

# **SIMPLE Individual Retirement Account Disclosure Statement and Custodial Agreement**

**Effective January 15, 2022**

**Investment and Insurance Products are:**

- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or Guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

Wells Fargo Advisors is a trade name used by Wells Fargo Clearing Services, LLC (WFCS), Member SIPC, a registered broker-dealer and non-bank affiliate of Wells Fargo & Company. WellsTrade brokerage accounts are offered through WFCS.

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# WFCS SIMPLE IRA

## Section I: Disclosure Statement

### A. Introduction.

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Wells Fargo Clearing Services, LLC (WFCS) is the custodian of your SIMPLE IRA. WFCS is also referred to in this Disclosure Statement as “we”, “us”, or “our”. The custodian of a SIMPLE IRA must be a bank or an entity meeting standards established by the Secretary of the Treasury. WFCS has been approved by the Internal Revenue Service (“IRS”) to act as the custodian of your Wells Fargo Clearing Services, LLC SIMPLE IRA (“SIMPLE IRA”). Please note that Wells Fargo Clearing Services, LLC was originally known as Wachovia Securities, LLC. In 2009, Wachovia Securities, LLC was renamed Wells Fargo Advisors, LLC. In 2016, Wells Fargo Advisors, LLC was renamed Wells Fargo Clearing Services, LLC due to a subsequent merger.

Please read this Disclosure Statement and the attached materials carefully. Please note that the rules regarding SIMPLE IRAs are subject to frequent change. Before entering into any major transaction involving your SIMPLE IRA, you should make sure that you have the most current information available. If you have any legal or tax questions concerning your SIMPLE IRA, we urge you to discuss them with your attorney or personal tax consultant. Our representatives, will, of course, be happy to answer any questions concerning the operation and financial aspects of your SIMPLE IRA, but cannot give you legal or tax advice.

#### A1. How do I open a SIMPLE IRA?

Complete an IRA enrollment form/application and return it to us. Submit your initial contribution. You must sign and complete the IRA enrollment form/application in order to establish a SIMPLE IRA with us.

#### A2. May I cancel my SIMPLE IRA?

Yes, but to receive a full refund without penalty on your initial contribution, you must do so on or before the seventh day after you receive the SIMPLE IRA Custodial Agreement (“Custodial Agreement”) and Disclosure Statement. To cancel your SIMPLE IRA, either deliver a written notice of cancellation or mail one to the address shown below before the end of the seven-day period (deemed mailed on postmark date). If the Custodial Agreement is mailed to you, you will be deemed to have received it seven days after the postmark absent evidence to the contrary. If an important change is made to the Disclosure Statement or your SIMPLE IRA during the seven-day period, we will notify you of the change and you will have an additional seven days from the date you receive the notice to revoke your SIMPLE IRA.

Wells Fargo Clearing Services, LLC  
Attn: IRA Department MAC H0006-083  
One North Jefferson Ave  
St. Louis, MO 63103

Until the seven-day period for revoking your SIMPLE IRA has lapsed, contributions may be accepted, but investment instructions may be restricted.

If you revoke your SIMPLE IRA within the seven-day period, we will return to you the entire amount of the contributions contributed before your revocation. You will not earn interest on the contribution if you revoke. There will be no adjustments for administrative expenses, or changes in the market value. When you revoke your SIMPLE IRA, the initial contribution and return of the contribution are reported to the IRS. You should consult your tax advisor if you have any questions about taxes.

#### A3. Is my SIMPLE IRA non-forfeitable?

Your interest in your SIMPLE IRA is non-forfeitable at all times.

#### A4. Is my SIMPLE IRA approved by the Internal Revenue Service?

Since the Custodial Agreement establishing your SIMPLE IRA utilizes IRS Form 5305-SA, as currently provided by the IRS, your SIMPLE IRA will be treated as approved as to form. IRS approval is a determination as to the form of your SIMPLE IRA but does not represent a determination of its merits.

In the event that the laws governing SIMPLE IRAs are amended or changed and cause differences between our current Custodial Agreement and the new laws, we will administer your SIMPLE IRA in accordance with the new laws and amend the SIMPLE IRA Custodial Agreement when revised IRS forms are published.

## **B. Contributions to your SIMPLE IRA.**

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### **B1. What is a SIMPLE IRA contribution?**

There are three types of SIMPLE IRA contributions.

An “Annual employer contribution” is a cash deposit made to your SIMPLE IRA on your behalf by your employer under your employer's SIMPLE IRA plan. An “employee contribution” is a pre-tax elective deferrals also known as salary reduction contributions. This deferral is the amount by which the employee agrees to reduce his or her compensation and have it contributed by the employer to the employee's SIMPLE IRA. Additionally, individuals who are age 50 and older can contribute an additional “catch up” amount beginning in the taxable year in which the individual turns age 50.

“Rollover contributions” are deposits to your SIMPLE IRA of funds that you receive from another SIMPLE IRA, SEP IRA, Traditional IRA or employer's qualified retirement plan. A rollover contribution is not deductible and is subject to special rules as discussed in the Rollover Contributions section.

### **B2. May I contribute directly to my SIMPLE IRA?**

No. Only your employer can directly make contributions to your SIMPLE IRA on your behalf. In addition, you may not make any Traditional IRA, SEP IRA, Roth IRA or Coverdell Education Savings Account contributions to your SIMPLE IRA.

### **B3. How much may my employer contribute to my SIMPLE IRA on my behalf under my employer's SIMPLE IRA plan?**

Each year your employer will make payments to your SIMPLE IRA equal to the amount of pre-tax salary reduction contributions that you have elected to make under your employer's SIMPLE IRA plan. Contact us, refer to the IRS Publication 590, IRS Publication 560 or [www.irs.gov](http://www.irs.gov) for current contribution limits.

If you are a participant in any other qualified retirement plan during the year and have elective salary reduction contributions or deferred compensation under those plans, the salary reduction contributions under your employer's SIMPLE IRA plan count toward the overall annual limit on salary reduction contributions and other elective deferrals.

If you are age 50 or over as of the end of the applicable year and no other pre-tax salary reduction contributions can be made for you under the SIMPLE IRA plan because you have reached the annual contribution limit, then you may make additional “catch-up” contributions to your SIMPLE IRA.

In addition, your employer will either contribute 2% of your compensation in a non-elective contribution or match your pre-tax contributions dollar for dollar from 1% to 3% of your compensation. For purposes of the 2% limit on non-elective SIMPLE IRA employer contributions your “compensation” is limited. SIMPLE IRA contributions are excluded from your income rather than deducted by you on your tax return.

### **B4. Am I eligible for a tax credit for pre-tax contributions made on my behalf under my employer's SIMPLE IRA plan?**

You may be eligible for a nonrefundable tax credit of “qualified retirement savings contributions,” provided your adjusted gross income (“AGI”) is within specified limits. “Qualified retirement savings contributions” include contributions to a Traditional IRA, Roth IRA, SIMPLE IRA, elective deferrals to a qualified retirement plan, elective deferrals under an eligible deferred compensation plan maintained by a state or local government, and voluntary employee contributions to a qualified retirement plan.

You can obtain additional information on this tax credit in IRS Publication 590 or go to the IRS website at [www.irs.gov](http://www.irs.gov)

## **C. Rollover Contributions.**

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### **C1. What is a rollover contribution?**

A rollover contribution is a deposit to your SIMPLE IRA of funds you received as a qualified distribution from another SIMPLE IRA, SEP IRA, or Traditional IRA and is allowed if you have participated in the SIMPLE IRA for at least two years. Your participation period begins on the date of your first contribution to the SIMPLE IRA (Note: rollovers from other SIMPLE IRAs are not subject to the two year period and may be rolled in at anytime). Additionally, you may roll over amounts from your Traditional, SEP or another SIMPLE IRA to a SIMPLE IRA only if you have not made such a rollover of any of your IRAs in the previous 12 months (or consecutive 365 days). You may not roll over to your SIMPLE IRA amounts distributed from a Roth IRA or a Coverdell Education Savings Account. A rollover contribution allows you to continue deferring income tax on the amount you roll over and its subsequent earnings. A rollover is often complex and we suggest you seek professional tax advice before receiving and rolling over a distribution. For additional resources and information regarding IRA rollovers, visit [www.irs.gov](http://www.irs.gov).

### **C2. May I roll over distributions from an employer's retirement plan into my SIMPLE IRA?**

Yes. You may roll over to your SIMPLE IRA amounts distributed from an employer's retirement plan if you have participated in the SIMPLE IRA for at least two years. If you have assets in another SIMPLE IRA, they may be rolled into your current SIMPLE IRA at any point, even if two years have not elapsed since the date of your first SIMPLE contribution.

### **C3. Is there a deadline for making a rollover contribution?**

Yes, you must complete a rollover contribution within 60 days after you receive an eligible rollover distribution. If you do not complete the rollover within the 60-day period, the amount of the distribution will be taxable as ordinary income for the year in which it was received and may be subject to additional taxes as explained in Question D2. The IRS may waive the 60-day limitation in some very limited situations, such as in the case of a disaster, casualty or other events beyond your reasonable control. You should contact your tax advisor if you believe that you qualify for a waiver.

**C4. May I make a rollover from my SIMPLE IRA to another type of IRA or to my employer's retirement plan?**

Generally, you may make a rollover from your SIMPLE IRA if you have participated in the SIMPLE IRA for at least two years. The two-year requirement does not apply, if you are otherwise not subject to the 25% early distribution additional tax described in Question D2. In addition, a rollover is only allowed into another IRA as long as you have not made such a rollover of any of your IRAs in the previous 12 months (or consecutive 365 days). If you are permitted to make a rollover from your SIMPLE IRA, you may roll it into a Traditional IRA, SEP IRA, another SIMPLE IRA or your employer's retirement plan (if your employer's plan permits). The receiving employer plan may place restrictions on the type of distributions it accepts as rollovers. Only the taxable amount of a distribution may be rolled over from a SIMPLE IRA into a qualified plan. In general, the taxable amount permitted to be rolled over is all of your employer contributions and earnings. You may not make a rollover from your SIMPLE IRA into a Roth IRA, Coverdell Education Savings Account or a Health Savings Account (HSA) at any time. You should seek professional tax advice if you plan on making a rollover contribution from your SIMPLE IRA to another qualified retirement plan as these rules differ from rolling from a plan to an IRA. For additional resources and information regarding IRA rollovers, visit [www.irs.gov](http://www.irs.gov).

**C5. May a deceased spouse's distribution from a SIMPLE IRA be rolled over? May I roll over a distribution from the SIMPLE IRA that I inherit from anyone other than my spouse?**

If you receive a partial or total distribution from a SIMPLE IRA that could have been rolled over by your spouse before death, you may roll the distribution over in the same manner your spouse could have done. You may not roll over to your SIMPLE IRA any part of a distribution you receive from another SIMPLE IRA due to the death of anyone other than your spouse.

**C6. May I transfer funds directly from one SIMPLE IRA to another SIMPLE IRA or to another tax-favored account?**

Instead of making a rollover contribution, you may transfer funds held in a previously established SIMPLE IRA to a new SIMPLE IRA by giving directions for the transfer to the Trustee/Custodian of each SIMPLE IRA. Transfers are not subject to the "once in twelve months rule" of rollover contributions.

You may also transfer funds directly from one SIMPLE IRA to the tax-favored accounts described in Question C4, if you have participated in your employer's SIMPLE IRA plan for at least two years. The two-year requirement does not apply if you otherwise satisfy an exception to the 25% early distribution additional tax described in Question D2.

**C7. May I repay a distribution I've taken due to special tax relief provisions?**

You may be able to repay the distribution to your SIMPLE IRA as a rollover contribution and avoid taxes on the distribution. Please consult your tax advisor for more information if you think that you may be eligible for a special repayment opportunity.

**D. Withdrawals from your SIMPLE IRA.**

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**D1. When may I make a withdrawal from my SIMPLE IRA?**

You may withdraw funds from your SIMPLE IRA at any time before or after you retire. If, however, you make withdrawals before age 59½, you may be subject to an IRS 10% additional tax on the amounts distributed.

**D2. What is the early distribution additional tax?**

If you make a withdrawal from your SIMPLE IRA before age 59½ and do not roll over the amount taken, you will have to pay a 10% additional tax on the taxable amount withdrawn, unless you qualify for one of the exceptions to the additional tax. The early distribution additional tax is 25% of any taxable amount withdrawn from your SIMPLE IRA during the first two years of your participation in your employer's SIMPLE IRA plan. The additional tax is reduced to 10% for taxable amounts distributed after the two-year period.

Examples of these exceptions include distributions on account of or for: your permanent disability; your death; certain medical expenses; health insurance premiums while you are unemployed; qualified higher education expenses; certain costs of acquiring a principal residence; a federal tax levy on your Traditional IRA; a qualified reservist distribution; birth or adoption expenses; or payments as a series of substantially equal periodic payments.

The additional tax for early distribution is on top of the income taxes which are payable on the taxable amount withdrawn. Please consult your tax advisor and/or review IRS Publication 590-B to determine if these exceptions apply to your particular situation.

**D3. How about income tax withholding?**

Federal tax laws require us to generally withhold 10% of each withdrawal by you for payment of your federal income taxes, unless you instruct us in writing not to withhold. Additionally, certain states require us to withhold from your distribution. Please consult your state tax authority to determine if your state requires withholding.

**D4. When must I start making withdrawals?**

You may incur an excise tax if you do not start making withdrawals on or before April 1st following the year you turn age 72. Before that date, you must either withdraw the balance from your account or begin making periodic withdrawals that are equal to or greater than the minimum amount you are required to withdraw for that year under federal laws.

You may elect to receive the minimum amount that applies to your SIMPLE IRA from another SIMPLE IRA or Traditional IRA. If you make this election you should notify us. The excise tax is 50% of the difference between the amount you are required to withdraw and the amount you actually withdrew in that year. NOTE: If you turned age 70½ prior to December 31, 2019, you were required to begin distributions the year you turned age 70½. The age for required distributions changed, effective after December 31, 2019.

## **D5. What is the minimum amount I must withdraw after age 72?**

Generally, after age 72, the minimum amount you must withdraw from your SIMPLE IRA each year to avoid the 50% excise tax is based on the account balance of your SIMPLE IRA on December 31 from the prior year divided by a factor tied to your age published by the IRS on the Uniform Life Expectancy table. If you name your spouse as the sole primary beneficiary of your SIMPLE IRA for the entire year and your spouse is more than ten years younger than you, the appropriate factor is found in the IRS's Joint Life and Last Survivor Expectancy table, which will further reduce the amount of your required distribution.

IRS Publication 590 explains the rules for determining the minimum amounts you must withdraw.

## **D6. What happens to my SIMPLE IRA when I die?**

Your account balance will be paid to your beneficiary. Your beneficiary is the person or persons you designate when you open your SIMPLE IRA. You may change your beneficiary designation at any time by contacting us and following the appropriate procedures. Each valid beneficiary designation you file with us will cancel all previous designations.

A beneficiary is subject to and bound by all the terms and conditions of the SIMPLE IRA Custodial Agreement and Disclosure Statement. A beneficiary is required to complete and submit any and all forms deemed necessary by us in order to process a transaction such as a distribution or transfer.

If a designated beneficiary (including any contingent beneficiary) does not survive you, such beneficiary's interest shall lapse, and the percentage interest of any remaining beneficiary (including any contingent beneficiary) shall be increased on a pro rate basis unless your beneficiary designation allows otherwise.

If a designated beneficiary (including any contingent beneficiary) does not survive you or if there is no record of a valid designated beneficiary, your SIMPLE IRA balance will be paid to your spouse. If your spouse does not survive you, your account will be paid to your surviving children as determined under state law. In such case, a legal or personal representative is required to provide us with a written certification listing the names of your surviving children as determined under state law. If there is no legal or personal representative, a court order may be required. If you are not survived by a spouse or by any of your children, as certified by your legal or personal representative or by a court order, then your SIMPLE IRA will be paid to your estate.

If you are divorced at the time of your death and your former spouse is named as beneficiary of your SIMPLE IRA, your former spouse will be treated as having predeceased you, unless you designated him or her as your beneficiary AFTER the divorce or unless a court order provides otherwise.

## **E. Conversions of a SIMPLE IRA to a Roth IRA.**

### **E1. May I convert all or part of my SIMPLE IRA to a Roth IRA?**

Yes. Any SIMPLE IRA amount converted to a Roth IRA must also satisfy the SIMPLE IRA rollover requirements.

Because of the strict rules that apply to conversions and distributions taken from Roth IRAs within five years after a conversion, you should seek professional tax advice before converting your SIMPLE IRA to a Roth IRA.

### **E2. How do I convert my SIMPLE IRA to a Roth IRA?**

You may convert all or part of your SIMPLE IRA to a Roth IRA. One of the following methods may be used to perform the conversion: (1) take a distribution from your SIMPLE IRA and contribute (roll over) the distribution to a Roth IRA within 60 days after the distribution; (2) transfer an amount in your SIMPLE IRA to your Roth IRA (including a Roth IRA maintained by the same trustee or custodian) in a trustee-to-trustee transfer; or (3) transfer an amount in your SIMPLE IRA to your Roth IRA maintained by the same trustee. All conversions (no matter the method used) are treated as a taxable distribution and a rollover contribution.

### **E3. Will I be taxed on the conversion?**

Yes. The amount converted from your SIMPLE IRA will be included in your gross income (except for the portion of the converted amount, if any, which represents a tax-free return of nondeductible contributions or after-tax amounts). The distribution (or amount converted), however, will not be subject to the 10% additional tax on early distributions, regardless of whether you are under age 59½.

### **E4. When will I be taxed on the conversion?**

Generally, conversions will be taxed in the year of distribution from the SIMPLE IRA.

## **F. Recharacterization of IRA Contributions.**

### **F1. May I recharacterize amounts contributed by my employer on my behalf to my SIMPLE IRA under my employer's SIMPLE IRA plan as contributions to another type of IRA?**

No. Employer contributions (including pre-tax salary reduction contributions) made under a SIMPLE IRA plan may not be recharacterized as contributions to another type of IRA. However, amounts converted from a SIMPLE IRA to a Roth IRA may be recharacterized as a contribution to a SIMPLE IRA, including the original SIMPLE IRA.

To calculate the net income or loss that is required to be transferred as part of the recharacterization, you multiply the recharacterized amount by a fraction, the numerator of which is the difference between the "adjusted closing balance" and the "adjusted opening balance" and, the denominator of which is the "adjusted opening balance." The "adjusted opening balance" is the fair market value of the SIMPLE IRA at the beginning of the "computation period" plus the amount of any contributions or transfers (including the contribution that is distributed as a returned contribution and recharacterizations of contributions) made to the SIMPLE IRA during the "computation period." The "adjusted closing balance" is the fair market value of the SIMPLE IRA at the end of the "computation period" plus the amount of any distributions or transfers (including recharacterizations) made from the SIMPLE IRA during the "computation period." The "computation period" is the period beginning immediately before the particular

contribution is made to the SIMPLE IRA and ending immediately before the removal of the contribution being returned. If more than one contribution was made as an annual contribution and is being returned from the SIMPLE IRA, the "computation period" begins immediately before the first contribution being returned was contributed. For more information about the calculation of net income, see your tax adviser.

Because of the strict rules that apply to recharacterizations, you should seek competent tax advice before recharacterizing your SIMPLE IRA contributions.

## **F2. How do I make an election to recharacterize a contribution to an IRA for a tax year?**

On or before the date a transfer is made to recharacterize a contribution, you must notify both the trustee of the original IRA and the second IRA that you are electing to treat the contribution as having been made to the second IRA instead of the first IRA, for federal tax purposes. The notification must include the type and amount of the contribution to the first IRA that is to be recharacterized, the date on which the contribution was made to the first IRA and the year for which it was made, a direction to the trustee of the first IRA to transfer the amount of the contribution and earnings allocable to the contribution to the trustee of the second IRA, the names of the trustee of the first IRA and the second IRA, and any other information needed or requested by the trustees to make the transfer.

You must report the recharacterization on Form 8606 and treat the contribution as being made to the second IRA, instead of the first IRA on your federal income tax return for the applicable tax year in accordance with the federal tax forms and instructions.

## **F3. Is a recharacterization treated as a rollover for purposes of the one-rollover-per-year limitation?**

No. Recharacterizing a contribution is not treated as a rollover for purposes of the one-rollover-per-year limit.

## **G. Excess Contributions and Prohibited Transactions.**

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### **G1. What is an excess contribution?**

An excess contribution is any amount contributed to your SIMPLE IRA for a tax year that exceeds allowable limits for that tax year. There is a 6% excise tax on an excess contribution for each year that it remains in your SIMPLE IRA.

### **G2. How may I avoid the 6% excise tax?**

If you withdraw the excess contribution for a year and any earnings or loss on it before the filing date of your income tax return for that year, including extensions or any other time permitted by the IRS, you will not have to pay the 6% excise tax. If you do not withdraw the excess contribution by that date, you will be charged the 6% excise tax for that year. In order to avoid subsequent excise tax, you must either:

- (a) contribute less than the maximum allowable contribution in later years, or
- (b) withdraw the excess contribution in accordance with applicable rules.

### **G3. What is a prohibited transaction?**

Generally, a prohibited transaction is any improper use of your SIMPLE IRA by you, your beneficiary or any disqualified person. Prohibited transactions include such actions as you selling property to your SIMPLE IRA or buying property from it. To learn more about prohibited transactions, and who are disqualified persons refer to IRS Publication 590.

### **G4. What happens if I engage in a prohibited transaction?**

If you or your beneficiary engages in a prohibited transaction, your SIMPLE IRA will lose its tax-exempt status and you will have to include the entire balance (subject to any applicable basis therein) in your taxable income for that year. Furthermore, you will be subject to the 10% additional tax on the entire balance unless you are over age 59½ or meet one of the other exceptions to the additional tax. If someone other than you or your beneficiary engages in a prohibited transaction with respect to your SIMPLE IRA, that person may be liable for certain excise taxes.

## H. Investments.

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### H1. Who is responsible for investing my SIMPLE IRA assets?

You are **solely** responsible for making any investment decision regarding your SIMPLE IRA assets. You may designate someone other than yourself to direct the investment of the assets in your SIMPLE IRA by executing a valid third party trading authorization or power of attorney on a form acceptable to us and by naming a person or entity acceptable to us.

All investment directions shall be given in a form that complies with the reasonable requirements and procedures imposed by us. Such requirements may include that certain representations and warranties accompany certain directions, including indemnification. The Custodian has no investment advice duties and shall only make investments pursuant to your (or your duly authorized representative's) direction and will not question such direction. In addition, the Custodian is indemnified and held harmless for any liability which may arise in our performance of our duties under the Custodial Agreement, except for any liability arising from our gross negligence or willful misconduct as broker or custodian.

### H2. What assets may not be held in my SIMPLE IRA?

The Custodian, in its sole discretion, may refuse to hold any investment. Your SIMPLE IRA may not be invested in life insurance contracts and, except for investments pooled in a common trust fund or common investment fund, may not be commingled with other property. Further, assets in your SIMPLE IRA may not be invested in commodities, "collectibles," alcoholic beverages, or any other tangible personal property. The term "collectibles" includes works of art, rugs, antiques, metals, gems, stamps, coins (other than certain gold, silver or platinum coins of the United States or a state and certain bullion, if on the Custodian's approved list of investments). You also may not invest the assets of your SIMPLE IRA in any investments we determine, in our sole discretion, are administratively or operationally burdensome.

The Custodian has no responsibility for monitoring your SIMPLE IRA investments. Thus, if you or your duly authorized representative engage in any non-qualifying or prohibited transaction or investment with respect to your SIMPLE IRA, neither the Custodian nor any of its employees will be liable for any adverse investment, tax or other legal consequences that may result from such purchase. Also, if your investment direction results in a prohibited transaction, the tax-favored status of your SIMPLE IRA will be affected.

### H3. Is any interest earned on amounts awaiting investment or disbursement?

The Custodian, or an affiliate, may retain any interest earned on assets awaiting investment or disbursement. You understand and agree that this interest (generally referred to as "float") will be retained by us as additional compensation for the provision of services with respect to your SIMPLE IRA. Such interest shall generally be a prevailing interest rate.

Assets awaiting investment include (a) new deposits to the SIMPLE IRA, including interest and dividends, and (b) any uninvested assets held by the SIMPLE IRA caused by an instruction to us to purchase or sell securities where

instructions are received too late in the day to be completed. We may also earn float on distributions from the time funds are distributed from your IRA until you cash the check or other payment method is completed.

## I. Other Questions and Answers.

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### I1. Am I required to file any tax forms for my SIMPLE IRA?

Generally, you will not be required to file any special forms for your SIMPLE IRA. However, you must file a Form 5329 *Additional Taxes on Qualified Plans (including IRAs) and Other Tax Favored Accounts* with the IRS for any year for which: (1) you are subject to the 6% excise tax for excess contributions, (2) you are subject to the early distribution additional tax for withdrawals before age 59 ½ and the proper distribution code is not shown on your Form 1099-R *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*, (3) you meet an exception to the early distribution additional tax, but the proper distribution code is not shown on your Form 1099-R, (4) or you or your beneficiary are subject to the 50% excise tax for failing to take a minimum distribution after you reach age 72. Also, you must file a Form 8606 *Nondeductible IRAs* for any year in which you received distributions from your SIMPLE IRA and your basis is more than zero or you convert all or any portion of your SIMPLE IRA into a Roth IRA.

### I2. Does the custodian report any information about my SIMPLE IRA to the Internal Revenue Service?

All IRA custodians are required to report various IRA transactions to the IRS, Social Security Administration and the state revenue department.

Form 5498 reports both annual, rollover and recharacterized contributions, plus the December 31 fair market value of your account. Form 5498 also reports if a required minimum distribution is required to be made to you for the following year.

Partial withdrawals, periodic distributions, and total distributions are reported on Form 1099-R. Unrelated business taxable income is reported on Form 990-T.

### I3. Are state tax laws the same as federal tax laws for SIMPLE IRAs?

You should consult your professional tax advisor about the tax treatment of SIMPLE IRAs in your state. This is especially important if you are subject to taxation by a state that does not automatically conform to the provisions found in the federal tax code.

### I4. Can my SIMPLE IRA be changed?

Yes. We may amend your SIMPLE IRA Custodial Agreement by mailing you a copy of the change. You will be deemed to have automatically consented to any amendment, unless we receive written notice to the contrary within 30 days after a copy of the amendment is first mailed to you. Any notice we send you will be mailed or delivered to the last address that we have for you in our records. Although other amendments may be made, generally amendments will be made only to comply with changes in tax law. No amendment can take any part of your SIMPLE IRA away from you or your beneficiary.



**I5. Will my SIMPLE IRA be charged any fees?**

Yes, all of the fees that may apply to your account are outlined in the fee schedule/notice you will receive when your account is opened. The fee schedule/notice may be changed from time to time, upon 30 days written notice to you. In addition, all of the fees that apply to brokerage accounts will also apply to your SIMPLE IRA account, including fees associated with the automatic cash investment service. Please review your relevant account opening documents for descriptions of these fees. If you do not pay fees by their due date, we may deduct these fees from your SIMPLE IRA.

## Section II: WFCS SIMPLE IRA Custodial Agreement

Wells Fargo Clearing Services, LLC, a firm with its principal office in St. Louis, Missouri and a non-bank IRA custodian (“Custodian”) hereby establishes the “Wells Fargo Clearing Services, LLC SIMPLE IRA Custodial Account” (“Custodial Account” or “SIMPLE IRA”) as a custodial account for an eligible customer (“Participant”) who enters into the SIMPLE IRA Custodial Agreement (“Agreement”) as set forth herein by executing an IRA enrollment/application form.

### WELLS FARGO CLEARING SERVICES, LLC SIMPLE INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT

(Under sections 408(a) and 408(p) of the Internal Revenue Code)

#### Form 5305-SA

(Rev. April 2017)

Department of the Treasury  
Internal Revenue Service

The Participant whose name appears on the Participant's IRA enrollment/application form 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.

The Custodian is also providing the Participant with the disclosure statement as 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 designated Roth 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 not later than the Participant's required beginning date April 1 following the calendar year in which the Participant reaches age 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 expectancy 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 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).

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## 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(I)(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(I)(2) unless this SIMPLE IRA is a transfer SIMPLE IRA.

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## 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.

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## 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 IRA enrollment/application form.

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## Article VIII

### 1. Definitions.

- (a) "Beneficiary" means the person or persons designated in accordance with paragraph 4.
- (b) "Broker" means the Introducing Firm and any other broker-dealer providing investment services in connection with the SIMPLE IRA Custodial Account.
- (c) "Code" means the Internal Revenue Code of 1986, as amended.
- (d) "WFCS" means Wells Fargo Clearing Services, LLC in its capacity as Custodian, its successors, permitted assigns, and any affiliated organization, all acting in a custodial capacity.

- (e) "Introducing Firm" means each broker-dealer who has entered into an agreement with WFCS pursuant to which WFCS, as agent for such broker-dealer, is contractually assigned the responsibility for the performance of certain back office, trade processing and custody, books and records and margin credit functions.
- (f) "Participant" means the eligible customer who established the SIMPLE IRA, and after such customer's death, the Beneficiary. For investment purposes under Article VIII, paragraph 5, Participant shall also include the customer's or Beneficiary's legal representative or one to whom he has granted a valid power of attorney on a form acceptable to Custodian.
- (g) "Spouse" or "spouse" means the person lawfully married to the Participant, determined in accordance with the Code and any regulatory guidance issued thereunder. The Participant's surviving Spouse is the Spouse remaining or deemed by law to remain alive after the Participant's death.

## 2. Resignation of Custodian/Designation of New Custodian.

- (a) The Custodian may resign as custodian of the SIMPLE IRA upon giving at least thirty (30) days prior written notice to the Participant. Prior to its resignation, the Custodian may, but shall not be required to appoint a successor custodian. If the resigning Custodian does not appoint a successor custodian or if the Participant does not consent to such appointment, the Participant shall, prior to the effective date of such resignation, appoint a successor custodian to receive funds held in the SIMPLE IRA and deliver evidence to the Custodian of the acceptance of such appointment by such successor. The Custodian shall then deliver the balance held in the SIMPLE IRA to its successor, or to the Participant for his delivery to its successor, on the effective date of the resignation or as soon thereafter as practical. In the event that the Participant or the Custodian shall fail or refuse to appoint a successor custodian during such thirty (30)-day period, the Custodian may make distribution directly to the Participant of the balance held in the SIMPLE IRA. The Custodian may reserve such funds as it deems necessary to cover any fees or charges against the SIMPLE IRA.
- (b) The Custodian may at any time and in its sole discretion appoint a successor custodian of the IRA, provided that such successor is an affiliate of the Custodian.
- (c) If the Custodian is merged with or purchased (in part, including your SIMPLE IRA or in whole) by another organization authorized to serve as a custodian, then that custodian may automatically become the trustee or custodian of your SIMPLE IRA.

## 3. Distributions.

- (a) Discretionary Distributions. Except as provided below, distributions shall be made upon the direction of the Participant. In its sole discretion, the Custodian may require that such direction from the Participant be in writing. The Custodian shall be under no duty or obligation to inquire as to the propriety of any distribution instruction, including any distribution instructions relating to the resignation of the Custodian. Participant is solely responsible for determining whether his election to withdraw all or a portion of the SIMPLE IRA will result in the imposition of withdrawal taxes. Custodian is not obligated to make a distribution without being provided the tax identification number of the recipient.
- (b) Required Distributions. The Custodian shall hold each IRA separately and make distributions in accordance with Article IV hereof and section 408(a) of the Code and the following provisions of this Article VIII. To the extent that Article IV is not consistent with section 408(a), as amended, section 408(a) shall be controlling.

If prior to April 1 of the year following the year in which the Participant becomes age 70½, the Custodian has not received from the Participant a request for commencement of the distribution of the SIMPLE IRA or, notified the Custodian that the Participant will satisfy the minimum distribution requirements that apply to the SIMPLE IRA from another individual retirement arrangement in accordance with paragraph 6 of Article IV, the Participant agrees that the Custodian may, in its sole discretion, distribute to the Participant the required minimum payment based on the Uniform Life Expectancy table published by the IRS.

The Participant agrees that the Custodian is not obligated to make such payment and will not be liable for any taxes related to failure to take the required distribution. In its sole discretion, the Custodian may require that Participant's request be in writing.

- (c) Distributions on Death. If the Participant dies prior to the commencement of distributions to him the balance in the SIMPLE IRA shall be distributed, applied or held in accordance with Article IV of the SIMPLE IRA pursuant to the request of the Beneficiary. If the Custodian does not receive such a request within ninety (90) days after it receives written notice of the Participant's death, it may distribute the balance in the SIMPLE IRA to his Beneficiary in a single lump sum payment. The Beneficiary agrees that the Custodian is not obligated to make such payment. In its sole discretion, the Custodian may require that the Beneficiary's request be in writing.

If the sole Beneficiary is the Participant's surviving spouse, the surviving spouse may elect to treat the SIMPLE IRA as the spouse's IRA. The foregoing election will be deemed to have been made if the surviving spouse contributes to the SIMPLE IRA,

makes a rollover contribution to or from the SIMPLE IRA or fails to elect to receive a distribution by December 31 of the calendar year that contains the first anniversary of the Participant's death or otherwise in accordance with Article IV or paragraph (e) hereof.

- (d) Payments to Children. If a distribution upon the death of the Participant is payable to a person known by the Custodian to be a minor or otherwise under a legal disability, the Custodian may, in its absolute discretion, make all, or any part of the distribution to such other person as may be acting as a parent of such Beneficiary, or legal guardian, committee, conservator, trustee or other legal representative, wherever appointed, of such Beneficiary, and the receipt by such person shall be a full and complete discharge by the Custodian of any sum so paid.
- (e) Annuity Payments. Notwithstanding anything in Article IV 3(b) or (c) to the contrary no distribution in the form of an annuity shall be made hereunder.

#### 4. Beneficiary.

The Depositor shall designate in writing the person or persons (or entity or entities) to receive any distribution to be made by reason of the Depositor's death. Each such designation shall be filed with the Custodian on a form acceptable to the Custodian and may be changed from time to time by the Depositor filing a new written designation with the Custodian. The Custodian reserves the right to limit the number of Beneficiaries or other directions designated on your SIMPLE IRA. A Beneficiary is subject to and bound by all the terms and conditions of the SIMPLE IRA Custodial Agreement and Disclosure Statement. A Beneficiary is required to complete and submit any and all forms deemed necessary by the Custodian in order to process a transaction such as a distribution or transfer.

If you invest all or a portion of your SIMPLE IRA in an annuity, the annuity is an investment within the SIMPLE IRA. If you invest all or a portion of your SIMPLE IRA in an annuity, then your account balance of the annuity will be paid in accordance with either the beneficiaries you designate on your SIMPLE IRA or the default beneficiary provisions of this Agreement. When an annuity is held in your SIMPLE IRA, a spouse beneficiary may have spousal rights (i.e. spousal continuation) that he or she may be able to exercise upon your death. If you designate a non-spouse beneficiary (someone other than your spouse) upon your death any annuity will be liquidated. The annuity carrier will transfer the proceeds to your SIMPLE IRA to be distributed in accordance with the beneficiary designation on file with us.

If a designated beneficiary (including any contingent beneficiary) does not survive you, such beneficiary's interest shall lapse, and the percentage interest of any remaining beneficiary (including any contingent beneficiary) shall be increased on a pro rate basis unless your beneficiary designation provides otherwise.

If you have more than one beneficiary who is entitled to benefits from your account after you die, each beneficiary's interest in your SIMPLE IRA will be considered to be a sub-account for purposes of determining required minimum distributions. The distribution rules will then be applied to each beneficiary's benefit.

In the event no designation is filed at the time of your death, there is no surviving Beneficiary or the Beneficiary designation is deemed illegal or otherwise prohibited by state or other law, the Beneficiary shall be your surviving spouse. In the event you do not have a spouse or your spouse predeceases you, the Beneficiary shall be your children as determined under state law. In such a case, a legal or personal representative shall provide the Custodian a written certification listing the names of your surviving children. If there is no legal or personal representative, a court order may be required to determine the appropriate beneficiaries. Under the foregoing circumstances, if you are not survived by children as determined under state law, the Custodial Account shall be paid to your estate.

The Custodian may pay to your surviving spouse such amount of the SIMPLE IRA to which he or she demonstrates to the satisfaction of the Custodian that he or she is entitled under marital or community property laws to the extent you have not designated your surviving spouse to receive such amount as a beneficiary, unless your spouse has properly consented in writing otherwise. You understand that we may reasonably delay payment to your beneficiaries to the extent necessary for us to determine whom to pay and the proper amounts. It is your responsibility to determine whether such laws apply and to request your spouse to consent to your beneficiary designation if appropriate. You understand that we are not responsible if a payment has been made in good faith to a party other than your surviving spouse and that your surviving spouse may not recover such amount paid from us.

In the event that you name your spouse as Beneficiary of the SIMPLE IRA, the following provisions apply:

- If you designate your spouse as Beneficiary and there is a subsequent divorce, your ex-spouse will be treated like any beneficiary that predeceases you; this change may be overruled by court order (such as if the divorce decree requires that your ex-spouse remain as beneficiary);
- If your ex-spouse is designated as Beneficiary AFTER the effective date of the divorce, he or she will remain as Beneficiary for the SIMPLE IRA, subject to surviving you; this change may be overruled by court order (such as if the divorce decree requires that your ex-spouse be removed as Beneficiary); and
- The Custodian shall be released and held harmless in the event that we are not notified of the divorce prior to making payment and therefore pays to the ex-spouse.

Unless a designation filed by you and agreed to by the Custodian states otherwise, if the Beneficiary dies after you, including the time before the determination date (September 30 in the year following the year of your death) the beneficiary will be the person, persons, legal entity or entities designated by the Beneficiary. Such designation shall be filed with the Custodian on a form acceptable to the Custodian. In the event no designation is filed at the time of the Beneficiary's death or there is no surviving beneficiary designated by the Beneficiary, the beneficiary shall be the Beneficiary's surviving spouse. In the event that the Beneficiary does not have a surviving spouse the beneficiary shall be the Beneficiary's children as determined under state law. In such a case, a legal or personal representative shall provide the Custodian a written certification listing the names of the Beneficiary's surviving children. If there is no legal or personal representative, a court order may be required to determine the appropriate beneficiaries. Under the foregoing circumstances, if the Beneficiary is not survived by children as determined under state law, the beneficiary shall be the Beneficiary's estate.

## 5. Investments.

- (a) Participant Direction. The SIMPLE IRA shall be invested, as instructed by the Participant, in one or more of the investment options made available by Broker and permitted in accordance with Subsection (b) hereof. Such investments shall be subject to the terms and conditions of this Agreement and relevant new account documents. All investment directions shall be given in a form that complies with the reasonable requirements and procedures imposed by the Custodian. Such requirements may include that certain representations and warranties and agreements accompany such directions, including indemnification. The Participant may designate someone else to direct the investment of the assets of the SIMPLE IRA by executing a valid third party trading authorization or power of attorney on a form acceptable to the Custodian and by naming a person or entity acceptable to the Custodian.

We shall not be liable for any loss, liability, or penalty, which results from the Participant's (or his duly authorized representative) exercise of control (whether as a result of action or inaction) over the SIMPLE IRA.

- (b) Permitted Investments. Investments may be made in instruments and investment vehicles that are permitted by the Custodian and are compatible with its administrative and operational requirements. The Custodian or its affiliates shall not be liable for any liabilities, including tax liabilities, resulting from investments not compatible with its administrative and operational requirements. The Custodian, at its discretion, may refuse to hold any investment or investment type, including, but not limited to, gold, silver and platinum coins issued under the laws of any state and bullion. The Custodian also has the right to refuse to accept any transfer or rollover of assets other than cash. The Custodian will not be liable for failure to notify the

Participant of any corporate actions regarding securities held in the IRA that are not provided by any service to which the Custodian subscribes. The Participant also agrees that the Custodian shall have no duty to forward to the Participant any class action lawsuit or other legal information unless compensated by the parties to the legal action for research and distribution expenses. The Participant acknowledges and agrees to arbitrate controversies as described in other account opening documents.

- (c) Investment Powers.
- (i) The Custodian may delegate and/or assign to one or more corporations, entities or persons, whether or not affiliated with the Custodian, the performance of record keeping and other ministerial services in connection with the SIMPLE IRA.
  - (ii) The Custodian may appoint one or more sub-custodians that may include affiliates of the Custodian.
  - (iii) The Custodian may hold property in nominee name, in bearer form, or in book entry form, in a clearinghouse corporation or in a depository (including an affiliate of the Custodian).
  - (iv) If made available, assets of the IRA may be invested in deposits of Wells Fargo Bank, N.A. (or an affiliate) that bear a reasonable rate of interest.
  - (v) If made available, assets of the IRA may be invested in any common or collective trust fund or common investment fund maintained by Wells Fargo Bank, N.A. or its affiliate and the provisions of the document that govern any such fund, as amended, are hereby incorporated.
- (d) Voting. The Custodian shall follow Participant's (or his duly authorized representative's) written instructions for voting shares and exercising other rights of ownership for investments held in the SIMPLE IRA. In absence of direction, the Custodian will not exercise any rights and will not be responsible for failing to take action.
- (e) Investment Advisory Services. Participant may enter into an agreement with Custodian, its affiliates, or Introducing Firm to provide investment advisory services and any services provided thereunder will be subject to the terms of such agreement.
- (f) Use of Introducing Firm. If you open your account through an Introducing Firm, you agree that, unless otherwise prohibited by law, any benefits, rights or protections of the Custodian under this Agreement are extended to and may be exercised by, or assigned to, the Introducing Firm and may be enforced independently or jointly by the Custodian and/or the Introducing Firm.

- (g) Cash Sweep Program. By completing and submitting the enrollment/application form, the Participant may select an automatic cash investment service (the "Service"). The Service provides for the automatic investment and reinvestment of income and dividends generated by investments in the Participant's IRA into a Sweep Option selected by the Participant, subject to the terms of the Cash Sweep Program Disclosure Statement. Prior to the Custodian's receipt of the Participant's fully executed and signed application/enrollment form and account opening documents, cash deposited in the Participant's account will be held as a free credit balance and not invested in the Cash Sweep Program. While any cash remains in free credit balance, we will retain any interest earned on assets awaiting investment or disbursement. You understand and agree that this interest (generally referred to as "float") will be retained by us as additional compensation for the provision of services with respect to your IRA. Such interest shall generally be a prevailing interest rate.

## 6. Taxes.

The Custodian shall have the power and right to pay from the SIMPLE IRA any estate, inheritance, income, backup withholding or other taxes, and any interest or penalties assessed or levied with respect to the SIMPLE IRA or the Participant's interest therein. The Custodian may liquidate assets held in the IRA to make withdrawals, distributions, transfers, or pay taxes assessed against the IRA. The Custodian is not obligated to liquidate assets and is not responsible for any tax liabilities if assets are liquidated or if they are not liquidated.

The Participant by signing the SIMPLE IRA enrollment/application form and under penalties of perjury certifies that:

- (a) The social security number shown on the SIMPLE IRA enrollment/application form along with any other account opening forms is the Participant's correct taxpayer identification number.
- (b) The Participant is not subject to backup withholding because (1) the Participant is exempt from backup withholding, or (2) the Participant has not been notified by the IRS he or she is subject to backup withholding as a result of failure to report all interest or dividends, or (3) the IRS has notified the Participant that he or she is no longer subject to backup withholding. Or, the Participant has notified the Custodian in writing that he or she is subject to backup withholding.

## 7. Excess Contributions.

If the Participant determines that any part or all of the contribution to the SIMPLE IRA for any taxable year is an excess contribution as defined in section 4973(b) of the Code, he or she may give the Custodian a written request for the refund of the amount of the excess contribution plus net income or loss contribution for such taxable year. Upon receiving such request the Custodian shall refund the requested amount.

## 8. Amendment.

Subject to the provisions of Article VII, the Custodian may amend the provisions of the SIMPLE IRA at any time by giving written notice of the amendment to the Participant. The Participant is deemed to have automatically consented to any amendment unless the Participant notifies the Custodian in writing that the Participant does not consent to the amendment and provides written notice of the SIMPLE IRA termination within 30 days after the Custodian mails a copy of the amendment to the Participant. Any and all amendments made to comply with any changes in applicable laws or regulations shall not require the Participant's consent.

## 9. Termination.

The SIMPLE IRA shall terminate when the Custodian receives written instructions from the Participant to transfer all of the assets of the SIMPLE IRA to the trustee or custodian of another retirement plan or directly to the Participant or upon the distribution of all of the assets of the SIMPLE IRA in accordance with Article IV hereof. In order for the Participant to transfer all of the assets of the SIMPLE IRA, the Participant must give the Custodian written instructions to make the transfer at least fifteen (15) days prior to the date the transfer is to be made. If the Custodian is notified by the Commissioner of the Internal Revenue Service that another custodian must be substituted for the Custodian because the Custodian has failed to comply with the requirements of Treasury regulation section 1.408-2(e) or is not keeping the records, making returns or rendering statements as required by the Internal Revenue Service's forms or regulations, the Custodian will substitute another custodian and will notify the Participant of this fact. The Participant agrees upon such notification or upon notification from the Commissioner of the Internal Revenue Service to transfer the Participant's assets to another individual retirement account or to substitute another custodian for the Custodian. The Custodian shall not be liable for any actions or failures to act on the part of any successor custodian or trustee nor for any tax consequences resulting from the transfer or distribution of assets pursuant to this section.

The Participant may not receive interest or dividends that have accrued but that have not been credited on a terminated SIMPLE IRA. A quarterly minimum balance fee of up to \$10 (or the balance of the account if less than \$10) may apply if your balance falls below \$50. If the fee should bring your account to a zero balance, the Custodian will terminate your SIMPLE IRA.

## 10. General Provisions.

The following general provisions apply to this Agreement.

- (a) Non-Assignable Interests. The Participant shall not have any right to pledge any part of the SIMPLE IRA as security for a loan or to assign, transfer or in any way create a lien on the SIMPLE IRA or any payments to be made under this SIMPLE IRA. Any indemnification agreement, cross-collateralization agreement or other grant of a security interest in

favor of the Custodian or its affiliates, in any other agreement the participant may have with us, as set forth in any other agreement, which guarantees the payment of debits to (or by) the Custodial Account under this Agreement by (or to) a Related Account is hereby null, void, and unenforceable with respect to the Custodial Account under this Agreement, notwithstanding any contrary provisions in the Related Account agreement. For this paragraph, a "Related Account" is another account established with us where such account is subject to an agreement with us that also covers the Custodial Account and/or guarantees the payment of debits to the Plan Account. This paragraph shall be interpreted in a manner consistent with the Department of Labor's Prohibited Transaction Class exemption 80-26 and shall not limit our ability to seek any and all legal remedies against you with regard to any indebtedness. The SIMPLE IRA shall not be subject to any execution, attachment, assignment, garnishment or other legal process by any creditor of the Participant except to the extent allowed by applicable law. Notwithstanding the foregoing, all or a portion of the Participant's interest may be transferred to the Participant's former spouse pursuant to a valid divorce decree, incorporated property settlement agreement or agreement of legal separation. Any interest so transferred shall be treated as an IRA for the benefit of the former spouse and such spouse shall be treated as the Participant of such IRA. Custodian may require any additional instruction it deems reasonable and necessary to accomplish the transfer. The Custodian, nor its affiliates will be liable for any adverse consequences resulting from such transfer.

- (b) Construction. If any part of the agreements governing this account is held to be illegal or invalid, the remaining parts shall not be affected. Neither the Participant's nor the Custodian's failure to enforce at any time or for any period of time any of the provisions of the governing agreements constitutes a waiver of such provisions, or the rights of either party to enforce each and every provision thereafter. The Participant further agrees to be bound by the regulations of the Custodian or any governmental agency regarding the operation of this IRA or any investment held hereunder.
- (c) Gender. Wherever in the language of this SIMPLE IRA the masculine gender is used, it shall be deemed equally to refer to the feminine gender.
- (d) Commissions, Expenses and Fees.
  - (i) All expenses incurred in connection with the administration of the SIMPLE IRA, including fees for legal services, and such reasonable compensation to the Custodian as may be established by the Custodian, may be paid from the SIMPLE IRA by the Custodian. Reimbursement for any expenses shall be due and payable upon demand. When the Custodial Account is established the Participant will be furnished with a compensation schedule and thereafter will give the Participant written notice of any changes in that schedule. Other

fees and expenses incurred due to the management of the SIMPLE IRA, including but not limited to investment advisory fees, may also be paid from the SIMPLE IRA by the Custodian at the direction of the Participant.

- (ii) All annual fees for a calendar year shall be due and payable when invoiced. The Custodian may charge any annual fees previously disclosed without any further notification to the Participant. In the event that the SIMPLE IRA is terminated or transferred, a termination and/or transfer fee as well as any outstanding annual fees (including the current year's annual fee) shall be due and payable on the date of the termination or transfer. The Custodian may liquidate assets held in the SIMPLE IRA to make withdrawals, distributions or transfers or pay fees, expenses, liabilities, charges or taxes assessed against the SIMPLE IRA. The Custodian is not obligated to liquidate assets and is not responsible for any tax liabilities if assets are liquidated or if they are not liquidated.
- (iii) The Custodian or an affiliate may retain any interest earned on assets awaiting investment or disbursement. Depositor understands and agrees that this interest (generally referred to as "float") will be retained by us as additional compensation for our services with respect to the SIMPLE IRA. Such interest shall generally be a prevailing interest rate.

Assets awaiting investment include (a) new deposits to the SIMPLE IRA, including interest and dividends, and (b) any uninvested assets held by the SIMPLE IRA caused by an instruction to us to purchase or sell securities where investment instructions are received too late in the day to be completed. We may also earn float on distributions from the time funds are distributed from the IRA until the check is cashed or other payment method is completed.

- (e) Reports. The Participant agrees to provide information to the Custodian at such time and in such manner as may be necessary to prepare any reports required pursuant to the Code and the regulations thereunder. The Participant agrees to hold the Custodian harmless against any liability arising from any inaccuracies or omissions with respect to such information.
- (f) No Representations. The Participant shall not rely on any oral or written representations of the Custodian, its agents, affiliates, officers, directors, and employees as to the tax or other effect of any transaction relating to the SIMPLE IRA.
- (g) Power of Attorney. The Participant may designate one or more individuals to act as the Participant's attorney-in-fact. Such written designations shall be made in a manner acceptable to the Custodian. The Custodian may rely on such designation until the Custodian has received written notification to the contrary. The Custodian shall be under no liability for any loss of any kind occasioned by its actions in



accordance with the directions of the Participant's attorney-in-fact, and shall be under no duty to question any direction of the Participant's attorney-in-fact.

Payments from the SIMPLE IRA may be made at our discretion to the Participant's duly authorized or qualified legal representative, including without limitation, legal guardian, committee or attorney-in-fact, during any period that the Participant is incapable of executing a valid receipt for such payments. Any payment made pursuant to the provisions of this paragraph shall be a complete discharge of any liability for the making of such payment from the SIMPLE IRA.

The Custodian may, at its sole discretion, prohibit any transaction and/or acts requested by the attorney-in-fact.

- (h) **Authority to Contract.** The Participant acknowledges that this document and any accompanying documents constitute a contract between the Participant and the Custodian. By entering into this contract, the Participant agrees that he has full legal power and authority to enter into any transaction with or through the Custodian and to provide instructions related to the SIMPLE IRA. The Participant agrees to promptly notify the Custodian in writing if their authority described above materially changes. The Participant agrees to be bound by any and all rules and regulations of Custodian, its affiliates or any government agency regarding the operation of the IRA or any investment held hereunder.
- (i) **Effective Date.** The effective date shall be the date that the Custodian accepts the Participant's SIMPLE IRA enrollment/application form.
- (j) **Notice.** Notices to us concerning the SIMPLE IRA must be in writing and must be delivered in person or sent by registered or certified mail to the mailing address specified in Question A.2. of the Disclosure Statement, as that address may be changed from time to time, or to any other address specified by us. We may honor any instructions in writing from the Participant sent by mail yet shall not be responsible for failure to follow any instructions not sent by certified or registered mail. Notices from us shall be in writing and sent by mail to the Participant's address listed in the SIMPLE IRA enrollment/application form or most current address of record, specified by the Participant.
- (k) **Extraordinary Events.** The Participant agrees that the Custodian and its affiliates shall not be liable for any loss or delay caused directly or indirectly by government restrictions, exchange or market rulings, suspension of trading, war, acts of terrorism, strikes, failure of the mail or other communication systems, mechanical or electronic failure, failure of third parties to follow instructions, or other conditions beyond the control of the Custodian.

## 11. Sharing Information.

The Participant expressly agrees that the Custodian is authorized to share such SIMPLE IRA information which it may lawfully share with its affiliated entities, including Broker, for such purposes as the Custodian, in its sole discretion, may deem necessary or appropriate.

The Custodian or its agent may submit the Participant's name, address, and security positions to the agent of the issuer of the securities held in the name of the Participant or to the Custodian's agent for corporate communications unless we receive written notification from the Participant to the contrary.

## 12. Limitations on Custodial Liability and Indemnification.

The Participant and the Custodian intend that the Custodian shall have and exercise no discretion, authority, or responsibility as to any investment except as indicated in a separate advisory agreement in connection with the SIMPLE IRA and the Custodian shall not be responsible in any way for the purpose, propriety, or tax treatment of any contribution, or of any distribution, or any other action or inaction taken pursuant to the Participant's (or his duly authorized representative's) direction. Participant agrees that the acceptance of any contribution by us is not an opinion that any party will be entitled to a tax deduction or "rollover" treatment on such amount. Participant understands that the Custodian has no responsibility or obligation to calculate the amount of any distribution or to make any election for the Participant. The Participant shall bear sole responsibility for the suitability of any investment and for any adverse consequences arising from such an investment, including, without limitation, the inability of the Custodian to value or to sell an investment, or the generation of unrelated business taxable income with respect to an investment. To the fullest extent permitted by law, the Participant shall at all times fully indemnify and save harmless the Custodian and its agents, affiliates, successors, and assigns and its officers, directors, and employees, from any and all liability arising from the Participant's (or his duly authorized representative's) investment direction under this SIMPLE IRA and from any and all other liability whatsoever which may arise in connection with this SIMPLE IRA, except liability arising under applicable law or liability arising from the gross negligence or willful misconduct on the part of the indemnified person.

The Custodian will be responsible only for the cash and property actually received by it under the terms of the SIMPLE IRA and will not be responsible for the collection of contributions to the SIMPLE IRA. Establishment of or subsequent contribution to this SIMPLE IRA is not intended to be a transfer or gift under any state Uniform Transfers to Minors Act or any comparable act under the laws of any state which may have jurisdiction over this SIMPLE IRA. Our only duties and responsibilities with respect to the SIMPLE IRA shall be those specifically set forth in this SIMPLE IRA.

### **13. Recording Conversations.**

The Participant understands and agrees that the Custodian and the Broker may electronically record any of the Participant's telephone conversations with the Custodian or the Broker. The Participant waives all rights to object to the admissibility into evidence of such recording in any legal or other proceeding between the Participant and the Custodian, its employees or affiliates, or in any proceeding brought by an exchange or governmental agency to which the Custodian, its employees or affiliates, are party or in which records are subpoenaed.

### **14. Holding Account Assets.**

The Participant hereby authorizes us to comply with any process, summary, order, injunction, execution, distribution, levy, lien, or notice of any kind ("Process") received by or served upon us which in our sole opinion affects the SIMPLE IRA. The Participant authorizes us to, at its option and without liability, thereupon refuse to honor orders to pay or withdraw monies from the SIMPLE IRA and to either hold the balance therein until the Process is disposed of to our satisfaction, or to pay the balance over to the source of the Process. In any event, we shall have no obligation to contest the service of any such Process, or the jurisdiction of said service. The Custodian may also require additional clarification or support for any court order or other document if it deems that the terms or effectiveness of the order or document are unclear. In any event, the Custodian shall have no obligation to contest the service of any such Process, or the jurisdiction of said service. In addition, the Custodian has a right to freeze or hold an account balance in the event that it believes that ownership of the account or any proceeds therein are in dispute and may continue to hold or freeze the account until the dispute is resolved to its satisfaction.

If the Custodian is unable to make a distribution to the appropriate party within 6 months after such distribution is to be made because we are unable to contact the Participant by mailing to the most recent address provided to us by the Participant for purposes of the SIMPLE IRA, we may, without liability for so doing, sell any securities in the SIMPLE IRA and, subject to applicable limitations, deposit the proceeds and any other funds in a bank deposit or a money market mutual fund, as designated by us from time to time, until such time as disbursement is possible to the appropriate party or until such funds escheat to a governmental agency by operation of law.

### **15. Counterparts.**

The IRA enrollment/application form may be executed in any number of counterparts, each one of which shall be deemed to be the original although the others have not been produced.

## **Section III: Additional Information**

### **A. Periodic Statements For Your SIMPLE IRA Investment Options.**

You will receive a periodic statement reflecting all of the investments in your SIMPLE IRA. In addition, you will receive a statement reflecting activity following any month in which there is activity in your SIMPLE IRA.

If you have questions about your SIMPLE IRA statement, please call us. You **must** notify us within 10 days in writing of any discrepancies noted on your statement, otherwise the statement will be deemed correct and conclusive.

### **B. How to Determine Your Annual Contributions to Date.**

To determine the amount you have contributed to your SIMPLE IRA at any point in time, you should refer to your statement. Each statement will include a total of contributions made during that calendar year.

### **C. Tax Reporting.**

Any discrepancies or errors in any tax reporting by the Custodian must be reported to the Custodian within 60 days after the reporting is mailed by the Custodian to the Participant.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

July 1, 2003

Wachovia Securities LLC  
901 East Byrd Street  
Richmond, VA 23219

EIN Number: 34-1542819

Ladies and Gentlemen:

In a letter dated March 21, 2003, as supplemented by a facsimile transmitted on June 23, 2003, your authorized representative requested a written notice of approval that Wachovia Securities LLC may act as a nonbank custodian of medical savings accounts established under section 220 of the Internal Revenue Code, plans qualified under section 401, accounts described in section 403(b)(7), individual retirement accounts (IRAs) established under sections 408, 408A (dealing with Roth IRAs), and 530 (dealing with Coverdell education savings accounts), and eligible deferred compensation plans described in section 457(b).

Section 220(d)(1)(B) of the Code (dealing with Archer MSAs (medical savings accounts)) provides, in pertinent part, that the trustee of a medical savings account must be a bank (as defined in section 408(n)), an insurance company (as defined in section 816), or another person who demonstrates to the satisfaction of the Secretary that the manner in which such person will administer the trust will be consistent with the requirements of this section. Q & A-10 of Notice 96-53, 1996-2 C.B. 219 provides, in pertinent part, that persons other than banks, insurance companies, or previously approved IRA trustees or custodians may request approval to be a trustee or custodian in accordance with the procedures set forth in section 1.408-2(e) of the Income Tax Regulations.

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

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 individual retirement account described in section 408.

Section 530(g) of the Code (dealing with Coverdell education savings accounts) provides that a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he 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 account described in subsection (b)(1). For purposes of title 26 of the Code, in 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 VII of Notice 98-8, 1998-1 C.B. 355 (guidance relating to the requirements applicable to eligible deferred compensation plans described in section 457(b) of the Code), provides, in pertinent part, that for purposes of the trust requirements of section 457(g)(1), a custodial account will be treated as a trust if the custodian is a bank, as described in section 408(n), or a person who meets the nonbank trustee requirements of section VIII of this notice, and the account meets the requirements of section VI of

this notice, other than the requirement that it be a trust. Section VIII provides that the custodian of a custodial account may be a person other than a bank only if the person demonstrates to the satisfaction of the Commissioner that the manner in which the person will administer the custodial account will be consistent with the requirements of section 457(g)(1) and (g)(3) of the Code. To do so, the person must demonstrate that the requirements of paragraphs (2)-(6) of section 1.408-2(e) of the regulations relating to nonbank trustees will be met.

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 220, 401(f), 403(b)(7), 408(a)(2), 408(h), 408(q), 408A, 457(b) and 530 of the Code. One of the requirements of section 1.408-2(e) 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 submitted to this office and all the representations made in the application, we have concluded that Wachovia Securities LLC meets the requirements of section 1.408-2(e) of the regulations and, therefore, is approved to act as a nonbank custodian of medical savings accounts established under section 220 of the Internal Revenue Code, plans qualified under section 401, accounts described in section 403(b)(7), individual retirement accounts (IRAs) established under sections 408, 408A (dealing with Roth IRAs), and 530 (dealing with Coverdell education savings accounts), and eligible deferred compensation plans described in section 457(b).

This letter authorizes Wachovia Securities LLC to act as a passive or non-passive nonbank custodian. When Wachovia Securities LLC acts as a passive nonbank 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 custodial agreement. It may not act as a passive custodian if under the written custodial agreement it has discretion to direct investments of the custodial funds.

Wachovia Securities LLC may not act as a custodian unless it undertakes to act only under custodial agreements that contain a provision to the effect that the grantor is to substitute a trustee or another custodian upon notification by the Commissioner that such substitution is required because Wachovia Securities LLC has failed to comply with the requirements of section 1.408-2(e) of the regulations 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.

Wachovia Securities LLC is required to notify the Commissioner of Internal Revenue, Attn: T:EP:RA, Internal Revenue Service, Washington, D.C. 20224, in writing, of any change which affects the continuing accuracy of any representations made in its application. Further, the continued approval of Wachovia Securities LLC to act as a

nonbank custodian of medical savings accounts established under section 220 of the Internal Revenue Code, plans qualified under section 401, accounts described in section 403(b)(7), individual retirement accounts (IRAs) established under sections 408, 408A (dealing with Roth IRAs), and 530 (dealing with Coverdell education savings accounts), and eligible deferred compensation plans described in section 457(b) is contingent upon the continued satisfaction of the criteria set forth in section 1.408-2(e) of the regulations.

This approval letter 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 an approval letter 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 approval letter 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 regulations.

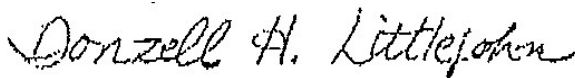
This letter constitutes a notice that Wachovia Securities LLC may act as a nonbank custodian of medical savings accounts established under section 220 of the Internal Revenue Code, plans qualified under section 401, accounts described in section 403(b) (7), individual retirement accounts (IRAs) established under sections 408, 408A (dealing with Roth IRAs), and 530 (dealing with Coverdell education savings accounts), and eligible deferred compensation plans described in section 457(b) and does not bear upon its capacity to act as a custodian under any other applicable law. This is not an endorsement of any investment. The Internal Revenue Service does not review or approve investments.

This notice of approval is effective as of the date of this letter and will remain in effect until withdrawn by Wachovia Securities LLC or revoked by the Service. This notice of approval does not authorize Wachovia Securities LLC to accept any fiduciary account before this notice becomes effective.

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

If you have any questions, please contact Mr. C. Thompson (Badge No. 50-07262) at (202) 283-9596.

Sincerely,



Donzell H. Littlejohn, Acting Manager  
Employee Plans Technical Group 1