the Participant and entered in the records of the Custodian and must be completed no later than the due date of the individual's income tax return for the tax year (without regard to extensions). This Account must be created in the United States for the exclusive benefit of the Participant or his or her Beneficiary or Beneficiaries.
- (f) **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.

An employer identification number is required for a common fund created for Individual Retirement Accounts.

- (g) Contributions to a Custodial Account for a nonworking spouse must be made to a separate Custodial Account established by the nonworking spouse.

## 12. ARBITRATION DISCLOSURES

- (a) ARBITRATION IS FINAL AND BINDING ON THE PARTIES.
- (b) THE PARTIES ARE WAIVING THEIR RIGHT TO SEEK REMEDIES IN COURT, INCLUDING THE RIGHT TO JURY TRIAL.
- (c) PREARBITRATION DISCOVERY IS GENERALLY MORE LIMITED THAN AND DIFFERENT FROM COURT PROCEEDINGS.
- (d) THE ARBITRATOR'S AWARD IS NOT REQUIRED TO INCLUDE FACTUAL FINDINGS OR LEGAL REASONING AND ANY PARTY'S RIGHT TO APPEAL OR TO SEEK MODIFICATION OF RULINGS BY THE ARBITRATORS IS STRICTLY LIMITED.
- (e) THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- (f) AGREEMENT TO ARBITRATE CONTROVERSIES

THE PARTIES AGREE TO ARBITRATE ANY CONTROVERSY BETWEEN OR AMONG THE PARTICIPANT, PERSHING, AND THE INTRODUCING FIRM OR ANY OF THEM ARISING OUT OF OR RELATING IN ANY WAY TO THE PARTICIPANT'S ACCOUNT, INCLUDING BUT NOT LIMITED TO: (I) TRANSACTIONS OF ANY KIND MADE ON BEHALF OF THE PARTICIPANT BY, THROUGH, OR WITH PERSHING AND THE INTRODUCING FIRM OR ANY AGENT OF ANY OF THEM; OR (II) THE PERFORMANCE, CONSTRUCTION, OR BREACH OF THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN THE PARTICIPANT AND PERSHING AND/OR THE INTRODUCING FIRM. SUCH ARBITRATION SHALL BE CONDUCTED AT THE NEW YORK STOCK EXCHANGE, INC., OR ANY OTHER NATIONAL SECURITIES EXCHANGE ON WHICH A TRANSACTION GIVING RISE TO THE CLAIM TOOK PLACE (AND ONLY BEFORE SUCH EXCHANGE) OR THE NASD REGULATION INC., AS THE UNDERSIGNED MAY ELECT AND IN ACCORDANCE WITH THE ARBITRATION RULES THEN IN EFFECT OF THE SELECTED ORGANIZATION WHERE THE ARBITRATION IS BROUGHT. ARBITRATION MUST BE COMMENCED BY SERVICE UPON THE OTHER PARTY OF A WRITTEN DEMAND FOR ARBITRATION OR A WRITTEN NOTICE OF INTENTION TO ARBITRATE, THEREIN ELECTING THE ARBITRATION TRIBUNAL. THE PARTICIPANT UNDERSTANDS THAT JUDGEMENT UPON ANY AWARD RENDERED BY THE ARBITRATORS MAY BE ENTERED IN ANY COURT HAVING JURISDICTION.

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 CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (I) THE CLASS CERTIFICATION IS DENIED; OR (II) THE CLASS ACTION 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.

## TRADITIONAL IRA DISCLOSURE STATEMENT

The Disclosure Statement provides a general description of the features of a Traditional Individual Retirement Account (the "Account," the "Custodial Account," or the "IRA") for which Pershing LLC acts as Custodian.

### 1. RIGHT OF REVOCATION BY PARTICIPANT

- (a) Once you execute the Adoption Agreement, you become the Participant and you have the right to revoke the Agreement for a period of seven days from the date it is executed by mailing or personally delivering a written notice of revocation to Pershing LLC, Retirement Products Department, One Pershing Plaza, Jersey City, New Jersey 07399. The notice of revocation shall be deemed mailed on 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, properly addressed. If such notice is not received within seven days after the deemed date of mailing, the notice of revocation shall not be valid.
- (b) If the Adoption Agreement is revoked, the Custodian will return your entire contribution to the IRA without penalty, service charge, administrative expenses, or any other reduction. The contribution to an IRA that is revoked, and the distribution from an IRA that is revoked must be reported to the Internal Revenue Service.

### 2. SPECIAL REQUIREMENTS OF THE PERSHING LLC INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT PLAN

In addition to the statutory requirements described in the Plan, Pershing LLC, as Custodian, has the following requirements:

- (a) Pershing LLC (the Custodian) will not make any investment decisions with respect to the Account. You shall direct the Custodian with respect to the investment of all contributions and earnings therefrom. Investments may be made in publicly traded securities, covered call options, long put and long call options, mutual funds, money market instruments, and other investments that are obtainable through and subject to the custody of the Custodian and compatible with its administrative or operational requirements and usual business practices. The Custodian may systematically sweep uninvested cash (subject to certain required minimums) in an Account to a money market fund or other investment offered by the Custodian.
- (b) You must notify the Custodian in writing as to when you wish to receive your benefits and the manner of payout pursuant to Article IV of the Pershing LLC Traditional Individual Retirement Custodial Account Plan.
- (c) Pershing LLC, as Custodian, will have no responsibility to ascertain whether rollover contributions comply with the Plan or the Code.
- (d) You shall be entitled to designate a Beneficiary or Beneficiaries to receive benefits which are payable under the IRA upon your death. If you do not designate a Beneficiary, or, if the Beneficiary dies before you, or cannot be located when you die, the benefits will be paid in the following order of priority: (i) to your surviving spouse, if any; (ii) to your surviving children, if any, in equal shares per stirpes; and (iii) to your estate.

### 3. REQUIREMENTS OF AN IRA

- (a) Your contribution to your IRA must be in cash, unless it is a rollover contribution.
- (b) Unless you are the age of 50 by the end of the year, contributions made on your behalf may not exceed \$3,000 for years 2002 through 2004, \$4,000 for years 2005 through 2007, and \$5,000 for 2008 (adjusted annually thereafter), unless the contribution is designated as a rollover or is pursuant to the terms of a SEP (see paragraph 5 below). Your IRA contribution for any year must be made by the due date, excluding extensions, for filing your tax return for that year (generally, April 15 of the following year). However, the earlier you set up and contribute to your IRA, the sooner you can take advantage of tax-deferred earnings on your investments. If you also maintain a Roth IRA, the maximum contribution to your Traditional IRA is reduced by any contributions you make to your Roth IRA. Your total annual contribution to all Traditional IRAs and Roth IRAs cannot exceed the lesser of the contribution limit or 100% of your compensation. If you are age 50 or older by the close of the taxable year, you may make an additional contribution to your Traditional IRA of \$500 for years 2002 through 2005 and \$1,000 for year 2006 and beyond.
- (c) A contribution is deemed to have been made on the last day of the preceding taxable year if you make a contribution by the deadline for filing your income tax return (not including extensions), and you designate that contribution as a contribution for the preceding taxable year. For instance, if you are a calendar year taxpayer and you make your annual Traditional IRA contribution on or before April 15, your contribution is considered to have been made for the previous tax year if you designate it as such.
- (d) Your interest in your IRA is nonforfeitable.
- (e) The assets of your IRA cannot be commingled with other property except in a common trust fund or common investment fund.
- (f) No portion of your IRA may be invested in life insurance contracts.
- (g) You may not invest the assets of your IRA in collectibles [as described in Section 408(m) of the 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 Internal Revenue Service. Specially minted United States gold and silver bullion coins and certain state-issued coins are permissible 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 IRA investments.
- (h) You are required to take minimum distributions from your IRA at certain times in accordance with the Code and Treasury Regulations. The Custodian reserves the right to calculate your required minimum distribution based upon the Uniform Lifetime Table found in Treasury Regulation Section 1.401(a)(9)-9. However, the Custodian will make distributions to you or your Beneficiary or Beneficiaries only upon specific instructions to do so.
  - (i) You are required to take a minimum distribution from your IRA by April 1 of the calendar year following the year in which you attain age 70½ and by the end of each year thereafter. 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 (less any required distribution taken between January 1 and April 1 of the year following the year you attain age 70½) by the applicable divisor.
  - (ii) The applicable divisor is generally determined using whichever is applicable of the Single Life Table, the Uniform Lifetime Table, or the Joint and Last Survivor Table, all as set forth in Treasury Regulation Section 1.401(a)(9)-9 or other applicable IRS publications. The Uniform Lifetime Table assumes that your beneficiary is exactly ten years younger than you, regardless of who is the named beneficiary. If your spouse is your sole designated

beneficiary and is more than ten years younger than you, the required minimum distribution must be calculated using the actual joint life expectancy of you and your spouse rather than the life expectancy divisor from the Uniform Lifetime Table.

- (iii) Distributions to your Beneficiary or Beneficiaries:
    - 1. If you die on or after your required beginning date, distributions will be made to your Beneficiary or Beneficiaries over the single life expectancy of such designated Beneficiary or Beneficiaries or over your remaining life expectancy, whichever is longer.
    - 2. If you die before your required beginning date, the entire amount remaining in your account must, at the election of your Beneficiary or Beneficiaries, either:
      - (a) Be distributed by December 31 of the fifth year following your death
      - (b) Be distributed in equal or substantially equal payments over a period not to exceed the life or life expectancy of your designated Beneficiary or Beneficiaries
- Your Beneficiary or Beneficiaries must elect either option 2(a) or 2(b) by December 31 of the year following the year of your death. If no election is made, distributions must be made in accordance with option 2(b). In the case of distributions under option 2(b), distributions must commence by December 31 of the year following the year of your death. If the Beneficiary is your surviving spouse, distributions need not commence until December 31 of the year you would have attained age 70½, if later.

### 4. INCOME TAX CONSEQUENCES OF ESTABLISHING AN IRA

- (a) **IRA Deductibility.** If you have not yet reached the year in which you attain age 70½, and have earned income from services rendered, you may make an IRA contribution of the lesser of 100% of compensation or \$3,000 for years 2002-2004, \$4,000 for years 2005-2007, and \$5,000 for 2008 (adjusted annually thereafter). However, the amount of the contribution for which you may take a tax deduction will depend upon whether you (or, in some cases, your spouse) are an active participant in an employer-maintained retirement plan. If you are not an active participant in a retirement plan maintained by your employer, your IRA contribution will be totally deductible. If you are an active participant, the deductibility of your contribution will depend on your modified adjusted gross income (MAGI) for the tax year for which the contribution was made. MAGI is determined using your adjusted gross income but disregarding any deductible IRA contributions.

**Definition of Active Participant.** Generally, you will be an active participant if you are covered by one or more of the following employer-maintained retirement plans:

- (i) A qualified pension, profit sharing, 401(k), or stock bonus plan
- (ii) A qualified annuity plan of an employer
- (iii) A simplified employee pension (SEP) plan
- (iv) A retirement plan established by the federal government, a state, or a political subdivision (except certain unfunded deferred compensation plans under IRC, Section 457 of the Code)
- (v) A tax sheltered annuity for employees of certain tax-exempt organizations or public schools
- (vi) A plan meeting the requirements of Section 501(c)(18) of the Code
- (vii) A qualified plan for self-employed individuals (H.R. 10 or Keogh Plan)
- (viii) A SIMPLE IRA plan or a SIMPLE 401(k) plan

If you do not know whether your employer maintains one of these plans or whether you are an active participant in it, check with your employer and your tax advisor. Also, the Form W-2 (Wage and Tax Statement) that you receive at the end of the year from your employer will indicate whether you are an active participant.

If you are an active participant and are single, the deductible amount of your contribution is determined as follows: (a) take the Phase-Out Maximum for the applicable year (specified below) and subtract your MAGI, (b) divide this total by the difference between the phase out maximum and minimum, (c) multiply this number by the maximum allowable contribution for the applicable year, including catch-up contributions if you are the age of 50 or older. The resulting figure will be the maximum IRA deduction you may take. For instance, if you are the age of 40 with a MAGI of \$36,000 in 2002, your maximum deductible contribution is \$2,400 (the 2002 Phase-Out Maximum of \$44,000 minus your MAGI of \$36,000, divided by the difference between the maximum and minimum phase out limits of \$10,000, and multiplied by the contribution limit of \$3,000). You must round the resulting number to the next highest \$10 if the number is not a multiple of 10.

If you are an active participant, are married, and you file a joint tax return, the deductible amount of your contributions is determined as follows: (1) take the Phase-Out Maximum for the applicable year (specified below) and subtract your MAGI, (2) divide this total by the difference between the phase-out maximum and minimum, (3) multiply this number by the maximum allowable contribution for the applicable year, including catch-up contributions if you are the age of 50 or older. The resulting figure will be the maximum IRA deduction you may take. For instance, if you are the age of 40 with a MAGI of \$56,000 in 2002, your maximum deductible contribution is \$2,400 (the 2002 Phase-out Maximum of \$64,000 minus your MAGI of \$56,000, divided by the difference between the maximum and minimum phase-out limits of \$10,000, and multiplied by the contribution limit of \$3,000). You must round the resulting number to the next highest \$10 if the number is not a multiple of 10.

Tax Year	Joint Filers Phase-Out Maximum	Single Taxpayers Phase-Out Maximum
2002	\$64,000	\$44,000
2003	\$70,000	\$50,000
2004	\$75,000	\$55,000
2005	\$80,000	\$60,000
2006	\$85,000	\$60,000
2007	\$100,000	\$60,000

If you are married filing jointly and are not an active participant in an employer-maintained retirement plan, but are married to someone who is an active participant, your maximum deductible contribution is determined as follows: (1) take \$160,000 minus your MAGI, (2) divide this total by \$10,000, (3) multiply this number by the maximum allowable contribution for the applicable year, including catch-up contributions if you are the age of 50 or older. This figure will be the maximum IRA deduction you may take. (Subject to the maximum combined annual contribution limit for Traditional and Roth IRAs of the lesser of the IRA contribution limit or 100% of earned income).

(b) **Tax Credit for Contributions.** For taxable years beginning on or after January 1, 2002, and ending on December 31, 2006, you may be eligible to receive a tax credit on your IRA contributions equaling a percentage of your qualified retirement savings contributions not exceeding \$2,000. This credit will be allowed in addition to any tax deduction that may apply, and may not exceed \$1,000 in a given year. You may be eligible for this tax credit if you are:

- Age 18 or older, as of the close of the taxable year
- Not a dependent of another taxpayer
- Not a full time student

The credit is based upon your income (see the following chart) and will range from 0% to 50% of eligible contributions. In order to determine the amount of your qualified retirement savings contributions, add all of the contributions made to your Traditional IRA or Roth IRA and reduce these contributions by any distributions that you have taken during the testing period. The testing period begins two years prior to the year for which the credit is sought and ends on the tax return due date (including extensions) for the year for which the credit is sought. In order to determine your tax credit, multiply the applicable percentage from the following chart by the amount of your contributions that do not exceed \$2,000.

ADJUSTED GROSS INCOME*						Applicable Percentage
Joint Return		Head of a Household		All Other Cases		
Over	Not Over	Over	Not Over	Over	Not Over	
	\$30,000		\$22,500		\$15,000	50
\$30,000	\$32,500	\$22,500	\$24,375	\$15,000	\$16,250	20
\$32,500	\$50,000	\$24,375	\$37,500	\$16,250	\$25,000	10
\$50,000		\$37,500		\$25,000		0

\*Adjusted gross income excludes foreign earned income and income from Guam, American Samoa, North Mariana Islands, and Puerto Rico.

- (c) **Definition of Compensation.** Compensation includes wages, salary, commissions, bonuses, tips, etc., but does not include income from interest, dividends, or other earnings or profits from property, or amounts not included in your taxable income. It also includes your earned income if you are self-employed (reduced by deductible Keogh plan contributions and one-half of your self-employment taxes) and taxable alimony. The Internal Revenue Service (“IRS”) treats as compensation any amount properly shown on your Form W-2 as “wages, tips, and other compensation” reduced by the amount shown on that form as distributions from nonqualified plans.
- (d) **Tax-Deferred Earnings.** The investment earnings of your IRA are generally not subject to federal income tax until distributions are made (or in certain instances when distributions are deemed to be made).
- (e) **Nondeductible Contributions.** You may make nondeductible contributions to your IRA to the extent that deductible contributions are not allowed. The total of your deductible and nondeductible IRA contributions cannot exceed your contribution limit (the lesser of the allowable contribution limit described previously, or 100% of compensation). You may elect to treat deductible IRA contributions as nondeductible contributions.
- If you make a nondeductible contribution to an IRA you must report the amount of the nondeductible contribution to the IRS as a part of your tax return for the year using IRS Form 8606.
- You may withdraw an IRA contribution made for a calendar year any time before the due date (including extensions) for filing your federal income tax return for that year. If you do so, you must also withdraw the earnings attributable to that portion of the IRA and report the earnings as income for the year for which the contribution was made. Further, you must not take a deduction for the contributions you withdrew.
- (f) **Spousal IRA.** If you and your spouse file a joint federal income tax return and your spouse has no compensation (or elects to be treated as having no compensation) for the year, you may establish an IRA for your spouse (a “Spousal IRA”). If you maintain IRAs for yourself and your spouse who has no compensation, you may make combined contributions each year in an amount up to the lesser of 100% of your gross annual compensation or twice the annual

contribution limit (\$6,000 for 2002, \$6,500 for 2002 if only one of you is the age of 50 or older, or \$7,000 if both you and your spouse are the age of 50 or older). You may determine how to divide your contributions between the two IRAs, but you cannot contribute more than the annual contribution limit to either IRA. As long as you have compensation, you may continue to make contributions to your spouse's IRA until the year in which your spouse attains the age of 70½ or older.

- (g) **Excess Contributions.** Any contributions to your IRA over and above the permissible limits set forth above are considered "excess contributions" subject to an annual excise tax of 6% of the amount of the excess contributions for each year in which the excess contribution remains in your IRA. Such excess contributions may be corrected (so that the 6% excise tax will not apply) by withdrawing the excess contributions and related earnings, as determined by you, from the IRA on or before the due date (including extensions) for filing your federal income tax return for the year for which the contribution relates. The amount of the excess contribution will not be considered a premature distribution nor be taxed as ordinary income. However, any earnings withdrawn will be taxed as ordinary income. In addition, the 10% penalty tax generally imposed on premature distributions will apply to the withdrawal of the earnings unless you have attained the age of 59½.

Alternatively, you may carry forward any excess contributions for one year and report it in a subsequent year as an annual contribution to the extent that the excess, when aggregated with your IRA contribution (if any) for the subsequent year, does not exceed the maximum permitted contribution for that year. The 6% excise tax will be imposed on excess contributions for each year they remain in the IRA.

- (h) **Designation of Beneficiary or Beneficiaries.** The assets remaining in your IRA will be distributed upon your death to the designated Beneficiary or Beneficiaries named by you on record with the Custodian. Your designated Beneficiary or Beneficiaries may be confirmed to you periodically by the Custodian and upon your request, and may be changed by you in a form and manner acceptable to the Custodian. If there is no designated Beneficiary for your IRA in the Custodian's records, your IRA will be paid in the following order of preference: (a) your surviving spouse, if any, (b) your surviving children, if any, in equal shares per stirpes, and if none, (c) your estate. Unless you designate otherwise, if a primary Beneficiary you designated predeceases you, the shares for that deceased Beneficiary will be divided equally among the surviving primary Beneficiary or Beneficiaries. If there is no primary Beneficiary living at the time of your death, payment of your IRA will be made to the surviving contingent Beneficiary or Beneficiaries designated by you. Unless otherwise specified in your designation, if a Beneficiary does not predecease you but dies before receiving his or her entire interest in the IRA, the remaining assets will be distributed 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, his or her remaining interest in the IRA will be paid to the survivors of the deceased Beneficiary in the following order of preference: (a) the deceased Beneficiary's surviving spouse, if any, (b) the deceased Beneficiary's children, if any, in equal shares per stirpes, and (c) the deceased Beneficiary's estate. For the rules governing mandatory distributions see paragraph 3(h) of this Disclosure Statement.
- (i) **Taxation of Distributions.** Except to the extent attributable to nondeductible IRA contributions, distributions from your IRA (that are not rolled over) are taxed as ordinary income and are not eligible for capital gains treatment.

If you make nondeductible IRA contributions, a portion of your distributions from the IRA will be nontaxable (as return of your nondeductible contributions) and a portion will be taxable (as a return of deductible contributions, if any, and account earnings). The following formula is used to determine the nontaxable portion of your distribution for a taxable year.

$$\begin{aligned} & \text{Aggregate nondeductible contributions} \\ \div & \text{Year-end account balance} \\ \times & \text{Distribution amount} \\ = & \text{Nontaxable portion of the distribution} \end{aligned}$$

To figure the year-end total IRA balance, you treat all of your IRAs as a single IRA. This includes all Traditional IRAs, as well as SEP and Rollover IRAs. You must also add back the distributions taken during the year in calculating your year-end total IRA balance.

- (j) **Rollovers.** The balance in your IRA may be rolled over to another IRA, or your IRA may receive rollover contributions from any of your other IRAs or from your employer's Qualified Retirement Plan, Tax Sheltered Annuity, or Section 457(b) deferred compensation plan (beginning January 1, 2002), provided that all of the applicable rollover rules are followed. "Rollover" is a term used to describe a tax-free movement of cash or other property to your IRA from any of your IRAs. Funds in a SIMPLE IRA may not be rolled to your IRA during the first two years you participate in your employer's SIMPLE IRA plan. The rollover rules are generally summarized below. These transactions are often complex. If you have any questions regarding a rollover, please see a tax advisor.
- (i) **IRA to IRA Rollovers.** Funds distributed from your IRA may be rolled over to another IRA if the requirements of Section 408(d)(3) of the Code are met. A proper IRA to IRA rollover is completed if all or part of the distribution is rolled over no later than 60 days after the distribution is received. You may not have completed another IRA to IRA rollover from the distributing IRA during the 12 months preceding the date you receive the distribution. Further, you may roll the same dollars or assets only once every 12 months.
- (ii) **Qualified Plan (or Tax-Sheltered Annuity) to IRA Rollovers.** You may roll over, directly or indirectly, any eligible rollover distribution. An eligible rollover distribution is defined generally as any distribution from a qualified plan, a Section 403(b) tax-sheltered annuity, or a Section 457 deferred compensation plan (other than distributions to nonspouse beneficiaries) unless it is part of a series of equal or substantially equal periodic payments, a required minimum distribution, or a hardship distribution.

If you elect to receive your rollover distribution prior to placing it in an IRA, thereby conducting an indirect rollover, your plan administrator will generally be required to withhold 20% of your distribution as a prepayment of federal income taxes. When completing the rollover, you may make up the amount withheld, out of pocket, and roll over the full amount distributed from your qualified plan balance, if you so choose. To qualify as a rollover, your eligible rollover distribution must be rolled over to your IRA no later than 60 days after you receive it. Alternatively, you may claim the withheld amount as income and pay the applicable income tax and, if you are under the age of 59½, the 10% early distribution penalty (unless an exception to the penalty applies).

As an alternative to the indirect rollover, your employer generally must give you the option of directly rolling your qualified plan balance over to an IRA. If you elect the direct rollover option, your eligible rollover distribution will be paid directly to the IRA (or other qualified plan) that you designate. The 20% withholding requirements do not apply to direct rollovers.

- (iii) **Traditional IRA to Roth IRA Rollovers.** If your adjusted gross income is not more than \$100,000, you are eligible to roll over (or convert) all or any portion of your existing Traditional IRA(s) into your Roth IRA(s). The amount of the rollover from your Traditional IRA to your Roth IRA shall be treated as a distribution for income tax purposes and is includible in your gross income (except for any nondeductible

contributions). Although the rollover amount is generally included in income, the 10% early distribution penalty shall not apply to rollovers or conversions from a Traditional IRA to a Roth IRA, regardless of whether you qualify for any exceptions to the 10% penalty.

- (iv) **Rollover Election.** At the time you make a proper rollover to an IRA, you must designate to the Custodian, in a form and manner acceptable to the Custodian, your election to treat that contribution as a rollover. Once made, the rollover election is irrevocable.
- (v) **Rolling Over Required Minimum Distribution Amounts.** You cannot rollover to your IRA required minimum distributions, which you receive from your IRA or your employer's qualified retirement plan or tax-sheltered annuity. Required minimum distributions from your IRA are those you must start taking for the year you attain the age of 70½ or older.
- (k) **Carry-Back Contributions.** A contribution is deemed to have been made on the last day of the preceding taxable year if you make a contribution by the deadline for filing your income tax return (not including extensions), and you designate that contribution as a contribution for the preceding taxable year. For instance, if you are a calendar year taxpayer and you make your Traditional IRA contribution on or before April 15, your contribution is considered to have been made for the previous tax year if you designate it as such.

## 5. LIMITATIONS AND RESTRICTIONS

- (a) Under a Simplified Employee Pension (SEP) Plan that meets the requirements of Section 408(k) of the Code, your employer may make contributions to your IRA. Your employer is required to provide you with information that describes the terms of your employer's SEP Plan.
- (b) Transfer of your IRA assets to a named Beneficiary made during your life and at your request or because of your failure to instruct otherwise, may be subject to federal gift tax under IRC Section 2501 of the Code. However, the naming of a Beneficiary generally will not subject you to gift tax liability.
- (c) Any withdrawal from your IRA, except a direct transfer to another IRA or qualified plan, is subject to federal income tax withholding and, perhaps, state income tax withholding. You may, however, elect not to have withholding apply to your IRA withdrawal. If withholding is applied to your withdrawal, not less than 10% (or other amount as prescribed by applicable law) of the amount withdrawn must be withheld for federal income tax. Special federal income tax withholding rules may apply if the distribution is sent outside of the United States.
- (d) If you or your Beneficiary engage in a prohibited transaction with your IRA, as described in IRC Section 4975 of the Code, the IRA will lose its tax exemption and you must include the value of your account in your gross income for that taxable year. In addition, if you are under the age of 59½, the "distribution" also will be subject to both ordinary income tax and the 10% penalty tax for premature distributions.
- (e) If you pledge any portion of your IRA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year.

## 6. FEDERAL TAX PENALTIES

- (a) If you are under the age of 59½ and receive an IRA distribution, an additional tax of 10% will apply, unless the distribution is made on account of death, disability, 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 made to pay medical expenses which exceed 7.5% of your adjusted gross income and distributions to pay for health insurance by an individual who has separated from employment and who has received unemployment compensation under a federal or state program for at least 12 weeks are also exempt from the 10% tax. In addition, payments to cover certain qualified education expenses and distributions to buy, build, or rebuild a first home (up to lifetime maximum of \$10,000) are exempt from the 10% tax. This additional tax will apply only to the portion of a distribution that is includible in your income.
- (b) If you or your designated Beneficiary or Beneficiaries fail to take a minimum distribution as described in paragraph 3(h) of this Disclosure Statement, an additional tax of 50% is imposed upon any excess of the minimum required to be distributed over the amount actually distributed. This tax is referred to as an excess accumulation penalty tax.
- (c) You must file Form 5329 with the Internal Revenue Service when any additional or excise taxes are due.

## 7. OTHER

- (a) The form of Agreement used to establish this IRA is the model government form provided by the Internal Revenue Service and is known as Form 5305-A. The Internal Revenue Service 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) You may obtain further information on IRAs from your District Office of the Internal Revenue Service or search the IRS web site at [www.irs.gov](http://www.irs.gov). In particular, you may wish to obtain IRS Publication 590, Individual Retirement Arrangements.
- (c) If you designate a trust for the benefit of your spouse as Beneficiary of your IRA and that trust is designed to meet certain special federal estate tax rules, special provisions of your IRA plan may apply. Those provisions relate to payments from your IRA to the trust after your death. Be sure to consult with your tax advisor about this issue.
- (d) Upon your death, your IRA will be divided into separate shares 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 your IRA. The transfer to a separate account does not create a taxable event for your designated beneficiaries.

## 8. ADDITIONAL FINANCIAL INFORMATION

- (a) **Custodial Fees.** If not accompanied by this Disclosure Statement and Individual Retirement Custodial Account Plan, a schedule of fees is available from the Custodian or from the financial organization that has introduced your account to the Custodian. The Custodian's annual maintenance, termination, and other administration fees shall be charged by the Custodian for its services hereunder in accordance with the current fee schedule of the Custodian that is in effect from time to time. At the discretion of the Custodian, you may receive an invoice for the custodial maintenance and other related fees that are due and

payable upon receipt. Unless paid by you in a timely manner, fees will be automatically charged against the Account, 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 custodial fees once they have been charged to your IRA. Any such reimbursement of custodial or other administrative fees charged to your account will be deemed a contribution to your IRA and reported to the IRS accordingly. The Custodian 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 Custodial Account.

- (b) *Brokerage Commissions.* Commissions and other securities transaction related charges shall be as charged by the financial organization which has introduced your account to the Custodian. Such commissions must be paid from assets held within your IRA and may not be reimbursed.
- (c) *Other Expenses.* Taxes of any kind, which may be imposed with respect to your IRA and any expenses incurred by the Custodian in the management of your IRA, together with any fees referred to above, shall be paid by you, or if not paid in a timely manner, will be charged against your account, or as directed in writing by you, charged against another account over which you have investment 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 its ordinary business practices and in accordance with its 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.



# **Pershing**<sup>®</sup><sub>LLC</sub>

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