

**Roth Individual Retirement Custodial Account  
Agreement and Disclosure Statement**

THIS DOCUMENT MAY ONLY BE USED WITH A SWS SECURITIES ACCOUNT.

HOW TO GET STARTED  
TO ESTABLISH A SWS SECURITIES  
ROTH INDIVIDUAL RETIREMENT ACCOUNT (ROTH IRA)

- Complete and sign the **Roth IRA Application**.<sup>1</sup> All beneficiary information including Social Security numbers should be completed.
- Submit the completed **Roth IRA Application**<sup>1</sup> to your Account Executive.
- Enclose a check made payable to SWS Securities for the initial Roth contribution, if applicable. Your check should reference which tax year the contribution should be credited.
- Complete and sign an **Account Transfer Form**<sup>2</sup> if either of the following situations apply to you:  
If you are transferring an existing Roth IRA to a SWS Securities IRA.  
If you are converting a traditional IRA to a SWS Securities Roth IRA<sup>3</sup>.
- Complete a **Rollover Certification Form**<sup>2</sup> if you wish to rollover funds previously distributed from a Roth IRA.
- Contact your Account Executive for any other forms that may be required to establish your IRA.

<sup>1</sup> This form is available as a separate insert to this booklet.

<sup>2</sup> These forms are available from your Account Executive.

<sup>3</sup> A Rollover Conversion Roth IRA must be kept in a separate account from a Roth IRA which accepts annual contributions. For more information on this requirement, please refer to the Roth IRA Disclosure Statement.

CUSTODIAL FEES FOR STANDARD ASSETS

- |                                    |           |
|------------------------------------|-----------|
| • Initial Set Up or Acceptance Fee | No Charge |
| • Annual Maintenance Fee           | No Charge |
| • Spousal Annual Maintenance Fee   | No Charge |
| • Premature Distribution Fee       | No Charge |
| • Transfer or Termination Fee      | \$25.00   |

The Custodial Fee Schedule for Standard Assets will apply to any SWS Securities IRA Account which is invested in widely held or publicly traded securities, such as Stocks, Bonds, Mutual Funds and/or Fixed Income instruments.

Form 5305-RA

(January 2000)  
Department of the Treasury  
Internal Revenue Service

Roth Individual Retirement Custodial Account

(Under Section 408A of the Internal Revenue Code)

Article I

- 1.01 Except in the case of a rollover contribution described in section 408A(e), a recharacterized contribution described in section 408A(d)(6), or an IRA Conversion Contribution, the Custodian will accept only cash contributions and only up to a maximum amount of \$2,000 for any tax year of the Depositor.

Article II

- 2.01 The \$2,000 limit described in Article 1 is gradually reduced to \$0 between certain levels of adjusted gross income (AGI). For a single Depositor, the \$2,000 annual contribution is phased out between AGI of \$95,000 and \$110,000; for a married Depositor who files jointly, between AGI of \$150,000 and \$160,000; and for a married Depositor who files separately, between \$0 and \$10,000. In the case of a conversion, the custodian will not accept IRA Conversion Contributions in a tax year if the Depositor's AGI for the tax year the funds were distributed from the other IRA exceeds \$100,000 or if the Depositor is married and files a separate return. Adjusted gross income is defined in section 408A(c)(3) and does not include IRA Conversion Contributions.
- 2.02 In the case of a joint return, the AGI limits in the preceding paragraph apply to the combined AGI of the Depositor and his or her spouse.

Article III

- 3.01 The Depositor's interest in the balance in the custodial account is nonforfeitable.

Article IV

- 4.01 No part of the custodial 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)).
- 4.02 No part of the custodial 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 V

- 5.01 If the Depositor dies before his or her entire interest is distributed to him or her and the Depositor's surviving spouse is not the sole beneficiary, the entire remaining interest will, at the election of the Depositor or, if the Depositor has not so elected, at the election of the beneficiary or beneficiaries, either:
- a.) Be distributed by December 31 of the year containing the fifth anniversary of the Depositor's death, or
- b.) Be distributed over the life expectancy of the designated beneficiary starting no later than December 31 of the year following the year of the Depositor's death. If distributions do not begin by the date described in 5.01(b), distribution method 5.01(a) will apply.
- 5.02 In the case of distribution method 5.01(b) above, to determine the minimum annual payment for each year, divide the Depositor's entire interest in the trust as of the close of business on December 31 of the preceding year by the life expectancy of the designated beneficiary using the attained age of the designated beneficiary as of the beneficiary's birthday in the year distributions are required to commence and subtract 1 for each subsequent year.
- 5.03 If the Depositor's spouse is the sole beneficiary on the Depositor's date of death, such spouse will then be treated as the Depositor.

Article VI

- 6.01 The Depositor agrees to provide the Custodian with information necessary for the Custodian to prepare any reports required under sections 408(i) and 408A(d)(3)(E), and Regulations section 1.408-5 and 1.408-6, and under guidance published by the Internal Revenue Service.
- 6.02 The Custodian agrees to submit reports to the Internal Revenue Service and the Depositor as prescribed by the Internal Revenue Service.

Article VII

- 7.01 Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through IV and this sentence will be controlling. Any additional articles that are not consistent with section 408A, the related regulations, and other published guidance will be invalid.

Article VIII

- 8.01 This agreement will be amended from time to time to comply with the provisions of the Code, related regulations, and other published guidance. Other amendments may be made with the consent of the persons whose signatures appear on the Roth IRA Adoption Agreement.

Article IX

- 9.01 **Applicable Law:** This Custodial Agreement shall be governed by the laws of the state where the Trust resides.
- 9.02 **Annual Accounting:** The Custodian shall, at least annually, provide the Depositor or Beneficiary (in the case of death) with an accounting of such Depositor's account. Such accounting shall be deemed to be accepted by the Depositor, if the Depositor or Beneficiary does not object in writing within 60 days after the mailing of such accounting statement.
- 9.03 **Amendment:** The Depositor irrevocably delegates to the Custodian the right and power to amend this Custodial Agreement. Except as hereafter provided, the Custodian will give the Depositor 30 days prior written

notice of any amendment. In case of a retroactive amendment required by law, the Custodian will provide written notice to the Depositor of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the IRS. The Depositor shall be deemed to have consented to any such amendment unless the Depositor notifies the Custodian to the contrary within 30 days after notice to the Depositor and requests a distribution or transfer of the balance in the account.

9.04 **Resignation and Removal of Custodian:**

- a.) The Custodian may resign at any time by giving at least 30 days notice to the Depositor. The Custodian may resign and appoint a successor trustee or custodian to serve under this agreement or under another governing instrument selected by the successor trustee or custodian by giving the Depositor written notice at least 30 days prior to the effective date of such resignation and appointment, which notice shall also include a copy of such other governing instrument, if applicable, and the related disclosure statement. The Depositor shall then have 30 days from the date of such notice to either request a complete distribution of the account balance or designate a different successor trustee or custodian. If the Depositor does not request distribution of the account or designate a different successor within such 30 days, the Depositor shall be deemed to have consented to the appointment of the successor trustee or custodian and the terms of any new governing instrument, and neither the Depositor nor the successor shall be required to execute any written document to complete the transfer of the account to the successor trustee or custodian. The successor trustee or custodian may rely on any information, including beneficiary designations, previously provided by the Depositor.
- b.) The Depositor may at any time remove the Custodian and replace the Custodian with a successor trustee or custodian of the Depositor's choice by giving 30 days written notice to the Custodian. In such event, the Custodian shall then deliver the assets of the account as directed by the Depositor. However, the Custodian may retain a portion of the assets of the Roth IRA as a reserve for payment of any anticipated remaining fees and expenses, and shall pay over any remainder of this reserve to the successor trustee or custodian upon satisfaction of such fees and expenses.
- c.) The Custodian may resign and demand that the Depositor appoint a successor trustee or custodian of this IRA by giving the Depositor written notice at least 30 days prior to the effective date of such resignation. The Depositor shall then have 30 days from the date of such notice to designate a successor trustee or custodian, notify the Custodian of the name and address of the successor trustee or custodian, and provide the Custodian with appropriate evidence that such successor has accepted the appointment and is qualified to serve as trustee or custodian of an individual retirement account.

- (1) If the Depositor designates a successor trustee or custodian and provides the Custodian evidence of the successor's acceptance of appointment and qualification within such 30-day period, the Custodian shall then deliver all of the assets held by the Custodian in the account (whether in cash or personal or real property, wherever located, and regardless of value) to the successor trustee or custodian.
- (2) If the Depositor does not notify the Custodian of the appointment of a successor trustee or custodian within such 30 day period, then the Custodian may distribute all of the assets held by the Custodian in the account (whether in cash or personal or real property, wherever located, and regardless of value) to the Depositor, outright and free of trust, and the Depositor shall be wholly responsible for the tax consequences of such distribution.

In either case, the Custodian may expend any assets in the account to pay expenses of transfer (including re-registering the assets and preparation of deeds, assignments, and other instruments of transfer or conveyance) to the successor trustee or custodian or the Depositor, as the case may be. In addition, the Custodian may retain a portion of the assets as a reserve for payment of any anticipated remaining fees and expenses. Upon satisfaction of such fees and expenses, the Custodian shall pay over any remainder of the reserve to the successor trustee or custodian or to the Depositor, as the case may be.

9.05 **Custodian's Fees and Expenses:**

- a.) The Depositor agrees to pay the Custodian any and all fees specified in the Custodian's current published fee schedule for establishing and maintaining this Roth IRA, including but not limited to any fees for distributions from, transfers from, and terminations of this Roth IRA. The Custodian may change its fee schedule at any time by giving the Depositor 30 days prior written notice.
- b.) The Depositor agrees to pay any expenses incurred by the Custodian in the performance of its duties in connection with the account. Such expenses include, but are not limited to, administrative expenses, such as legal and accounting fees, and any taxes of any kind whatsoever that may be levied or assessed with respect to such account.
- c.) All such fees, taxes, and other administrative expenses charged to the account shall be collected either from the assets in the account or from any contributions to or distributions from such account if not paid by the Depositor, but the Depositor shall be responsible for any deficiency.
- d.) In the event that for any reason the Custodian is not certain as to who is entitled to receive all or part of the Custodial Funds, the Custodian reserves the right to withhold any payment from the Custodial

Account, to request a court ruling to determine the disposition of the custodial assets, and to charge the Custodial Account for any expenses incurred in obtaining such legal determination.

- 9.06 **Withdrawal Requests:** All requests for withdrawal shall be in writing on the form provided by the Custodian. Such written notice must also contain the reason for the withdrawal and the method of distribution being requested.
- 9.07 **Responsibilities:** Depositor agrees that all information and instructions given to the Custodian by the Depositor is complete and accurate and that the Custodian shall not be responsible for any incomplete or inaccurate information provided by the Depositor or Depositor's beneficiary(ies). Depositor agrees to be responsible for all tax consequences arising from contributions to and distributions from this Custodial Account and acknowledges that no tax advice has been provided by the Custodian.
- 9.08 **Designation of Beneficiary:**
  - (a) Except as may be otherwise required by State law, in the event of the Depositor's death, the balance in the account shall be paid to the beneficiary or beneficiaries designated by the Depositor on a beneficiary designation acceptable to and filed with the Custodian. The Depositor may change the Depositor's beneficiary or beneficiaries at any time by filing a new beneficiary designation with the Custodian. If no beneficiary designation is in effect, if none of the named beneficiaries survive the Depositor, or if the Custodian cannot locate any of the named beneficiaries after reasonable search, any balance in the account will be payable to the Depositor's estate.
  - (b) If the Custodian permits, in the event of the Depositor's death, any beneficiary may name a subsequent beneficiary(ies) to receive the balance of the account to which such beneficiary is entitled upon the death of the original beneficiary by filing a Subsequent Beneficiary Designation Form acceptable to and filed with the Custodian. Payments to such subsequent beneficiary(ies) shall be distributed in accordance with the payment schedule applicable to the original beneficiary. In no event can any subsequent beneficiary be treated as a designated beneficiary of the Depositor. The preceding sentence shall not apply with respect to the subsequent beneficiary(ies) of an original spouse beneficiary where the Depositor dies before his or her required beginning date. If the balance of the account has not been completely distributed to the original beneficiary and such beneficiary has not named a subsequent beneficiary or no named subsequent beneficiary is living on the date of the original beneficiary's death, such balance shall be payable to the estate of the original beneficiary.
- 9.09 **Spousal Beneficiary Provisions:** Notwithstanding the provisions of Article 5.03, if the Depositor's only primary beneficiary is the surviving spouse, such spouse may elect to be treated as a non-spouse beneficiary for purposes of the provisions of Articles 5.01 and 5.02, but including the special rule provided under §401(a)(9)(B)(iv) of the Code. Thus, a surviving spouse beneficiary may remain the beneficiary of the deceased spouse's Roth IRA and be able to take death distributions under the five year rule or the exception to the five year rule, including the ability to wait to begin receiving distributions over his or her single life expectancy by December 31 of the year the deceased spouse would have attained the age of 70½ had he or she lived, if this date is later than the December 31 immediately following the year of death. In addition, if the surviving spouse is not the sole beneficiary of the Roth IRA, in addition to the provisions of Articles 5.01 and 5.02, the surviving spouse beneficiary may elect to treat his or her beneficial portion of the deceased spouse's Roth IRA as his or her own Roth IRA.
- 9.10 **Responsibility for Determining Eligibility for Conversion Contributions:** Notwithstanding the provisions of the third sentence of Article II, the Depositor agrees to be solely responsible for determining eligibility to convert any of the Depositor's traditional IRAs to a Roth IRA.
- 9.11 **Combining Regular Roth IRA Contributions with Roth Conversion Contributions:** Notwithstanding the provisions of Article I, the Depositor may combine regular Roth IRA contributions in the same Roth IRA account as Roth IRA conversion contributions. The Depositor agrees to designate each deposit as either a regular Roth IRA contribution (and the tax year to which it relates) or a Roth IRA conversion contribution. The Depositor further agrees that he/she will be solely responsible for any record keeping of such deposits as determined or required by the Internal Revenue Service, including but not limited to, the timing, ordering and taxation of any distributions.

**ARTICLE X  
SELF-DIRECTED IRA PROVISIONS**

- 10.01 **Investment of Contributions:** At the direction of the Depositor (or the direction of the beneficiary upon the Depositor's death) the Custodian shall invest all contributions to the account and earnings thereon in investments acceptable to the Custodian, which may include marketable securities traded on a recognized exchange or "over the counter" (excluding any securities issued by the Custodian), covered call options, certificates of deposit, and other investments to which the Custodian consents, in such amounts as are specifically selected and specified by Depositor in orders to the Custodian in such form as may be acceptable to the Custodian, without any duty to diversify and without regard to whether such property is authorized by the laws of any jurisdiction as a custodial investment. The Custodian shall be responsible for the execution of such orders and for maintaining adequate records thereof. However, if any such orders are not received as required, or, if received, are unclear in the opinion of the Custodian, all or a portion of the contribution may be held uninvested without liability for loss of income or appreciation, and without liability for interest pending receipt of such orders or clarification, or the contribution may be returned. The Custodian may, but need not, establish programs under which cash deposits in excess of a minimum set by it will be periodically and automatically invested in interest-bearing investment funds. The Custodian shall have no duty other than to follow the written investment directions of the Depositor, and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Depositor.

- 10.02 **Registration:** All assets of the account shall be registered in the name of the Custodian or of a suitable nominee. The same nominee may be used with respect to assets of other investors whether or not held under agreements similar to this one or in any capacity whatsoever. However, each Depositor's account shall be separate and distinct; a separate account therefor shall be maintained by the Custodian, and the assets thereof shall be held by the Custodian in individual or bulk segregation either in the Custodian's vaults or in depositories approved by the Securities and Exchange Commission under the Securities Exchange Act of 1934.
- 10.03 **Investment Advisor:** The Depositor may appoint an Investment Advisor, qualified under Section 3(38) of the Employee Retirement Income Security Act of 1974, to direct the investment of his Roth IRA. The Depositor shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment, an acknowledgement by the Investment Advisor that it is a fiduciary of the account, and a certificate evidencing the Investment Advisor's current registration under the Investment Advisor's Act of 1940. The Custodian shall comply with any investment directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Depositor that the Investment Advisor's appointment has been terminated. The Custodian shall have no duty other than to follow the written investment directions of such Investment Advisor and shall be under no duty to question said instructions, and the Custodian shall not be liable for any investment losses sustained by the Depositor.
- 10.04 **No Investment Advice:** The Custodian does not assume any responsibility for rendering advice with respect to the investment and reinvestment of Depositor's account and shall not be liable for any loss which results from Depositor's exercise of control over his account. The Custodian and Depositor may specifically agree in writing that the Custodian shall render such advice, but the Depositor shall still have and exercise exclusive responsibility for control over the investment of the assets of his account, and the Custodian shall not have any duty to question his investment directives.
- 10.05 **Prohibited Transactions:** Notwithstanding anything contained herein to the contrary, the Custodian shall not lend any part of the corpus or income of the account to; pay any compensation for personal services rendered to the account to; make any part of its services available on a preferential basis to; acquire for the account any property, other than cash, from; or sell any property to, any Depositor, any member of a Depositor's family, or a corporation controlled by any Depositor through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of 50 percent or more of the total value of shares of all classes of stock of such corporation.
- 10.06 **Unrelated Business Income Tax:** If the Depositor directs investment of the account in any investment which results in unrelated business taxable income, it shall be the responsibility of the Depositor to so advise the Custodian and to provide the Custodian with all information necessary to prepare and file any required returns or reports for the account. As the Custodian may deem necessary, and at the Depositor's expense, the Custodian may request a taxpayer identification number for the account, file any returns, reports, and applications for extension, and pay any taxes or estimated taxes owed with respect to the account. The Custodian may retain suitable accountants, attorneys, or other agents to assist it in performing such responsibilities.
- 10.07 **Disclosures and Voting:** The Custodian shall deliver, or cause to be executed and delivered, to Depositor all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to assets credited to the account. The Custodian shall not vote any shares of stock or take any other action, pursuant to such documents, with respect to such assets except upon receipt by the Custodian of adequate written instructions from Depositor.
- 10.08 **Miscellaneous Expenses:** In addition to those expenses set out in Section 9.05 of this plan, the Depositor agrees to pay any and all expenses incurred by the Custodian in connection with the investment of the account, including expenses of preparation and filing any returns and reports with regard to unrelated business income, including taxes and estimated taxes, as well as any transfer taxes incurred in connection with the investment or reinvestment of the assets of the account.
- 10.09 **Nonbank Custodian Provision:** If the Custodian is a nonbank custodian, the Depositor shall substitute another trustee or custodian in place of the Custodian upon receipt of notice from the Commissioner of the Internal Revenue Service or his delegate that such substitution is required because the Custodian has failed to comply with the requirements of Income Tax Regulations Section 1.408-2(e), or is not keeping such records, making such returns, or rendering such statements as are required by applicable law, regulations, or other rulings. The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, Custodian shall transfer and pay over to such successor the assets of the account (less amounts retained pursuant to Section 9.04 of the Custodial Agreement) and all records (or copies thereof) of the Custodian pertaining thereto, provided that the successor trustee or custodian agrees not to dispose of any such records without the Custodian's consent

## General Instructions

(Section references are to the Internal Revenue Code unless otherwise noted.)

### Purpose of Form

Form 5305-RA is a model custodial account agreement that meets the requirements of section 408A and has been automatically approved by the IRS. A Roth Individual Retirement Account (Roth IRA) is established after the form is fully executed by both the individual (Depositor) and the Custodian. This account must be created in the United

States for the exclusive benefit of the Depositor or his or her beneficiaries. Do not file Form 5305-RA with the IRS. Instead, keep it for your records.

Unlike contributions to traditional individual retirement arrangements, contributions to a Roth IRA are not deductible from the Depositor's gross income; and distributions after 5 years that are made when the Depositor is 59½ years of age or older or on account of death, disability, or the purchase of a home by a first-time homebuyer (limited to \$10,000), are not includible in gross income. For more information on Roth IRAs, including the required disclosure the Depositor can get from the Custodian, get Pub. 590, Individual Retirement Arrangements (IRAs).

### Definitions:

**IRA Conversion Contributions.** IRA Conversion Contributions are amounts rolled over, transferred, or considered transferred from a nonRoth IRA to a Roth IRA. A nonRoth IRA is an individual retirement account or annuity described in section 408(a) or 408(b), other than a Roth IRA.

**Custodian.** The custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as custodian.

**Depositor.** The depositor is the person who establishes the custodial account.

### Specific Instructions:

**Article I.** - The Depositor may be subject to a 6 percent tax on excess contributions if (1) contributions to other individual retirement arrangements of the Depositor have been made for the same tax year, (2) the Depositor's adjusted gross income exceeds the applicable limits in Article II for the tax year, or (3) the Depositor's and spouse's compensation does not exceed the amount contributed for them for the tax year. The Depositor should see the disclosure statement or Pub. 590 for more information.

**Article V.** This article describes how distributions will be made from the Roth IRA after the Depositor's death. Elections made pursuant to this article should be reviewed periodically to ensure they correspond to the Depositor's intent. Under paragraph 3 of Article V, the Depositor's spouse is treated as the owner of the Roth IRA upon the death of the Depositor, rather than as the beneficiary. If the spouse is to be treated as the beneficiary, and not the owner, an overriding provision should be added to Article IX.

**Article IX.** - Article IX and any that follow it may incorporate additional provisions that are agreed to by the Depositor and Custodian to complete the agreement. They may include, for example, definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, beginning date of distributions, accepting only cash, treatment of excess contributions, prohibited transactions with the Depositor, etc. Use additional pages if necessary and attach them to this form.

## ROTH IRA DISCLOSURE STATEMENT RIGHT TO REVOKE YOUR ROTH IRA ACCOUNT

You may revoke your Roth IRA within 7 days after you sign the Roth IRA Adoption Agreement by hand-delivering or mailing a written notice to the name and address indicated on the Roth IRA Adoption Agreement. If you revoke your account by mailing a written notice, such notice must be postmarked by the 7th day after you sign the Adoption Agreement. If you revoke your Roth IRA within the 7 day period you will receive a refund of the entire amount of your contributions to the Roth IRA without any adjustment for earnings or any administrative expenses. If you exercise this revocation, we are still required to report the contribution on Form 5498 (except transfers) and the revoked distribution on Form 1099-R.

### GENERAL REQUIREMENTS OF A ROTH IRA

- Your contributions must be made in cash, unless you are making a qualified rollover contribution and the Custodian accepts non-cash rollover contributions.
- The annual contributions you make on your behalf to all of your Roth IRAs and traditional IRAs may not exceed the lesser of 100% of your compensation or \$2,000, unless you are making a rollover or transfer contribution from a traditional IRA or another Roth IRA.
- Your regular annual Roth IRA contributions for any taxable year may be deposited at any time during that taxable year and up to the due date for the filing of your federal income tax return for that taxable year, no extensions. This generally means April 15th of the following year.
- The Custodian of your Roth IRA must be a bank, savings and loan association, credit union or a person who is approved to act in such a capacity by the Secretary of the Treasury.
- No portion of your Roth IRA funds may be invested in life insurance contracts.
- Your interest in your Roth IRA is nonforfeitable at all times.
- The assets in your Roth IRA may not be commingled with other property except in a common trust fund or common investment fund.
- You may not invest the assets of your Roth IRA in collectibles (as described in Section 408(m) of the Internal Revenue Code.) A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, if the Custodian permits, specially-minted US gold, silver, and platinum coins and certain state-issued coins are permissible Roth IRA investments. Beginning on 1/1/98, you may also invest in certain gold, silver, platinum or palladium bullion, if the trustee or custodian permits. Such bullion must be in the physical possession of the Roth IRA trustee or custodian.

### WHO IS ELIGIBLE TO ESTABLISH A ROTH IRA?

You are permitted to make regular contributions to your Roth IRA for any taxable year if you receive compensation for such taxable year. Compensation includes salaries, wages, tips, commissions, bonuses, alimony, royalties from creative efforts and "earned income" in the case of self-employed. The amount which is permitted to be contributed Roth IRA Agreement (10/2001)

depends upon your modified adjusted gross income (Modified AGI); your marital status; and your tax filing status discussed below.

### CONTRIBUTIONS TO A ROTH IRA

**Regular Roth Contributions** - The maximum amount you may contribute for any year is the lesser of 100% of your compensation or \$2,000. Your actual contribution limit depends upon your marital status, tax filing status, and your Modified AGI.

All regular contributions to a Roth IRA are nondeductible. The maximum amount you may contribute to a Roth IRA is reduced by any contributions you make to all of your traditional IRAs for the same tax year. In other words, the total maximum combined annual contribution to a traditional IRA and a Roth IRA is \$2,000.

**Unmarried Taxpayer (or a Married Person filing a separate return who did not live with their spouse at any time during the year)** - If you are unmarried and your Modified AGI is \$95,000 or less, you may contribute up to the maximum amount of \$2,000 to your Roth IRA. If your Modified AGI is \$110,000 or more, no contribution is permitted. If your Modified AGI is over \$95,000 but less than \$110,000, then a calculation must be made to determine your Roth IRA contribution limit for the year. The calculation reduces your otherwise allowable contribution limit of \$2,000 by .13 for every \$1 of Modified AGI between \$95,000 and \$110,000.

**Married Person Filing Joint Tax Return** - If you file a joint tax return with your spouse and your combined Modified AGI is \$150,000 or less, you may contribute up to the maximum amount of \$2,000 to your Roth IRA. If your combined Modified AGI is \$160,000 or more, no contribution is permitted. If your Modified AGI is over \$150,000 but less than \$160,000, then a calculation similar to the one described above must be made. The calculation reduces each spouse's otherwise allowable Roth IRA contribution limit of \$2,000 by .20 for every \$1 of Modified AGI between \$150,000 and \$160,000.

**Married Persons Filing Separate Returns (who lived together at any time during the year)** - If you have a separate Modified AGI of more than \$10,000, no contribution is permitted to your Roth IRA. If your or your Spouse's separate Modified AGI is more than \$0 but less than \$10,000, then the Roth IRA contribution limit of \$2,000 is reduced by .20 for every \$1 of Modified AGI between \$0 and \$10,000.

**Spousal Roth IRAs** - If you and your spouse file a joint tax return and have unequal compensation (including no compensation for one spouse) you may establish separate Roth IRAs for each spouse. The total annual contribution limit for both Roth IRAs may not exceed the lesser of 100% of the combined compensation for both spouses or \$4,000, but neither Roth IRA may accept more than \$2,000 per spouse.

The maximum Roth IRA contribution of \$2,000 for the spouse is then reduced by:

- 1.) regular traditional IRA contributions made on behalf of such spouse; and
- 2.) Roth IRA contributions made on behalf of such spouse.

This \$2,000 limit may be further reduced if the modified AGI exceeds the levels discussed above.

**\$200 Minimum Roth IRA Contribution** - If you fall into any of the categories listed above, your minimum allowable Roth IRA contribution will be \$200 until phased out under the appropriate marital status.

In other words, if your Roth IRA contribution amount calculated under the appropriate dollar amounts discussed above results in a contribution between \$0 and \$200, your permitted contribution is \$200 instead of the calculated amount. If the result is not a multiple of \$10, round up to the nearest \$10.

**Modified AGI** - Modified AGI does not include any distributions from a traditional IRA that are rolled over to a Roth IRA and included in income. Modified AGI is determined before deductible traditional IRA contributions.

Effective for distributions after December 31, 2004, modified AGI does not include any amounts that are required minimum distributions pursuant to §408(a)(6) only for purposes of determining eligibility for conversion contributions.

**Other Contributions** - Your Roth IRA may not accept rollovers from an employer-sponsored plan, employer contributions made under a SEP or SIMPLE plan and traditional IRA contributions. However, certain rollovers and transfers as described below may be made.

**Miscellaneous Contribution Rules** - Contributions are permitted after you attain age 70½, so long as you have compensation discussed earlier.

Contributions are permitted regardless of whether you are an active participant in an employer-sponsored plan.

### EXCESS CONTRIBUTIONS TO A ROTH IRA

Generally, an excess Roth IRA contribution is any contribution which exceeds the contribution limits. Such excess amount is subject to a 6% excise tax on the principal remaining amount of the excess each year until the excess is corrected.

**Method of Withdrawing Excess in a Timely Manner** - This 6% excise tax may be avoided, if the excess amount plus the earnings attributable to the excess are distributed to you by your tax filing deadline including extensions for the year during which the excess contribution was made. If you decide to correct your excess in this manner, the principal amount of the excess returned to you is not taxable, however, the earnings attributable to the excess are taxable to you in the year in which the contribution was made. In addition, if you are under age 59½, the earnings attributable to the excess amount are subject to a 10% additional income tax. This is the only method of correcting an excess contribution that will avoid the 6% excise tax!

**Method of Withdrawing Excess After Tax Filing Due Date** - If you do not withdraw your excess contribution in the manner prescribed above by the due date for filing your tax return, then you may withdraw the principal amount of the excess (no earnings need be distributed). The 6% excise tax will, however, apply first to the year in which the excess was made and each subsequent year until it is withdrawn.

**Undercontribution Method** - Another method of correcting an excess contribution is to treat a prior year excess as a regular Roth IRA contribution in a subsequent year. Basically all you do is undercontribute in the first subsequent

year where you have an unused contribution limit until your excess amount is used up. However, once again, you will be subject to the 6% excise tax in the first year and each subsequent year that an excess remains.

### CONTRIBUTION RECHARACTERIZATIONS

You may be able to recharacterize a contribution to a Roth IRA under the following two different circumstances:

- 1.) By crossing over a current year regular contribution plus earnings explained in this section; or
- 2.) By unwinding a conversion made to a Roth IRA by transferring the amount plus earnings back to a traditional IRA discussed in the next section under the heading "Conversion from a Traditional IRA to a Roth IRA".

If you decide by your tax filing deadline (including extensions) to transfer a current year contribution plus earnings from your traditional IRA to a Roth IRA, no amount will be included in your gross income as long as you did not take a deduction for the amount of the contribution. You may also cross over a current year contribution plus earnings from your Roth IRA to a traditional IRA by your tax filing deadline including extensions.

Prior year excess contributions made to an IRA that are carried over to a subsequent year cannot be recharacterized as a current year contribution to another IRA. Only actual contributions made for a taxable year may be recharacterized.

Any recharacterized contribution (whether a regular contribution or a conversion contribution) cannot be revoked after the transfer.

You are required to notify both trustees (or custodians) and to provide them with certain information in order to properly effectuate such a recharacterization.

A traditional "conduit" IRA that is converted to a Roth IRA, but subsequently recharacterized back to a traditional IRA retains its status as a "conduit" IRA.

Amounts in a SEP IRA (or SIMPLE IRA) that are converted to a Roth IRA can be recharacterized back to a SEP IRA (or SIMPLE IRA), including the original SEP IRA (or SIMPLE IRA).

An election to recharacterize may be made on behalf of a deceased IRA owner by the executor, administrator, or other person charged with the duty of filing the decedent's final Federal income tax return.

A recharacterization is not a designated distribution; and therefore, is not subject to Federal income tax withholding.

### ROLLOVER ROTH IRAs

**Rollover Contribution from Another Roth IRA** - A rollover contribution from another Roth IRA is any amount you receive from one Roth IRA and within 60 days roll some or all of it over into another Roth IRA. You are not required to roll over the entire amount received from the first Roth IRA. However, any taxable amount (generally earnings) you do not roll over will be taxed at ordinary income tax rates for federal income tax purposes and may be subject to additional income taxes.

The following special rules also apply to rollovers between Roth IRAs:

- The rollover must be completed no later than the 60th day after the day the distribution was received by you from the first Roth IRA.
- You may have only one Roth IRA to Roth IRA rollover during a 12 consecutive month period measured from the date you received a distribution from a Roth IRA which was rolled over to another Roth IRA.
- The same property you receive in a distribution from the first Roth IRA must be the same property you roll over into the second Roth IRA. For example, if you receive a distribution from a Roth IRA of property, such as stocks, that same stock must be the property rolled over into the second Roth IRA.
- You are required to make an irrevocable election indicating that this transaction will be treated as a rollover contribution.
- You are not required to receive a complete distribution from your Roth IRA in order to make a rollover contribution into another Roth IRA, nor are you required to roll over the entire amount you received from the first Roth IRA into the second Roth IRA.
- If you inherit a Roth IRA due to the death of the participant, you may not roll this Roth IRA into your own Roth IRA unless you are the spouse of the deceased Roth IRA participant.

**Rollovers From Employer-Sponsored Plans Not Permitted** - You may not roll over from an employer-sponsored plan to a Roth IRA. However, you may roll over from an employer-sponsored plan to a traditional IRA and then "convert" the traditional IRA to a Roth IRA in a Rollover Conversion explained below.

For more information concerning rollovers from an employer-sponsored retirement plan to a traditional IRA, please refer to the traditional IRA's disclosure statement.

**Conversion from a Traditional IRA to a Roth IRA** - You are permitted to make a qualified rollover contribution from a Traditional IRA to a Roth IRA if your Modified AGI (not including the taxable amount rolled over) for the year during which the rollover is made does not exceed \$100,000 and you are not a married person filing a separate tax return. This is called a "conversion" and may be done at any time without waiting the usual 12 months.

You are also permitted to recharacterize, ("unwind") a conversion made to a Roth IRA if the amount plus earnings is transferred back to a traditional IRA before your tax filing deadline including extensions for the year the amount was distributed from the traditional IRA that was converted to the Roth IRA.

**Taxation in Completing a Rollover Conversion from a Traditional IRA to a Roth IRA** - If you complete a rollover conversion from a Traditional IRA to a Roth IRA, the conversion amount (to the extent taxable) is generally included

in your income for the year during which the distribution is made. However, the 10% additional income tax for premature distributions does not apply.

For taxable conversions made during 1998, you may include the taxable amount of the traditional IRA distribution in income "ratably" over a four-tax-year period beginning in 1998, or include the entire taxable amount of the traditional IRA distribution in income the year of the conversion.

Any taxable conversions from a Traditional IRA to a Roth IRA after 12/31/98 will be fully includible in income the year in which you receive the distribution.

Once an amount has been properly converted any subsequent conversion of that amount is called a "reconversion".

In general, you are entitled to one reconversion between November 1, 1998, and December 31, 1998, AND one reconversion between January 1, 1999 and December 31, 1999 in accordance with the rules described in IRS Notice 98-50. Effective January 1, 2000, an IRA owner who converts an amount from a traditional IRA to a Roth IRA during any taxable year and then recharacterizes that amount back to a traditional IRA may not reconvert that amount from the traditional IRA to a Roth IRA before the later of:

- a. the taxable year following the taxable year in which the amount was first converted to a Roth IRA; or
- b. the end of the 30-day period beginning on the day on which the IRA owner recharacterizes the amount from the Roth IRA back to a traditional IRA.

Any amount previously converted is adjusted for subsequent net income in determining the amount subject to the limitation on subsequent reconversions.

Since adverse tax consequences could arise, it is recommended that you seek the advice of your own tax advisor.

**Death of Taxpayer** - With respect to 1998 conversions, if the taxpayer dies before including the taxable amounts in income over a 4-year period, all remaining taxable amounts will be included in gross income on the return filed on behalf of the decedent for the taxable year of death. However, if the surviving spouse of such deceased Roth IRA participant is the sole beneficiary of the Roth IRA, the surviving spouse may elect to continue including the remaining amount in income over the 4-year period as if the surviving spouse were the distributee.

**Income Acceleration** - If a distribution is deemed from a 1998 conversion amount and the taxpayer is spreading the distribution over four years, a special rule applies. If such distribution occurs before all taxable conversion amounts have been included in income, such distribution is accelerated in income for that year in addition to that year's one-fourth amount until the original taxable conversion amount has been includible in income.

**Change in Status** - A change in filing status or a divorce does not affect the application of the 4-year spread for 1998 conversions. Thus, if a married Roth IRA participant who is using the 4-year spread and who was married in 1998 subsequently files separately or divorces before the full taxable conversion has been included in gross income, the remainder of the taxable conversion must be included in the owner's gross income over the remaining years in the 4-year period, unless accelerated due to a distribution or death.

**Substantially Equal Payments** - If a taxpayer converts a traditional IRA to a Roth IRA where the traditional IRA was subject to the substantially equal periodic payment exception, the same periodic payments must continue from the Roth IRA. However, for 1998 conversions where the taxpayer is using the 4-year spread rule, the payments from the Roth IRA will be subject to the income acceleration rule. Thus, in addition to the normal 1/4th amount, the substantially equal amount is also includible in the participant's gross income for each year until the full taxable conversion has been so included.

**Types of IRAs Permitted to be Converted** - Traditional regular IRAs, Rollover "conduit" IRAs, and SEP IRAs may be converted to a Roth IRA, so long as the taxpayer meets the eligibility requirements. A SIMPLE IRA may also be converted to a Roth IRA, but only after such SIMPLE IRA is no longer subject to the 2-year holding period applicable to SIMPLE IRAs.

**Required Minimum Distributions** - If the IRA owner is age 70 1/2 or older, the required minimum amount must first be distributed to the owner before any of the remaining amount can be converted to the Roth IRA.

#### DISTRIBUTIONS FROM A ROTH IRA

**Taxation of Distributions** - "Qualified" distributions are neither subject to income tax nor the 10% additional income tax for premature distributions. Nonqualified distributions are taxable to the extent such distribution is attributable to the income earned in the account.

When you start withdrawing from your Roth IRA, you may take the distributions in regular payments, random withdrawals or in a single sum payment.

**Qualified Distributions** - Qualified distribution is one made:

- 1.) on or after you attain age 59½;
- 2.) to a beneficiary after your death;
- 3.) on account of you becoming disabled (defined under Section 72(m)(7) IRC);
- 4.) for qualified first time homebuyer expenses.

AND

made after the end of the five year period beginning with the taxable year for which you first make any contribution to a Roth IRA.

If your first contribution is a conversion from a traditional IRA to a Roth IRA, the five year period begins with the year in which the distribution was made from the traditional IRA that was converted. If your first contribution is a regular contribution, the five year period begins with the year for which the contribution was made. You may maintain only one Roth IRA plan which accepts regular contributions and conversions. Additional contributions or conversions in subsequent years will not start the running of another five year period for purposes of determining whether or not you have received a "Qualified Distribution."

If the entire Roth IRA account balance is distributed before any other Roth IRA contributions are made, the 5-year aging period does not start over when future contributions are made.

However, if any of the following situations occur, the 5-year aging period has not yet started:

- a. the initial Roth IRA contribution is revoked within its first 7-day period;
- b. the initial Roth IRA contribution is recharacterized to a traditional IRA; or
- c. an excess contribution, plus earnings, is timely distributed in accordance with '408(d)(4), by the tax filing deadline including extensions, unless other eligible contributions were made.

**Nonqualified Distributions** - Distributions from a Roth IRA which are made as a nonqualified distribution are treated as made from contributions to the Roth IRA to the extent that such distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate amount of contributions to the Roth IRA.

In other words, nonqualified distributions are treated as taken from the nontaxable portion first (the contributions) until the aggregate distributions exceed the aggregate contributions. When the aggregate distributions exceed the aggregate contributions, then the earnings will be treated as part of the distribution for taxation purposes. The portion of the nonqualified distribution that represents earnings will be taxable and subject to the 10% additional income tax for premature distributions, unless an exception applies. You are responsible for keeping records on the contributions you make to your Roth IRA and for figuring any taxable, nonqualified distributions from your Roth IRA.

**Distributions Made Before the End of the 5 Year Period** - Distributions taken before the end of the 5 year period are taxable (to the extent you receive the earnings attributable) and are subject to the 10% additional income tax if the participant is not age 59½. However, the 10% additional income tax is avoided if the distribution meets one of the exceptions under Section 72(t).

**Recapture of the 10% Additional Tax** - The 10% additional tax on early distributions will apply to conversions if the taxpayer is deemed to withdraw any portion of the taxable conversion amount before the end of the five year period commencing the year of conversion contribution, unless an exception under Section 72(t) applies. This is true even if none of the distribution is otherwise taxable.

**Basis Recovery Rules for Distributions from Different IRA Plans** - The taxation of distributions from a Roth IRA shall be treated separately from the taxation of a distribution from other IRA plans. In other words, nondeductible contributions made to your traditional IRA will continue to be recovered tax-free on a ratable basis.

**Ordering Rules** - Distributions from any of your Roth IRAs are to be "deemed" withdrawn in the following order: first from regular Roth IRA contributions; second from converted amounts on a first-in, first-out basis (with the taxable conversion amount first and then the nontaxable conversion amount); and last from the earnings. In determining these ordering rules, any amount distributed from an individual's Roth IRA is determined as of the end of a taxable year and exhausting each category before moving to the following category. The taxpayer will be required to keep track of these ordering provisions by using IRS Form 8606.

**Multiple Beneficiaries** - At the Roth IRA owner's death and where multiple beneficiaries are named, each type of contribution must be allocated to each beneficiary on a pro-rata basis. Thus, for example, if a Roth IRA owner dies when the Roth IRA contains a regular contribution of \$2,000, a conversion contribution of \$6,000 and earnings of \$1,000, and the owner leaves his Roth IRA equally to four children, each child will receive one quarter of each type of contribution. Pursuant to the ordering rules, an immediate distribution of \$2,000 to one of the children will be deemed to consist of \$500 of regular contributions, and \$1,500 of conversion contributions.

For purposes of the ordering rules upon distribution, a beneficiary's inherited Roth IRAs may not be aggregated with any other Roth IRAs maintained by such beneficiary, except for other Roth IRAs that the beneficiary inherited from the same decedent. However, if the surviving spouse is the sole beneficiary of a Roth IRA and such surviving spouse elects to treat the Roth IRA as his or her own Roth IRA, the spouse can aggregate contributions with his or her other Roth IRAs for purposes of determining the ordering rules when distributions are taken.

**Premature Distributions** - If you are under age 59½ and receive a "nonqualified" distribution from your Roth IRA, a 10% additional income tax will apply to the taxable portion (generally the earnings portion) of the distribution unless the distribution is received due to death; disability; a qualifying rollover distribution; the timely withdrawal of the principal amount of an excess; substantially equal periodic payments; certain medical expenses; health insurance premiums paid by certain unemployed individuals; qualified higher education expenses; or qualified first time homebuyer expenses; or beginning in 2000, due to an IRS levy.

**Required Distributions** - Unlike a traditional IRA, you are not required to begin distributions when you attain age 70½. Also, the incidental death benefit requirements (referred to as MDIB) do not apply to the Roth IRA.

**Death Distributions** - If you die, the balance in your Roth IRA must generally be distributed no later than December 31st of the year containing the 5th anniversary of your death. However your beneficiary(ies) may elect to receive the balance in your account over the single life expectancy of your designated beneficiary if distributions begin no later

than the end of the year containing the one year anniversary of your death. However, if your spouse is your sole beneficiary, your spouse may elect to treat the Roth IRA as their own Roth IRA, unless the surviving spouse elects to be treated as a non-spouse beneficiary for purposes of the death distribution options. The surviving spouse death distribution options will also include the right to wait to receive distributions until the participant would have attained age 70½, if this date is later than the one year period.

The term "spouse as sole beneficiary" means either the only primary beneficiary of the entire plan, or the only primary beneficiary of a segregated portion of the plan determined as of the date of death.

#### **PROHIBITED TRANSACTIONS WITH A ROTH IRA**

If you or your beneficiary engage in a prohibited transaction (as defined under Section 4975 of the Internal Revenue Code) with your Roth IRA, it will lose its tax exemption and you must include the taxable portion of your account in your gross income for that taxable year and may also be subject to the 10% additional tax. If you pledge any portion of your Roth IRA as collateral for a loan, the amount so pledged will be treated as a distribution and the taxable portion will be included in your gross income for that year and may also be subject to the 10% additional tax.

#### **ADDITIONAL TAXES AND PENALTIES**

If you are under age 59½ and receive a nonqualified premature distribution from your Roth IRA, an additional 10% income tax will apply on the taxable amount of the distribution (generally the earnings portion only), unless an exception under Section 72(t) applies.

A 10% additional tax will be assessed if you are under age 59½ if you are deemed to withdraw any portion of a conversion that you made from your traditional IRA to your Roth IRA before five years have lapsed from the conversion year, even if such distribution is otherwise nontaxable.

If you make an excess contribution to your Roth IRA and it is not corrected on a timely basis, an excise tax of 6% is imposed on the excess amount. This tax will apply each year to any part or all of the excess which remains in your account.

If you should die, and the appropriate required death distributions are not made from your Roth IRA, an excise tax of 50% is assessed to your beneficiary based upon the difference between the amount that should have been distributed and the amount that was actually distributed.

You must file IRS Form 5329 with the Internal Revenue Service for any year an additional tax is due.

#### **INCOME TAX WITHHOLDING**

All withdrawals from your Roth IRA (except a direct transfer to another Roth) are subject to federal income tax withholding. You may, however, elect not to have withholding apply to your Roth IRA distribution in most cases. If withholding does apply to your distribution, it is at the rate of 10% of the amount of the distribution.

#### **TRANSFERS**

A direct transfer of all or a portion of your funds is permitted from this Roth IRA to another Roth IRA or visa versa. Transfers do not constitute a distribution since you are never in receipt of the funds. The monies are transferred directly to the new trustee or custodian. Transfers are neither subject to the 12-month restriction nor the 60 day rollover period usually associated with rollovers.

If you should transfer all or a portion of your Roth IRA to your former spouse's Roth IRA under a divorce decree (or under a written instrument incident to divorce) or separation instrument, you will not be deemed to have made a taxable distribution, but merely a transfer. The portion so transferred will be treated at the time of the transfer as the Roth IRA of your spouse or former spouse.

If your spouse is the beneficiary of your Roth IRA, in the event of your death, your spouse may "assume" your Roth IRA. The assumed Roth IRA is then treated as your surviving spouse's Roth IRA.

#### **FEDERAL ESTATE AND GIFT TAXES**

Generally there is no specific exclusion for Roth IRAs under the estate tax rules. Therefore, in the event of your death, the value of your Roth IRA will be includible in your gross estate for federal estate tax purposes. However, if your surviving spouse is the beneficiary of your Roth IRA, the value of your Roth IRA may qualify for the marital deduction available under Section 2056 of the Internal Revenue Code. A transfer of property for federal gift tax purposes does not include an amount which a beneficiary receives from a Roth IRA plan.

#### **IRS APPROVAL AS TO FORM**

This Roth IRA Custodial Agreement has been approved by the Internal Revenue Service as to form. This is not an endorsement of the plan in operation or of the investments offered.

#### **ADDITIONAL INFORMATION**

You may obtain further information on Roth and Traditional IRAs from your District Office of the Internal Revenue Service. In particular, you may wish to obtain IRS Publication 590 (Individual Retirement Arrangements).

#### **FINANCIAL DISCLOSURE**

**In General** - IRS regulations require the Custodian to provide you with a financial projected growth of your Roth IRA account based upon certain assumptions.

**Growth in the Value of Your Roth IRA** - Growth in the value of your Roth IRA is neither guaranteed nor projected. The value of your Roth IRA will be computed by totaling the fair market value of the assets credited to your account. At least once a year the Custodian will send you a written report stating the current value of your Roth IRA assets. The Custodian shall disclose separately a description of:

- a.) the type and amount of each charge;
- b.) the method of computing and allocating earnings, and
- c.) any portion of the contribution, if any, which may be used for the purchase of life insurance.

**Custodian Fees** - The Custodian may charge reasonable fees or compensation for its services and it may deduct all reasonable expenses incurred by it in the administration of your Roth IRA, including any legal, accounting, distribution, transfer, termination or other designated fees. Any charges made by the Custodian will be separately disclosed on an attachment hereto. Such fees may be charged to you or directly to your custodial account. In addition, depending on your choice of investment vehicles, you may incur brokerage commissions attributable to the purchase or sale of assets.

**Internal Revenue Service****Department of the Treasury  
Washington, DC 20224**

SWS Securities, Inc.  
Suite 4300, Renaissance Tower  
1201 Elm Street  
Dallas, TX 75270

**Person to Contact:**  
B. Gamerman  
**Telephone Number:**  
(202) 622-8400  
**Refer Reply to:**  
E:EP:R:7  
**Date:**  
December 9, 1992

EIN Number: 75-1382137

Ladies and Gentlemen:

In a letter dated July 9, 1992, and subsequent letters, you requested a written notice of approval that SWS Securities, Inc., may serve as a custodian of plans qualified under section 401 of the Internal Revenue Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for individual retirement arrangements (IRAs) established under section 408.

Section 401(f) 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 and the custodian is a bank (as defined in section 408(n)) or other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will hold the assets will be consistent with the requirements of section 401. Section 401(f) also provides that in the case of a custodial account treated as a qualified trust by reason of the preceding sentence, 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). This 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 that 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, separates from service, 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(a)(2) of the Code requires that a trustee of an IRA be a bank (as defined in section 408(n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of section 408.

Section 408(h) of the Code provides that a custodial account shall be treated as a trust under this section if the assets of such account are held by a bank (as defined in subsection (n)) or such other 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.

The Income Tax Regulations at section 1.401-12(n) provide the criteria for determining the ability of such other person, for purposes of sections 401(f), 403(b)(7), 408(a)(2), and 408(h) of the Code, to act as a trustee or custodian. Section 1.401-12 (n) of the regulations provides 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 SWS Securities, Inc., meets the requirements of section 1.401-12(n) of the regulations and, therefore, is approved to serve as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408.

This letter authorizes SWS Securities, Inc., to serve only as a nonbank trustee or custodian in a fashion similar to a passive nonbank trustee, within the meaning of section 1.401-12(n)(7) of the regulations, that is, it is authorized only to acquire and hold particular investments specified by the owner, it may not serve as trustee or custodian if under the written agreement it has discretion to direct investments of the trust or custodial funds.

This letter while authorizing SWS Securities, Inc., to act as a passive trustee or custodian does not authorize it to pool accounts in a common investment fund (other than a mutual fund) within the meaning of section 1.401-

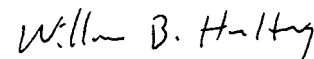
12(n)(6)(viii)(C) of the regulations. SWS Securities, Inc., may not act as a passive trustee or custodian unless it undertakes to act only under trust instruments or custodial agreements that contain a provision to the effect that the owner is to substitute another trustee or custodian upon notification by the Commissioner that such substitution is required because the applicant has failed to comply with the requirements of section 1.401-12(n) of the regulations or is not keeping such records, or making such returns or rendering such statements as are required by forms or regulations.

SWS Securities, Inc., is required to notify the Commissioner of Internal Revenue, Attn: E:EP:R, 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 its application to act as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408, is contingent upon the continued satisfaction of the criteria set forth in section 1.401-12(n) 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 a merger, consolidation or other type of reorganization may no longer rely on the approval letter issued to such entity prior to the merger, consolidation or other type of reorganization. Such entity will have to apply for a new determination letter in accordance with section 1.401-12 (n) of the regulations.

This letter constitutes a determination that SWS Securities, Inc., may act as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408, and does not bear upon its capacity to act as a trustee or custodian under any other applicable law.

Sincerely yours,



William B. Hulteng  
Chief, Employee Plans  
Rulings Branch

Retirement Plans are offered through:  
**SWS Securities, Inc.**  
Member NASD, NYSE, SIPC  
1201 Elm Street  
Suite 3500  
Dallas, TX 75270