

First Clearing, LLC

**Self-Directed SIMPLE
Individual Retirement Account
Disclosure Statement &
SIMPLE IRA
Account Custodial Agreement**

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FIRST CLEARING, LLC SELF-DIRECTED SIMPLE IRA

Section I: Disclosure Statement

A. Introduction.

This Disclosure Statement explains what you should know about your savings incentive match plan for employees of small employers individual retirement account ("SIMPLE IRA") and is a general review of the federal income tax law applicable to it. SIMPLE IRAs are intended to help individuals in preparing for their retirement. Therefore, SIMPLE IRAs may not be used like normal investments and are subject to many restrictions imposed by the Internal Revenue Code.

For the 1997 tax year, Congress introduced the savings incentive match plan for employees ("SIMPLE IRA plans") funded through an employee's SIMPLE IRA to encourage small employers to provide retirement benefits for their employees. Together a SIMPLE IRA plan and SIMPLE IRA form a tax-qualified savings plan that lets you and your employer set aside money for your retirement. Contributions made by your employer on your behalf under the SIMPLE IRA plan to your SIMPLE IRA and the earnings from your SIMPLE IRA are not taxed until they are distributed to you. (Certain investments, however, may generate "unrelated business income" that may be taxable in the year earned.)

First Clearing, LLC ("FCC") is the custodian of your SIMPLE IRA. The custodian of a SIMPLE IRA must be a bank or an entity meeting standards established by the Secretary of the Treasury. FCC has been approved by the Internal Revenue Service ("IRS") to act as the custodian of your First Clearing, LLC Self-Directed SIMPLE IRA ("FCC SIMPLE IRA" or "SIMPLE IRA").

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 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. The representatives of FCC, 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 Cash Agreement and Enrollment Form and return it either personally or by mail to your Financial Advisor. If you need help in completing the form or have any questions, please call your Financial Advisor. You must sign and complete the IRA Cash Agreement and Enrollment Form in order to establish a SIMPLE IRA with FCC.

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 (7th) day after you receive this agreement. 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 7-day period. If an important change is made to the Disclosure Statement or your SIMPLE IRA during the 7-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.

First Clearing, LLC
Attn: IRA Department WS1095
Post Office Box 3809
Glen Allen, VA 23058-3809

If you send your notice by first class mail, your revocation will be deemed mailed as of the date of the postmark.

Until the 7-day period for revoking your SIMPLE IRA has lapsed, contributions may be accepted, but investment instructions for your SIMPLE IRA may be restricted.

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 document 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 document and the new laws, we will administer your SIMPLE IRA in accordance with the new laws and amend the SIMPLE IRA document when revised IRS forms are published.

You may obtain further information on SIMPLE IRAs and SIMPLE IRA plans from your District Office of the IRS. In particular, you may wish to obtain IRS Publication 590 *Individual Retirement Arrangements (IRAs)* for more information on SIMPLE IRAs and IRS Publication 560 *Retirement Plans for Small Business (SEP, SIMPLE and Keogh Plans)* for information on SIMPLE IRA plans.

A5. Is my FCC SIMPLE IRA insured by the FDIC?

SIMPLE IRA investments in stocks, bonds and mutual funds, including any money market mutual fund, are not bank deposits, and they are not insured by the FDIC. However, FCC is a member of the Securities Investor Protection Corporation ("SIPC"). SIPC currently protects the securities and cash in an FCC account up to \$500,000, of which up to \$100,000 can be cash. FCC has obtained additional protection, at no cost to you, for the remaining net equity balance, if any, of the cash and securities in your account. SIPC does not protect your accounts against declines in value, such as those resulting from market fluctuation.

Cash sweeps deposited into the Bank Deposit Sweep Option qualify for FDIC insurance up to \$100,000 for the principal and interest you have on deposit. However, the deposits held in a SIMPLE IRA will be aggregated with your other deposits at Wachovia Bank, N.A. held by certain employee benefit plans in which you have an interest. Thus, the owner of a SIMPLE IRA will only be entitled to insurance of up to \$100,000 for deposits at Wachovia Bank, N.A. for all accounts held in retirement plans. Under FDIC regulations, an individual's interest in the deposits held by (i) IRAs, (ii) deferred compensation plans for certain employees of state or local governments or tax-exempt organizations (i.e., Section 457 Plans), (iii) self-directed or "Keogh Plans" of owner-employees described in section 401(d) of the Internal Revenue Code of 1986, as amended, and (iv) self-directed defined contribution plans will be insured for up to \$100,000 in the aggregate whether or not maintained by the same employer or employee organization.

B. Contributions to your SIMPLE IRA.

B1. What is a SIMPLE IRA contribution?

There are two types of SIMPLE IRA contributions.

"Regular contributions" are cash deposits of pre-tax deferrals and employer contributions made to your SIMPLE IRA on your behalf by your employer under your employer's SIMPLE IRA plan. 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. A rollover contribution is subject to special rules as discussed in *Section D: Rollover Contributions*.

C. Regular Contributions.

C1. May I contribute to my SIMPLE IRA?

No. Only your employer can make contributions to your SIMPLE IRA on your behalf under your employer's SIMPLE IRA plan. In addition, you may not make any traditional IRA, SEP IRA, Roth IRA or Education Savings Account contributions to your SIMPLE IRA.

C2. 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. Your pre-tax salary reduction contributions are limited to the amount determined from the chart below. In addition, your employer will either contribute 2% of your compensation or match your pre-tax contributions dollar for dollar from 1% to 3% of your compensation. SIMPLE IRA contributions are excluded from your income rather than deducted by you on your tax return. For purposes of the 2% limit on SIMPLE IRA employer contributions described above, your "compensation" is limited to \$200,000 in 2002. This compensation limit will be adjusted periodically by the IRS for inflation.

CONTRIBUTION LIMITS			
Year	Maximum Pre-tax Salary Reduction Contribution (Under Age 50)	Maximum Catch Up (Age 50 or Older)	Total Maximum (Age 50 or Older)
2002	\$7,000	\$500	\$7,500
2003	\$8,000	\$1,000	\$9,000
2004	\$9,000	\$1,500	\$10,500
2005	\$10,000	\$2,000	\$12,000
2006	\$10,000	\$2,500	\$12,500
2007	\$10,000	\$2,500	\$12,500
2008	\$10,000	\$2,500	\$12,500
2009	\$10,000	\$2,500	\$12,500
2010	\$10,000	\$2,500	\$12,500

The above figures do not take into account potential cost of living adjustment in increments of \$500 beginning in 2006 for the maximum regular contribution and beginning in 2007 for the maximum catch up contribution.

C3. Am I eligible for a tax credit for pre-tax contributions made on my behalf under my employer's SIMPLE IRA plan?

If your adjusted gross income is below certain levels, you may be eligible for a nonrefundable income tax credit for contributions to IRAs and tax-qualified plans. For more details, please refer to IRS Publication 590 (Individual Retirement Arrangements IRAs).

D. Rollover Contributions.

D1. What is a rollover contribution?

A rollover contribution is a deposit to your SIMPLE IRA of funds you receive as a qualified distribution from another SIMPLE IRA. To be a qualified distribution, amounts rolled over from one SIMPLE IRA to another SIMPLE IRA must not have been rolled over in the previous twelve months. 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.

D2. Must I roll over the entire amount of a distribution?

No. You may keep some of the funds and "roll" the remaining amount into your SIMPLE IRA. The amount rolled into a SIMPLE IRA will not be taxed until withdrawn and will continue earning income on a tax-deferred basis. The amount not rolled over will be taxed under the regular rules for taxing distributions from SIMPLE IRAs. Again, we suggest that you seek professional tax advice before you receive your distribution.

D3. May I roll over distributions from an employer's tax-qualified plan or another type of IRA into my SIMPLE IRA?

No. You may not roll over to your SIMPLE IRA, amounts distributed from an employer's tax-qualified plan or a Traditional IRA, SEP IRA, Roth IRA or Education Savings Account.

D4. Is there a deadline for making a rollover contribution?

Yes, you must complete a rollover contribution within 60 days after you receive a qualified 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 penalties as explained in Question E2. The IRS may waive the 60-day limitation in some very limited situations, such as in the case of a disaster. You should contact your tax advisor if you believe that you qualify for a waiver.

D5. May I make a rollover from my SIMPLE IRA to another type of IRA or to my employer's tax-qualified plan?

You may make a rollover from your SIMPLE IRA if you have participated in the SIMPLE IRA for at least two years and have not rolled over those amounts in the previous twelve months. The two-year requirement does not apply, if you are otherwise not subject to the 25% early withdrawal penalty described in Question E2. If you may make a rollover from your SIMPLE IRA, you may roll it into a Traditional IRA and you may roll it into your employer's tax-qualified 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. The rules regarding the taxable amount of a distribution from a SIMPLE IRA that is rolled over to a workplace retirement plan are different from the rules described in Question E3. In general, the amount rolled over is treated as first coming from employer contributions and earnings and then from nondeductible contributions. You may not make a rollover from your SIMPLE IRA into a Roth IRA or Education Savings Account at any time. You should seek professional tax advice if you plan on making a rollover contribution from your SIMPLE IRA to a Traditional IRA.

D6. 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.

D7. 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 D5, 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 withdrawal penalty described in Question E2.

E. Withdrawals from your SIMPLE IRA.

E1. 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 tax penalties on the amounts withdrawn as explained in E2.

E2. What is the early withdrawal penalty?

If you make a withdrawal from your SIMPLE IRA before age 59½ and do not roll over the amount withdrawn, you will have to pay a federal early withdrawal tax penalty on the taxable amount withdrawn, unless you qualify for one of the exceptions to the penalty tax. The early withdrawal penalty 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 penalty tax is reduced to 10% for taxable amounts withdrawn after the two-year period. Exceptions to the early withdrawal penalty tax include:

- (a) Distributions on account of your permanent disability;
- (b) Distributions made to your designated beneficiary after your death;
- (c) Distributions made as a series of substantially equal periodic payments (not less frequently than annually) made for your life or life expectancy, or for the joint lives or life expectancies of you and your beneficiary;
- (d) Distributions for medical expenses to the extent that the distributions do not exceed your unreimbursed, deductible medical expenses in excess of 7.5% of your adjusted gross income;
- (e) Distributions used to pay health insurance premiums while you are unemployed. This exception only applies if you receive unemployment compensation for 12 consecutive weeks under federal or state law, and the distributions are made during the tax year in which the unemployment compensation is paid or during the next tax year. This exception does not apply to distributions made after your reemployment, if you have been employed for at least 60 days after your initial separation from service;

- (f) Distributions used to pay qualified higher education expenses. Qualified higher education expenses are post-secondary education expenses (tuition, fees, books, supplies & equipment) furnished to you, your spouse, or your or your spouse's child or grandchild. The amount of qualified higher education expenses is reduced for certain scholarships;
- (g) Distributions used within 120 days by a "first time home buyer" to pay certain costs of acquiring a principal residence. Permissible acquisition costs include the costs of acquiring, constructing, or reconstructing a residence, including reasonable settlement, financing, or other closing costs. A "first time home buyer" can be you or your spouse, or a child, grandchild or ancestor of you or your spouse. The first time home buyer cannot have owned a home for two years prior to receiving the distribution and there is a lifetime dollar limitation of \$10,000; and
- (h) Distributions made after 1999 on account of a federal tax levy on your SIMPLE IRA.

The early withdrawal penalty tax is in addition to the income taxes which are payable on the amount withdrawn. Please consult your tax advisor to determine if these exceptions apply to your particular situation.

E3. How are withdrawals taxed?

Generally, any withdrawal from your SIMPLE IRA will be includible in your gross income as ordinary income for federal income tax purposes for the tax year in which you receive it. You may avoid taxation if the withdrawal is a qualified distribution and you roll over the withdrawal by following the rules described in *Section D* above. Please note that the special tax rules relating to lump sum distributions from tax-qualified employer plans do not apply to SIMPLE IRAs.

If you have ever made nondeductible contributions to a Traditional IRA, each distribution from your SIMPLE IRA may consist of a nontaxable portion (return of nondeductible contributions) and a taxable portion (payment of employer contributions made under your employer's SIMPLE IRA plan and account earnings). You should consult with a professional tax advisor prior to making withdrawals from your SIMPLE IRA and when determining the tax consequences of any withdrawal, especially if you have ever made nondeductible contributions to a Traditional IRA.

E4. 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.

E5. What are the methods of withdrawal from my SIMPLE IRA?

You may withdraw the balance of your FCC SIMPLE IRA by choosing (a) or (b) below. All withdrawals must be paid either by check or by automatic deposit to a designated deposit account.

- (a) A single withdrawal of the balance; or
- (b) Withdrawing the balance in substantially equal periodic payments to you over a period of time generally defined by the Uniform Life Expectancy table published by the IRS. If you name your spouse as the sole beneficiary of your SIMPLE IRA and your spouse is at least ten years younger than you are, the required distributions may be based on the IRS's Joint Life and Last Survivor Expectancy table. After withdrawals have begun, you may withdraw the remaining balance at any time.

Life expectancies are determined for purposes of withdrawals by standard tables published by the IRS.

Please note that the special tax rules relating to lump sum distributions from tax-qualified employer plans do not apply to SIMPLE IRAs.

E6. When must I start making withdrawals?

You may incur a federal tax penalty if you do not start making withdrawals on or before April 1st of the year following the year in which you become age 70½. 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 FCC SIMPLE IRA from another SIMPLE IRA. If you make this election you must notify FCC. The federal tax penalty is 50% of the difference between the amount you are required to withdraw and the amount you actually withdrew in that year. If you have good reason for failing to make a minimum withdrawal, explain your reason to the IRS and they may waive the penalty.

If you do not begin taking the required withdrawals from your FCC SIMPLE IRA (or notify FCC that you have elected to make the required withdrawals from another SIMPLE IRA), FCC may (but is not required to) distribute the required minimum withdrawals to you based on the Uniform Life Expectancy table published by the IRS.

E7. What is the minimum amount I must withdraw after age 70½?

Generally, after age 70½, the minimum amount you must withdraw from your SIMPLE IRA each year to avoid the 50% federal tax penalty 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 and your spouse is more than ten years younger than you, you may use the appropriate factor 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 will explain the rules for determining the minimum amounts you must withdraw.

Prior to January 1, 2001, the rules governing required distributions were very complex. The rules for determining the amounts that must be withdrawn after age 70½ have been simplified yet the penalties for underwithdrawal remain severe. You should seek professional tax advice to determine the amounts you have to withdraw. It is the responsibility of the IRA account owner to ensure that adequate and timely withdrawals are made.

E8. Are there any other distribution penalties that I should be aware of?

No. However, prior to January 1, 1997, taxable distributions were subject to an additional tax of 15% of any amount received and included in income during a calendar year from tax-qualified employer retirement plans, tax sheltered annuities, and IRAs, which exceeded \$112,500 (or the excess distribution limit then in effect).

E9. 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 your Financial Advisor. Each beneficiary designation you file with us will cancel all previous designations. If a designated beneficiary (including any contingent beneficiary) does not survive you or if there is no record of a designated beneficiary, your account balance will be paid to your spouse. If your spouse does not survive you, your account will be paid to the personal representative of 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.

If you die after you are required to begin distributions from your IRA, the distribution for the year of your death may be paid to your beneficiary under the method of payment in effect at the time of your death. In the year following your death, your beneficiary may then receive payments based on their life expectancy. If you named a non-qualifying beneficiary (such as an estate or a non-qualifying trust), payments will be based on your life expectancy determined in the year of your death and reduced by one each subsequent year. Your beneficiary may always accelerate payments.

If you die before you are required to begin distributions from your IRA, your account balance must be paid to your beneficiary over a period not extending beyond his/her life expectancy. These withdrawals must begin in the year following your death. If your spouse is your sole beneficiary, he or she may defer making withdrawals until the date you would have become age 70½, roll funds over into his or her own IRA or elect to treat the account as his or her own. If you named a non-qualifying beneficiary (such as an estate or non-qualifying trust), the balance of your SIMPLE IRA must be distributed by December 31 of the fifth full year after your death. In all cases, withdrawals will be subject to the minimum amount rules published by the IRS. Withdrawals of less than required minimums may

result in federal tax penalties. If your beneficiary does not begin withdrawals within the required period and after FCC receives notice of your death, FCC may, but is not required to, distribute the assets of your FCC SIMPLE IRA to your beneficiary in a single sum.

Your beneficiaries may further designate beneficiaries of their portion of your SIMPLE IRA after your death (subject to any restriction under state law), by contacting your Financial Advisor who will provide the necessary forms. For instance, if you designated your children Sue and Tom as equal beneficiaries, they each could designate subsequent beneficiaries upon inheriting their portion of your SIMPLE IRA. Sue could designate beneficiaries to receive payments after her death and Tom could designate his estate to receive payments after his death. Any subsequent beneficiary who inherits your SIMPLE IRA must continue to receive payments under the same schedule established by the original beneficiary. However, a subsequent beneficiary may choose to receive payments greater than the minimum payment amount.

If you are the beneficiary or subsequent beneficiary of a SIMPLE IRA, you should seek professional tax advice prior to making withdrawals.

E10. Would my beneficiary have to pay income tax on my SIMPLE IRA?

Yes. Payments from your SIMPLE IRA will be taxable to your beneficiary as income received. However, most beneficiaries will have the ability to take distributions over a number of years to lessen the impact of taxation. By seeking professional tax advice regarding how to choose and designate your primary and contingent beneficiaries, you can give them the flexibility to take the entire amount in one distribution or spread the distributions out in order to lower the amount of taxable income recognized each year.

Special rules also allow your spouse to either roll your SIMPLE IRA into his or her own Traditional IRA and defer taking distributions until his or her required beginning date, or to continue to treat the SIMPLE IRA as yours and defer the starting date for taking distributions until the date on which you would have been required to start taking minimum distributions.

E11. How about estate and gift taxes?

Your entire account balance would be subject to federal estate tax. If your spouse is your beneficiary, the amount of your account balance may be a deduction for federal estate tax purposes. Your entire account balance may also be subject to any applicable state death taxes.

A transfer by you to your beneficiary of the right to receive distributions from your SIMPLE IRA may be subject to federal gift tax. If a federal estate tax is paid by your estate upon your death, then the beneficiary of your SIMPLE IRA may be entitled to an income tax deduction for part of the estate tax paid. A qualified tax professional can help your beneficiary determine the amount of this deduction.

F. Conversions of a SIMPLE IRA to a Roth IRA.

F1. May I convert all or part of my SIMPLE IRA to a Roth IRA?

Yes. If you have participated in your employer's SIMPLE IRA plan for at least two years, your adjusted gross income (for both single and joint filers) for the tax year is \$100,000 or less and you are not a married individual filing a separate return, you may convert all or part of your SIMPLE IRA account balance to a Roth IRA. The \$100,000 limit and the joint filing requirement for married persons apply to the year that the funds are paid from the SIMPLE IRA, rather than the year they are contributed to the Roth IRA (if different). In addition, the \$100,000 limit does not include any taxable income resulting from the conversion.

Any SIMPLE IRA amount converted to a Roth IRA must also satisfy the SIMPLE IRA rollover requirements discussed in *Section D: Rollover Contributions*, except that the one-rollover-per-year limitation does not apply. Once an amount is converted to a Roth IRA, it is treated as a Roth IRA for all purposes. Future contributions under your employer's SIMPLE IRA plan may not be made to the Roth IRA.

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.

F2. 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 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.

F3. Will I be taxed on the conversion?

Yes. The amount converted from your SIMPLE IRA will be included in your gross income. 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.

F4. When will I be taxed on the conversion?

Conversions will be taxed in the year of distribution from the SIMPLE IRA.

F5. What if I convert all or part of my SIMPLE IRA to a Roth IRA and later discover that I have adjusted gross income of more than \$100,000? Can I "undo" the conversion? What happens if I do not "undo" the conversion?

If certain requirements are met, you may recharacterize a "failed" conversion and "undo" the conversion. Recharacterizations are explained in more detail in *Section G: Recharacterization of IRA Contributions*.

If you do not recharacterize a failed conversion, the conversion amount will be treated as a regular contribution to the Roth IRA and will be treated as an excess contribution subject to the 6% excise tax to the extent that it exceeds your Roth IRA contribution limit. In addition, if you do not recharacterize a failed conversion, distributions (or the amount converted) from the SIMPLE IRA will be subject to the additional 10% federal tax on early distributions (unless an exception applies).

F6. If I convert my SIMPLE IRA to a Roth IRA and later "undo" the conversion by recharacterizing it, may I later reconvert the recharacterized contribution back to a Roth IRA?

You should seek professional tax advice before reconverting any conversion contributions that have been recharacterized.

You cannot convert an amount during the same taxable year, or if later, during the 30-day period following a recharacterization. If you reconvert during either of these periods, your attempted conversion will fail.

If you reconvert amounts in violation of the rules, the "failed" reconversion and the last preceding recharacterization will not be taken into account for purposes of determining your taxable conversion amount and your taxable conversion amount for the year will be based on your last permitted reconversion (unless, after the impermissible reconversion, the amount is transferred back to a Traditional IRA by means of a recharacterization). An impermissible reconversion will otherwise be treated as a valid reconversion.

F7. If I am age 70½ or older, may I convert an amount from my SIMPLE IRA to a Roth IRA? May the conversion occur before I receive my required minimum distribution for the year of the conversion?

If you are age 70½ or older, you may still convert all or part of your SIMPLE IRA to a Roth IRA, provided you otherwise satisfy the two year holding requirement. Because conversion amounts must satisfy the rollover rules (even if the conversion is in the form of a trustee-to-trustee transfer), you may not, however, convert amounts required to be distributed to satisfy the required minimum distribution rules. Since the first dollars distributed from an IRA are treated as consisting of the required minimum distribution for the year, you may not convert any amount in your SIMPLE IRA to a Roth IRA until the required minimum distribution for the SIMPLE IRA has been distributed for the year. This prohibition applies beginning with the year in which you reach age 70½ and all later years. See *Section E: Withdrawals from your SIMPLE IRA* for more information about required minimum distributions.

However, if a required minimum distribution is contributed to a Roth IRA, it is treated as having been distributed and taxed under the normal SIMPLE IRA rules, and then contributed as a regular contribution to a Roth IRA. The amount of the required minimum distribution is not a conversion contribution.

G. Recharacterization of IRA Contributions.

G1. 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.

You may recharacterize amounts converted from your SIMPLE IRA to your Roth IRA for a tax year by transferring (in a trustee-to-trustee transfer) the conversion contribution (or a portion of the conversion contribution) and the related earnings back to a SIMPLE IRA. The recharacterization must be completed before the due date for filing your federal income tax return (including extensions) for the tax year for which the conversion contribution was made. Beginning in tax year 2001, if you filed your taxes in a timely manner you may also recharacterize contributions up to six months after the due date of your tax return, excluding extensions. (You will need to file an amended return if you take advantage of this provision.) The conversion contribution will be treated as having been made to the SIMPLE IRA on the same date and for the same taxable year as the contribution was originally made to the Roth IRA for federal tax purposes. Once a recharacterization is made it may not be revoked. Because of the strict rules that apply to recharacterizations, you should seek competent tax advice before recharacterizing your IRA contributions.

G2. May I recharacterize an amount contributed to my SIMPLE IRA in a tax-free transfer or tax-free rollover?

No. Amounts contributed to a SIMPLE IRA in a tax-free transfer (including a tax-free rollover) may not be recharacterized as contributions to another type of IRA. However, if you roll over or transfer an amount from a Traditional IRA to a SIMPLE IRA by mistake, the contribution may be subsequently recharacterized as a contribution to another Traditional IRA.

G3. 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 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.

G4. If I initially make a conversion contribution from my SIMPLE IRA to a Roth IRA for a tax year, then I move the contribution (with related earnings) in a tax-free transfer to another Roth IRA, can the tax-free transfer be disregarded, so that the original contribution that was transferred may be recharacterized?

Yes. If a conversion contribution is made from a SIMPLE IRA to a Roth IRA for a taxable year and then is moved (with related earnings) in a tax-free transfer to another Roth IRA, the tax-free transfer is disregarded and the initial contribution to the first Roth IRA may be recharacterized, if done in a timely manner.

G5. 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.

H. Excess Contributions and Prohibited Transactions.

H1. 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% federal tax penalty on an excess contribution for each year that it remains in your SIMPLE IRA.

H2. How may I avoid the 6% penalty?

If you withdraw the excess contribution for a year and any earnings on it before the filing date of your income tax return for that year, including extensions, you will not have to pay the 6% tax penalty. Beginning in tax year 2001, if you filed your taxes in a timely manner, you may also remove excess contributions without penalty up to six months after the due date of your tax return, excluding extensions. (You will need to file an amended return if you take advantage of this provision.) The earnings on an excess contribution are calculated by using a formula provided by tax law. If you do not withdraw the excess contribution by that date, you will be charged the 6% penalty tax for that year and may incur additional adverse tax consequences. Withdrawals of the excess contributions may be subject to the early withdrawal tax penalty. For more information about excess contributions, including taxation, penalties and alternative correction methods, consult your tax advisor.

H3. What is a prohibited transaction?

A prohibited transaction is a transaction that causes the loss of the tax-exempt status of your SIMPLE IRA. Prohibited transactions include such actions as you selling property to your SIMPLE IRA or buying property from it. To learn more about prohibited transactions, refer to IRS Publication 590.

H4. What happens if I engage in a prohibited transaction?

Your SIMPLE IRA will lose its tax-exempt status and you will have to include the entire balance in your taxable income for that year. Furthermore, you will be subject to the federal early withdrawal tax penalty on the entire balance unless you are over age 59½ or meet one of the other exceptions to the tax penalty.

H5. May I use my SIMPLE IRA as security for a loan?

You should not. If you use all or part of your SIMPLE IRA as security for a loan, the amount used would be considered a withdrawal made by you in that year. You would have to include that amount in your taxable income for that year. You will be subject to the federal early withdrawal tax penalty on that amount unless you are over age 59½ or meet one of the other exceptions to the tax penalty.

I. Investments.

I1. 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 FCC and by naming a person or entity acceptable to FCC.

The assets in your SIMPLE IRA generally are not limited to any particular type of investment, and therefore it is impossible to determine what your investment return will be or what your SIMPLE IRA assets will look like in future years. You (or your duly authorized representative) are making all investment decisions, and thus FCC will have no investment responsibility (and neither FCC nor any of its employees will accept such responsibility) other than to make investments pursuant to your (or your duly authorized representative's) direction. FCC has no duty to and will not question such direction. In addition, FCC is indemnified and held harmless for any liability which may arise in FCC's performance of its duties under the Custodial Agreement, except for any liability arising from FCC's gross negligence or willful misconduct as broker or custodian.

I2. What assets may not be held in my SIMPLE IRA?

FCC, 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 FCC's approved list of investments). You also may not invest the assets of your SIMPLE IRA in uncovered options, municipal bonds, mortgages, leaseholds, real estate or solicited partnership interests (other than those on FCC's approved list of such interests applicable to such accounts, as revised from time to time, and in compliance with such other rules that FCC may impose from time to time). In addition, FCC will not invest the proceeds of your account through any non-FCC dividend reinvestment program or in any reinvestment program or in any investment that FCC determines is unacceptable to it due to administrative or operational considerations.

FCC has no responsibility for monitoring your SIMPLE IRA investments. Thus, if you purchase a non-qualifying investment for your SIMPLE IRA, neither FCC 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 IRA will be affected. See *Section H: Excess Contributions and Prohibited Transactions* for more information.

I3. Is my idle cash invested?

Yes. By establishing this SIMPLE IRA, you also enroll in our automatic cash investment service ("ACIS"), which is a service for investment and reinvestment of your IRA's idle cash in the Bank Deposit Sweep Option or a Money Market Mutual Fund ("Sweep Option") you select from the options available.

ACIS provides two important features to your account. First, additional assets credited to your account (interest, dividends, and other deposits) are automatically invested in the Sweep Option selected by you. The currently offered Sweep Options and their function are described in the IRA Cash Agreement and Enrollment Form.

Second, each time you direct that other securities be purchased from assets in your SIMPLE IRA, ACIS causes an automatic liquidation of assets in the Sweep Option account in an amount equal to the total amount due for the securities purchased. This can occur on any day upon settlement for the securities purchased.

Your initial deposit will be invested in the Sweep Option selected by you. FCC reserves the right to require that your initial deposit remain in such Sweep Option account for a minimum of 7 days. If you fail to select one of the Sweep Options, your initial deposit will be invested in a Sweep Option selected by FCC at its sole discretion.

I4. Can I have a margin account?

No. FCC does not allow margin loans in your SIMPLE IRA.

J. Other Questions and Answers.

J1. 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 Attributable to IRAs, Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs*, with the IRS for any year for which: (1) you are subject to the 6% penalty for excess contributions, (2) you are subject to the federal early withdrawal tax penalty 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 federal early withdrawal tax penalty, but the proper distribution code is not shown on your Form 1099-R, (4) or you or your beneficiary are subject to the 50% penalty for failing to take a minimum distribution after you reach age 70½. Also, you must file a Form 8606 *Nondeductible IRA Contributions* for any year in which you convert all or any portion of your SIMPLE IRA into a Roth IRA.

J2. 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 regular and rollover contributions, plus the December 31 fair market value of your account.

Partial withdrawals, periodic distributions, and total distributions are reported on Form 1099-R.

J3. How is a conversion of my SIMPLE IRA to a Roth IRA reported?

A conversion of your SIMPLE IRA to a Roth IRA will be treated as a distribution from the SIMPLE IRA and a conversion contribution to the Roth IRA. We will report the distribution to the IRS and to you on Form 1099-R and the conversion contribution on Form 5498. You must report the conversion to the IRS by completing and filing Form 8606.

J4. How are recharacterizations reported?

If you recharacterize contributions made to an IRA, the trustee or custodian of the first IRA will report the contribution on Form 5498 as originally contributed. The trustee or custodian of the first IRA will also report the recharacterization as a distribution on Form 1099-R.

For recharacterized amounts received by the second IRA, the trustee or custodian of the second IRA will report the contribution as a recharacterized contribution on Form 5498.

J5. Are state tax laws the same 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.

J6. Can my SIMPLE IRA be changed?

Yes. We may amend your FCC SIMPLE IRA 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 IRA away from you or your beneficiary.

J7. How much will my account be worth when I'm ready to retire?

The future value of your account will depend on your future contributions and the rate of return on your investments in your SIMPLE IRA. The assets in your SIMPLE IRA generally are not limited to any particular type of investment, and therefore it is impossible to project what your investment return will be or what your SIMPLE IRA assets will look like in future years.

J8. Will my SIMPLE IRA be charged any fees?

Yes, all of the fees that may apply to your account are outlined in the Schedule of Fees you will receive at account opening. The Schedule of Fees may be changed from time to time, upon 30 days' written notice to you. Please see the Schedule of Fees for more details. In addition, all of the fees that apply to brokerage accounts will also apply to your account including fees associated with the automatic cash investment service. Please review your brokerage account agreement for descriptions of these fees. If you do not pay FCC's fees by their due date, FCC may deduct these fees from your SIMPLE IRA.

J9. What other rules apply to my FCC SIMPLE IRA?

If FCC receives any process, summaries, levy or similar order, you authorize FCC either to comply with the order or to refuse to honor the order, at FCC's sole discretion. FCC has no obligation to contest the order.

Any controversy regarding your SIMPLE IRA is subject to arbitration. The FCC IRA Cash Agreement and Enrollment Form contains the complete text of the arbitration information and you should read that information carefully before you sign the IRA Cash Agreement and Enrollment Form.

Section II: FCC Self-Directed SIMPLE IRA Custodial Agreement

First Clearing, LLC, a firm with its principal office in Richmond, Virginia and a non-bank IRA custodian ("Custodian") hereby establishes the "First Clearing, LLC Self-Directed SIMPLE Individual Retirement Custodial Account Plan" ("SIMPLE Plan") as an individual retirement account for an eligible customer ("Participant") who adopts the SIMPLE IRA by executing an IRA Cash Agreement and Enrollment Form.

FCC SELF-DIRECTED SIMPLE INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT PLAN

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

Form 5305-SA

(Rev. January 1998)

Department of the Treasury
Internal Revenue Service

The Participant whose name appears on the Participant's IRA Cash Agreement and Enrollment 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 has given the Participant the disclosure statement required under Regulations section 1.408-6.

The Participant has assigned the Custodian the sum shown on the Participant's Contribution Form.

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. 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 end 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).

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.

Article VI

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

Article VII

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

Article VIII

1. Definitions.

- (a) "Beneficiary" means the person or persons designated in accordance with paragraph 3.
- (b) "Broker" means the Introducing Firm and any other broker-dealer providing investment services in connection with the FCC Self-Directed SIMPLE IRA.
- (c) "Code" means the Internal Revenue Code of 1986, as amended.
- (d) "FCC" means First Clearing, LLC acting in its capacity as Custodian and in any other capacity, its successors, permitted assigns, and any affiliated organization.

- (e) "Introducing Firm" means each broker-dealer who has entered into an agreement with FCC pursuant to which FCC, 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 under the laws of the jurisdiction in which the Participant is then domiciled. 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 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) If Custodian is merged with or purchased 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 or her election to withdraw all or a portion of the SIMPLE IRA will result in the imposition of withdrawal penalties. 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 plan 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 penalties or 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 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) Liquidation of Plan Assets. If assets in the SIMPLE IRA require liquidation in order to make a distribution, the Custodian may follow the provisions outlined in Article VIII 10(d)(ii).

- (e) **Payments to Children.** For purposes of Article IV and paragraph (b) hereof, any amount paid to the Participant's child (or children) will be treated as if it had been paid to the Participant's surviving spouse if the amount becomes payable to the Participant's surviving spouse when the child (or children) reaches the age of majority.

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: (i) a parent of such Beneficiary, (ii) the guardian, conservator, or other legal representative, wherever appointed, of such Beneficiary, (iii) a custodial account established under a Uniform Gifts to Minors Act, Uniform Transfers to Minors Act, or similar act, (iv) any person having control or custody of such Beneficiary, or (v) such Beneficiary directly.

- (f) **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 Participant shall designate in writing the person or persons (or entity or entities) to receive any distribution to be made by reason of the Participant'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 Participant 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.

In the event no designation is filed at the time of Participant's death or no Beneficiary designation can be located, the Beneficiary shall be the Participant's surviving spouse. In the event the Participant's spouse predeceases the Participant or cannot be located, the Beneficiary shall be the Participant's estate.

In the event that the Participant names his or her spouse as beneficiary of the plan, the following provisions apply:

- If an owner designates his spouse as Beneficiary and there is a subsequent divorce, the ex-spouse will be treated like any beneficiary that predeceases the owner;
- If the 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 the Participant; this change may be overruled by court order (such as if the divorce decree requires that the ex-spouse remain as Beneficiary); and
- The Custodian shall be released and held harmless in the event that it is not notified of the divorce within 30 days of Participant's death (or sooner) and therefore pays to the ex-spouse.

Unless a designation filed by the Participant and agreed to by the Custodian states otherwise, if the Beneficiary dies after the Participant, including the time before the determination date (September 30 in the year following

the year of death of the Participant) 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 Beneficiary's death or no surviving beneficiary designated by the Beneficiary can be located, the beneficiary shall be the Beneficiary's surviving spouse. In the event that the Beneficiary does not have a surviving spouse or a surviving spouse cannot be located, 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 offered by Introducing Firm. Such investments shall be subject to the terms and conditions for the investment options outlined in the Plan and the Cash Agreement and Enrollment Form. If the Custodian does not have adequate instruction from the Participant as to how funds in the SIMPLE IRA are to be invested, the Custodian may, in its sole discretion, hold such funds uninvested or invest such funds as it shall determine from time to time.

The Custodian shall not have any duty to question the directions of a Participant in the investment of the SIMPLE IRA or to advise him or her regarding the purchase, retention, or sale of assets credited to the SIMPLE IRA. The Participant understands that certain investments may not be suitable for his or her account and agrees that he or she is solely responsible for making a determination as to the suitability of investments or any other federal or state law issues which may arise regarding investments in the account. If legal advice is required in this regard, the Participant is solely responsible for obtaining such advice from the Participant's personal legal advisors at the Participant's expense. FCC shall not be liable for any loss, liability, or penalty, which results from the Participant's exercise of control (whether by his or her action or inaction) over the SIMPLE IRA.

- (b) **Errors or Omissions.** The Participant authorizes the Custodian to debit and credit the SIMPLE IRA for purposes of settling transactions in securities, commodities or other property purchased or sold at the Participant's instruction. If an error or omission is made by the Custodian in debiting or crediting the SIMPLE IRA, the Participant must give written notice of such error or omission within 10 calendar days following the date on which the Participant is sent the first monthly statement on which the error or omission appears. The liability of Custodian for any such error or omission is limited to debiting or crediting the SIMPLE IRA, as appropriate. In no event shall Custodian incur any additional liability for any such error or omission. The SIMPLE IRA in Participant's name is for such purposes described above.
- (c) **Permitted Investments.** Investments may be made in, but not limited to, publicly traded securities, covered call options, mutual funds and other instruments that are made available by the Custodian and are compatible with its administrative and operational requirements. FCC shall not be liable for any liabilities, including tax liabilities, resulting from investments not compatible with its administrative and

operational requirements, including but not limited to limited partnerships, privately held securities, non-publicly traded securities and new offerings. The Custodian, at its discretion, may refuse to hold any investment, including, but not limited to, gold, silver and platinum coins issued under the laws of any state and bullion. The Custodian may also limit the number of open orders maintained by the Participant and set trading limitations. The Participant agrees not to make any trade that would have the effect of exceeding any such limitations of Custodian.

While representatives of Introducing Firm may from time to time suggest certain investments for the Participant's account, unless the Participant has appointed Broker (or one of Broker's employees or affiliates) as an investment manager pursuant to a written agreement, Broker and its representatives do not intend that any such advice will serve as a primary basis for investment decisions. Broker and its representatives will have no duty to diversify the assets in the Participant's account. The Participant understands that he or she is solely responsible for making investment decisions and that FCC, Broker and their respective representatives are liable, if at all, solely as ministerial agents and not for any loss resulting from or the making or retention of any investment pursuant to Participant's authorized direction. The Participant understands that FCC, Broker, and their respective representatives will have no responsibility to supervise, monitor or make suggestions with respect to the investment, retention or disposition of the assets in the Participant's account.

The Participant acknowledges and understands that the Custodian and/or its officers, directors, affiliates, stockholders, research analysts, employees, or representatives may have or take significant positions in securities, commodities, or futures contracts which are the subject of market recommendations furnished to the Participant and that the market position of the Custodian, or those of any such persons or entities may or may not be consistent with the recommendations furnished to the Participant.

By completing and submitting to FCC an IRA Cash Agreement and Enrollment Form, Participant may select an automatic cash investment service (the "Service") offered by FCC. The Service provides for the automatic investment and reinvestment of income and dividends generated by investments in Participant's SIMPLE IRA into a Sweep Option selected by Participant, subject to the terms of the IRA Cash Agreement and Enrollment Form. If the Participant selects the Service, he or she authorizes and directs the Custodian, acting as his or her agent, to initiate transactions within the Participant's SIMPLE IRA, as set out in the IRA Cash Agreement and Enrollment Form. In the absence of any specific direction from the Participant in the IRA Cash Agreement and Enrollment Form, and Account Application, if applicable, the Participant's initial deposit will be invested by FCC at its sole discretion.

While the Service is presently available based on the terms outlined in the IRA Cash Agreement and Enrollment Form, FCC does not guarantee the continued availability of such Service or of any Sweep Option used with the Service or otherwise.

If the Participant selects one of the Money Market Mutual Funds, a prospectus will be mailed under separate cover. In addition, a disclosure statement titled *Is My Idle Cash Invested?* will be provided. Before electing to have available funds in the SIMPLE IRA invested in the selected money market mutual fund or to participate in the Service, Participants should read the prospectus and disclosure statement carefully. The prospectus contains information relating to investments in the money market mutual fund, as well as fees that may be payable to FCC or an affiliate and other fees and charges. Dividends on shares held in connection with the Service will not be payable in cash but will be reinvested each month, net of any administrative fee which may be charged by the Custodian against such dividend.

All investments by FCC as part of the Service will be made in the name of FCC on behalf of the Participant. Accordingly, all transactions involving the Service in connection with the SIMPLE IRA can only be executed by FCC and cannot be executed directly by the Participant.

The Participant acknowledges and agrees to the Agreement to Arbitrate Controversies as described in the Depositor's IRA Cash Agreement and Enrollment Form.

(d) Investment Powers.

- (i) The Custodian may delegate 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).

- (e) Voting. The Custodian shall follow Participant'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.

- (f) **Investment Advisory Services.** Participant may enter into an agreement with an affiliate of Custodian to provide investment advisory services. Except as specifically provided in such agreement, FCC shall not have any discretionary authority or control over the investment of the SIMPLE IRA.
- (g) **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.

6. Taxes.

The Custodian shall have the power and right to pay from the SIMPLE IRA any estate, inheritance, income or other taxes, and any interest or penalties assessed or levied with respect to the SIMPLE IRA or the Participant's interest therein.

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 for such taxable year. Upon receiving such request the Custodian shall refund the requested amount. The refund shall be accompanied by the amount of net income that the Custodian determines to be attributable to the amount of the contribution being refunded.

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 within 30 days after the Custodian mails a copy of the amendment to the Participant.

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, Custodian will substitute another custodian and will notify the Participant of this fact. 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 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. 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. FCC will not be liable for any adverse consequences resulting from such transfer.
- (b) **Construction.** This SIMPLE IRA shall be construed, administered and enforced in accordance with the laws of the State of Virginia, except to the extent that such laws are preempted by federal law. Brokerage transactions will be construed, administered, and enforced as defined in the agreement with your Broker. 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 SIMPLE 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) Any brokerage commissions attributable to the acquisition or disposition of assets for the SIMPLE IRA shall be charged to the SIMPLE IRA. 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. Prior to charging any compensation, the Custodian will furnish the Participant 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 by FCC. The Custodian may charge any annual fees previously disclosed without any further notification to the Participant. In the event that the account is terminated or transferred, a termination and/or transfer fee as well as any outstanding annual fees (including the current year 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. If the Custodian liquidates assets and the Participant fails to instruct the Custodian as to the liquidation of such assets, assets will be liquidated in the following order to the extent held in the Account:
- (i) Shares of money market mutual funds.
- (ii) Publicly traded securities in such order as the Custodian deems reasonable.
- (iii) Other investment in such order that the Custodian deems reasonable.
- 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.
- (f) No Representations. The Participant shall not rely on any oral or written representations of FCC, 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 Custodian. Custodian may rely on such designation until the Custodian has received written notification to the contrary. 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 account may be made at FCC or the Broker's discretion to the Participant's duly authorized or qualified representative, including without limitation, guardian, committee or attorney-in-fact, during any period that the Responsible Individual 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 account.
- 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 Custodian. By entering into this contract, the Participant agrees that he or she has full legal power and authority to enter into any transaction with or through the Custodian and to provide instructions related to the account. 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 FCC or any government agency regarding the operation of the SIMPLE IRA or any investment held hereunder.
- (i) Effective Date. The effective date shall be the date that the Custodian accepts the Participant's IRA Cash Agreement and Enrollment Form.
- (j) Notice. Notices to FCC 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 Section 1.A. of the Disclosure Document, as that address may be changed from time to time, or to any other address specified by FCC. FCC 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 FCC shall be in writing and sent by mail to the Participant's address listed in the IRA Cash Agreement and Enrollment Form, or other address 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. Investments Not Guaranteed.

Investments in the money market mutual fund or any of the other funds are not endorsed or guaranteed by FCC or any bank, are not deposits or other obligations of FCC or any bank, are not insured by the Federal Deposit Insurance Corporation, or any other government agency and involve investment risks, including possible loss of principal. Investments made through Broker are not endorsed or guaranteed by FCC or any bank, are not deposits or other obligations of FCC or any bank, are not insured by the Federal Deposit Insurance Corporation, and involve investment risks, including possible loss of principal.

CDs purchased through FCC are FDIC insured up to \$100,000 in the event of the failure of the issuing bank and are covered by SIPC in the event of the failure of FCC. neither form of insurance protects against declines in the market value of the CDs to the extent a secondary trading market exists.

Cash sweeps deposited into the Bank Deposit Sweep Option qualify for FDIC insurance up to \$100,000 for the principal and interest you have on deposit. However, the deposits held in a SIMPLE IRA will be aggregated with your other deposits at Wachovia Bank, N.A. held by certain employee benefit plans in which you have an interest. Thus, the owner of a SIMPLE IRA will only be entitled to insurance of up to \$100,000 for deposits at Wachovia Bank, N.A. for all accounts held in retirement plans. Under FDIC regulations, an individual's interest in the deposits held by (i) IRAs, (ii) deferred compensation plans for certain employees of state or local governments or tax-exempt organizations (i.e., Section 457 Plans), (iii) self-directed or "Keogh Plans" of owner-employees described in section 401(d) of the Internal Revenue Code of 1986, as amended, and (iv) self-directed defined contribution plans will be insured for up to \$100,000 in the aggregate whether or not maintained by the same employer or employee organization.

12. Sharing Information.

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 Depositor to the contrary.

13. 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 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 direction. Participant agrees that the acceptance of any contribution by FCC is not an opinion that any party will be entitled to a tax deduction or "rollover" treatment on such amount. Participant understands that FCC 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 FCC and its agents, affiliates, successors, and assigns and its officers, directors, and employees, from any and all liability arising from the Participant'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.

FCC 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. FCC's only duties and responsibilities with respect to the SIMPLE IRA shall be those specifically set forth in this SIMPLE IRA.

14. 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.

15. Holding Account Assets.

The Participant hereby authorizes FCC to comply with any process, summary, order, injunction, execution, distribution, levy, lien, or notice of any kind ("Process") received by or served upon FCC which in FCC's sole opinion affects the SIMPLE IRA account. The Participant authorizes FCC to, at its option and without liability, thereupon refuse to honor orders to pay or withdraw monies from the SIMPLE IRA account and to either hold the balance therein until the Process is disposed of to FCC's satisfaction, or to pay the balance over to the source of the Process. In any event, FCC 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 FCC is unable to make a distribution to the appropriate party within 6 months after such distribution is to be made because FCC is unable to contact the Participant by mailing to the most recent address provided to FCC by the Participant for purposes of the SIMPLE IRA, FCC 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 FCC 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.

16. Counterparts.

The SIMPLE IRA Cash Agreement and Enrollment 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 your Financial Advisor. You **must** notify FCC 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.



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

May 30, 2003

First Clearing, LLC
(FKA First Clearing Corporation)
10700 Wheat First Drive
Glen Allen, VA 23060

EIN: 23-2384840

Ladies and Gentlemen:

In a letter dated March 14, 2003 as supplemented by letters and facsimiles dated May 15 and 21, 2003, your authorized representative requested a written notice of approval that First Clearing, LLC may act as a passive or non-passive nonbank custodian of medical savings accounts established under section 220 of the Internal Revenue Code, passive or non-passive nonbank custodian of plans qualified under section 401 or accounts described in section 403(b)(7), passive or non-passive nonbank custodian for individual retirement accounts (IRAs) established under sections 408, 408A (dealing with Roth IRAs), and 530 (dealing with Coverdell education savings accounts), and as a passive nonbank custodian of 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 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 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 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 custodian.

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

This letter authorizes First Clearing, LLC to act as a passive or non-passive nonbank custodian. When First Clearing, 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.

First Clearing, 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 First Clearing, 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.

First Clearing, 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 First Clearing, LLC to act as a passive or non-passive nonbank custodian of medical savings accounts established under section 220 of the Internal Revenue Code, passive or non-passive nonbank custodian of plans qualified under section 401 or accounts described in section 403(b)(7), passive or non-passive nonbank custodian for individual retirement accounts (IRAs) established under sections 408, 408A (dealing with Roth IRAs), and 530 (dealing with Coverdell education savings accounts), and as a passive nonbank custodian of 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 the regulations.

This letter constitutes a notice that First Clearing, LLC may act as a passive or non-passive nonbank custodian of medical savings accounts established under section 220 of the Internal Revenue Code, passive or non-passive nonbank custodian of plans qualified under section 401 or accounts described in section 403(b)(7), passive or non-passive nonbank custodian for individual retirement accounts (IRAs) established under sections 408, 408A (dealing with Roth IRAs), and 530 (dealing with Coverdell education savings accounts), and as a passive nonbank custodian of 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 is a retroactive notice of approval effective April 21, 1999 and will remain in effect until withdrawn by First Clearing, LLC or revoked by the Service. This notice of approval supersedes the notice of approval issued to First Clearing Corporation on April

21, 1999. This notice of approval does not authorize First Clearing, LLC to accept any fiduciary account before the date of this letter.

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,

A handwritten signature in black ink that reads "Andrew E. Zuckerman". The signature is written in a cursive style with a long horizontal flourish at the end.

Andrew E. Zuckerman, Manager
Employee Plans Technical Group 1