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2023 JUL 31 AM 11:27

COVER LETTER

TO: **Registration Section**
Division of Corporations

SUBJECT: CAB & DBL LLC
Name of Limited Liability Company

The enclosed Articles of Amendment and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to the following:

Douglas Lanciano
Name of Person

CAB & DBL LLC
Firm/Company

1800 Liesl Dr E
Address

Venice FL 34293
City/State and Zip Code

cblatzheim@verizon.net
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Carol Blatzheim at (301) 452-1198
Name of Person — Area Code — Daytime Telephone Number

Enclosed is a check for the following amount:

- ■ $25.00 Filing Fee
- ☐ $30.00 Filing Fee & Certificate of Status
- ☐ $55.00 Filing Fee & Certified Copy (additional copy is enclosed)
- ☐ $60.00 Filing Fee, Certificate of Status & Certified Copy (additional copy is enclosed)

Mailing Address:
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

Street Address:
Registration Section
Division of Corporations
The Centre of Tallahassee
2415 N. Monroe Street, Suite 810
Tallahassee, FL 32303

ARTICLES OF AMENDMENT
TO
ARTICLES OF ORGANIZATION
OF

CAB & DBL LLC

(Name of the Limited Liability Company as it now appears on our records.)
(A Florida Limited Liability Company)

The Articles of Organization for this Limited Liability Company were filed on 09/11/2018 and assigned Florida document number L18000211935.

This amendment is submitted to amend the following:

A. If amending name, enter the new name of the limited liability company here:

The new name must be distinguishable and contain the words "Limited Liability Company," the designation "LLC" or the abbreviation "L.L.C."

Enter new principal offices address, if applicable:
(Principal office address MUST BE A STREET ADDRESS)

Enter new mailing address, if applicable:
(Mailing address MAY BE A POST OFFICE BOX)

B. If amending the registered agent and/or registered office address on our records, enter the name of the new registered agent and/or the new registered office address here:

Name of New Registered Agent:

New Registered Office Address:

Enter Florida street address

, **Florida**

City *Zip Code*

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relative to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent as provided for in Chapter 605, F.S. Or, if this document is being filed to merely reflect a change in the registered office address, I hereby confirm that the limited liability company has been notified in writing of this change.

If Changing Registered Agent, Signature of New Registered Agent

If amending Authorized Person(s) authorized to manage, enter the title, name, and address of each person being added or removed from our records:

MGR = Manager
AMBR = Authorized Member

Title	Name	Address	Type of Action
AMBR	Carol Blatzheim	1800 Liesl Dr E	☐ Add
		Venice FL 34293	■ Remove
			☐ Change
			☐ Add
			☐ Remove
			☐ Change
			☐ Add
			☐ Remove
			☐ Change
			☐ Add
			☐ Remove
			☐ Change
			☐ Add
			☐ Remove
			☐ Change
			☐ Add
			☐ Remove
			☐ Change

D. If amending any other information, enter change(s) here: *(Attach additional sheets, if necessary.)*

2023 JUL 31 AM 11:27

E. Effective date, if other than the date of filing: 07/20/2023 **(optional)**

(If an effective date is listed, the date must be specific and cannot be prior to date of filing or more than 90 days after filing.) Pursuant to 605.0207 (3)(b)

Note: If the date inserted in this block does not meet the applicable statutory filing requirements, this date will not be listed as the document's effective date on the Department of State's records.

If the record specifies a delayed effective date, but not an effective time, at 12:01 a.m. on the earlier of: (b) The 90th day after the record is filed.

Dated 07/20, 2023

Signature of a member or authorized representative of a member

Douglas Lanciano

Typed or printed name of signee

Filing Fee: $25.00

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

CAB & DBL LLC

(A Florida Limited Liability Company)

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

CAB & DBL LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (the "Agreement"), has been executed by the member (the "Member") set forth on Exhibit A annexed hereto, for the purposes of setting forth the rights and obligations of the Member in and to **CAB & DBL LLC** (the "Company") formed pursuant to the provisions of the Florida Limited Liability Company Act (the "Act").

ARTICLE 1
THE COMPANY AND ITS BUSINESS

1.1 **Formation of Company**. The limited liability company was formed on September 5,2018, pursuant to the provisions of the Act. The rights and liabilities of the Member with respect to the management of the affairs of the Company and the conduct of its business shall be as provided in the Act, except as otherwise expressly provided herein.

1.2 **Name.** The name of the Company shall be **CAB & DBL LLC** until otherwise determined by the Manager (as defined in Section 5.1).

1.3 **Purpose**. The business purpose of the Company is to engage in any activity which may lawfully be conducted under the Act, including investing in real estate, public stocks or mutual funds, private business entities and commercial paper. The Company shall not engage in investments relating to life insurance, collectibles and any "prohibited transaction" listed under Internal Revenue Code ("Code") Section 4975, a copy of which is attached hereto as **Exhibit B**.

1.4 **Filings**. The Manager shall, from time to time, execute, acknowledge, verify, file, record and publish all such applications, certificates and other documents, and do or cause to be done all such other acts, as the Manager may deem necessary or appropriate to comply with the requirements of law for the formation, qualification and operation of the Company as a limited liability company in all jurisdictions in which the Company shall desire to conduct business.

1.5 **Offices**. The name and address of the Company's registered office in the State of Florida shall be Douglas B. Lanciano, 1800 Liesl Dr. E., Venice, FL 34293. In addition, the Company shall maintain its chief executive office and principal place of business at 1800 Liesl Dr. E., Venice, FL 34293, or as otherwise determined by the Manager.

ARTICLE 2

CAPITALIZATION

2.1 **Capital Contributions**. The Member shall make such capital contributions, consisting of cash or real or personal property, to the Company as it deems appropriate from time to time. The Member's initial capital contribution shall be provided on Exhibit A annexed hereto. Subsequent investments by the member are permitted and do not create a prohibited transaction under IRC Section 4975.

2.2 **Liability of Member and Affiliates**. Except as otherwise provided by applicable law, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company. Neither the Member, any person affiliated with the Member nor any officer of the Company shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being the Member, an affiliate of the Member or an officer of the Company.

2.3 **Required Distributions**. Manager confirms that he is aware of the rules surrounding required minimum distributions generally beginning at the age of 73 for "Traditional IRAs" and confirms that he has or will take the steps necessary to ensure that the requirement is met.

2.4 **Title to Company Property**. All property owned by the Company, including but not limited to real estate, shall be owned by the Company as an entity and, insofar as permitted by applicable law, the Member shall have no ownership in any Company property in its individual name or right, and the Member Interest shall be personal property for all purposes.

ARTICLE 3

PROFITS AND LOSSES; DISTRIBUTIONS

3.1 **Profit and Losses**. All profits and losses of the Company will be allocated to the Member.

3.2 **Distributions**. All distributions of cash, property, profits or otherwise and the timing thereof will be made at the discretion of the Manager.

ARTICLE 4
PROHIBITED TRANSACTION & UBTI

4.1 **General**. The Company shall not engage in any transaction prohibited by Code Section 4975 (attached hereto as **Exhibit B**), Code Section 408 (attached hereto as **Exhibit C**), or any other provision of the Code. Under Code Section 4975, a "prohibited transaction" is generally defined as any direct or indirect: (1) Sale or exchange, or leasing, of any property between a

plan and a disqualified person (as defined in Section 4.7.2); (ii) Lending of money or other extension of credit between a plan and a disqualified person; (iii) Furnishing of goods, services, or facilities between a plan and a disqualified person; (iv) Transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan; (v) Act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interests or for his own account; or (vi) Receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

4.2 **Direct Prohibited Transactions**. The Manager shall not allow the Company to engage in any type of "Direct Prohibited Transaction". A "Direct Prohibited Transaction" generally involves one of the following:

(i) Sale, exchange, or leasing of property between an IRA and a "disqualified person";

(ii) Lending of money or other extension of credit between an IRA and a "disqualified person";

(iii) Furnishing of goods, services, or facilities between an IRA and a "disqualified person"; or

(iv) Transfer to a "disqualified person" of income or assets of an IRA.

4.3 **Self-Dealing/Personal Benefit Prohibited Transactions**. The Manager shall not allow the Company to engage in any type of "Self Dealing/Personal Benefit Prohibited Transaction". A "Self Dealing/Personal Benefit Prohibited Transaction" generally involves one of the following:

(i) Direct or indirect use of Plan income or assets for the benefit of a "Disqualified Person";

(ii) An act by a "Disqualified Person" who is a fiduciary whereby he/she deals with income or assets of the Plan in his/her own interest or for his/her own account; or

(iii) Receipt of any consideration by a "Disqualified Person" who is a fiduciary for his/her own account from any party dealing with the Plan in connection with a transaction involving income or assets of the Plan.

4.4 **Conflict of Interest Prohibited Transactions**. The Manager shall not allow the Company to engage in any type of "Conflict of Interest Prohibited Transaction". A "Conflict of Interest Prohibited Transaction" could arise if a disqualified person interest or involvement in a transaction affects his/her independent judgment.

4.5 **Section 408 Prohibited Transactions**. (a) General. Under Code Section 408, the Company shall not engage in: (i) investing in life insurance contracts as defined in Code Section 408(a)(3), (ii) pledging an IRA or any IRA asset as a security for a loan, or (iii) investing in collectibles pursuant to Section 408(m). Notwithstanding the above, Code Section 4975(d) sets

forth certain transactions that are exempt from being treated as "prohibited transactions" which the Company shall be permitted to engage in.

(b) Precious Metals. The Manager agrees that the Company shall not be permitted to invest in any collectibles pursuant to Section 408(m). However, the following are not considered collectibles for this purpose:

- One, one-half, one-quarter or one-tenth ounce U.S. gold coins (American Gold Eagle coins are the only gold coins specifically approved for IRAs. Other gold coins, to be eligible as IRA investments, must be at least .995 fine (99.5% pure) and be legal tender coins.
- one ounce silver coins minted by the Treasury Department;
- any coin issued under the laws of any state;
- a platinum coin described in 31 USCS 5112(k) : and
- gold, silver, platinum or palladium bullion (other than bullion that is made into a coin) of a certain fineness that is in the physical possession of a trustee that meets the requirements for IRA trustees under Code Sec. 408(a).

4.6 **Penalties**.

4.6.1 The Members and Manager acknowledge that if any of the events prohibited by Code Section Code 4975, Code Section 408, or any other provision of the Code occurs during the existence of the IRA. with respect to the IRA owner, the IRA is deemed immediately disqualified as of January 1 of the year in which the prohibited transaction occurred, resulting in current income tax treatment of a traditional IRA and possible excise tax penalty for a premature withdrawal from an IRA. If this deemed "distribution" occurs, it will be subject to ordinary income tax and, if you were under the age of 591/2 at that time, a ten (10%) percent excise tax on premature distributions may also be assessed.

4.6.2 For the "disqualified person" involved in the transaction, the initial tax on a prohibited transaction is fifteen (15%) percent of the amount involved for every year (or portion thereof) in the "taxable period," which is the period beginning when the transaction occurs and ending on the date of the earliest of (1) the mailing of a notice of deficiency for the tax, (2) assessment of the tax, or (3) correction of the transaction. The fifteen (15%) percent excise tax is followed by an additional tax of 100% if the disqualified person is recalcitrant.

4.7 **Definitions.**

4.7.1 Under Code Section 4975, the term "plan" is defined as (A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under Code Section 501(a). (B) an individual retirement account described in Code Section 408(a), (C) an individual retirement annuity described in Code Section 408(b), (D) an Archer MSA described in Code Section 220(d), (E) a health savings account described in Code Section 223(d), (F) a Coverdell education savings account described in Code Section 530, or (G) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

4.7.2 Under Code Section 4975(e)(2), a "disqualified person" is defined as a person who is (A) a fiduciary; (B) a person providing services to the plan; (C) an employer any of whose employees are covered by the plan; (D) an employee organization any of whose members are covered by the plan; (E) an owner, direct or indirect, of 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, (ii) the capital interest or the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D) of Code Section 4975(e); (F) a member of the family (as defined in paragraph (6) of Code Section 4975) of any individual described in subparagraph (A), (B), (C), or (E) of Code Section 4975(e); (G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of (i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E) of Code Section 4975(e); (H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G) of Section 4975(e); or (I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G) of Code Section 4975(e).

4.7.3 Under Code Section 4975(e)(3), a "fiduciary" is defined as any person who:

(i) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) has any discretionary authority or discretionary responsibility in the administration of such plan.

4.8 **UBTI.** The Manager acknowledges that if the Company engages in an "active trade or business" that is regularly carried on or generates debt financed income as defined pursuant to Code Section 514, any income derived from such business will be subject to "unrelated business taxable income" ("UBTI"). Regarding the potential or the avoidance of UBTI and, if incurred, the manager will complete and ensure the timely filing of all relevant tax returns to the IRS and state authorities.

4.9 **Plan Asset Rules.** The Member and the Manager acknowledge that the Plan Asset Rules described in Department of Labor Regulation 29 CFR 2510.3-101 may treat an investment of the Company into an "investment entity", as defined therein, as "Plan" assets. Under the Plan Asset Rules, if the Company's ownership of an "investment entity" combined with any other unrelated IRA investor is 25% or more of all the assets of an "investment entity", then the equity interests and assets of the "investment entity" are viewed as assets of the Company for purposes of the prohibited transactions rules, unless an exception applies. Also, if the Company or any

Affiliate owns 100% of an "operating company", the operating company exception will not apply and the company's assets will still be treated as plan assets.

ARTICLE 5
MANAGEMENT

5.1 **Management**. The business and affairs of the Company shall be managed by Douglas B. Lanciano (the "Manager"). Upon the death or disability of the Manager, a successor Manager shall be appointed as Manager. The Manager shall have full power and authority to take any action and execute any documents on behalf of the Company; provided; however, the Manager shall not engage in any investments relating to life insurance, collectibles or certain "prohibited transaction" described in Code Section 4975. The Manager is hereby designated as the sole manager of the Company. The Manager is the agent of the Company for the purpose of the Company's business, and for the purpose of the execution in the name of the Company of any instrument for carrying on in the usual way the business of the Company. The Manager's acts bind the Company, unless such act is in contravention of the Act or this Agreement.

5.2 **Expenses.** The Company shall pay all of its own operating, overhead and administrative expenses of every kind. The Manager and the officers of the Company shall be reimbursed for all reasonable costs and expenses they may have incurred or may hereafter incur on behalf of the Company.

5.3 **Compensation**. The Manager shall not be entitled to receive any compensation for serving as Manager of the Company.

5.4 **Officers**. The Manager shall have the right to delegate any portion of his, her, or its duties as the Manager may determine to officers or to other persons; provided, however, that no such delegation of authority shall relieve the Manager of his, her, or its obligations hereunder. The Manager may, from time to time, designate or appoint one or more officers of the Company, including, without limitation, one or more chairmen, a vice chairman, a chairman emeritus, a chief executive officer, a president, one or more vice presidents, a secretary, an assistant secretary, and/or a treasurer. Such officers may, but need not be, employees of the Company, or an affiliate of the Company. Each appointed officer shall hold office until: (i) his/her successor is appointed by the Manager; (ii) such officer submits his/her resignation; or (iii) such officer is removed, with or without cause, by the Manager. All officers shall have the authority to perform duties to conduct the day to day operations of the Company consistent with and in the ordinary course of its business, subject to the terms and provisions of this Agreement and to the direction and authorization of the Member. Each officer shall perform his/her duties as an officer in good faith and with such degree of care, which an ordinarily prudent person in a like position would use under similar circumstances.

5.5 **Fiduciary Duty**. The Manager shall have a fiduciary responsibility for the safekeeping and use of all Company funds, property and assets, whether or not in his, her or its immediate possession. The Manager shall not engage in any investments relating to life insurance, collectibles or certain "prohibited transaction" described in Code Section 4975. The Manager

acknowledges that he or she is a fiduciary to the Company and cannot use the Company's funds directly *or indirectly* for his, her, or its benefit. The Manager acknowledges that the fiduciary prohibited transaction rules under Code Section 4975(c)(1)(D) and (E), may be applicable to an investment or transaction, regardless of whether there is a disqualified person on the other side of the investment or transaction. The Manager shall not employ or permit another to use any of the Company's funds, property or assets in any manner except for the exclusive benefit of the Company and shall not engage in any investment or transaction that conflicts with the purpose of the Company pursuant to Section 1.3 hereof. In fulfilling his, her or its fiduciary duty, the Manager shall exercise his, her or its business judgment in a manner that is reasonably consistent with that which would be applied by a reasonable Person under similar circumstances.

5.6 **Indemnity**.

5.6.1 Neither the Manager nor any officer of the Company shall be liable to the Company for any loss or damages resulting from errors in judgment or for any acts or omissions that do not constitute willful misconduct or gross negligence. In all transactions for or with the Company, the Manager and the officers of the Company shall act in good faith and in a manner believed to be in the best interests of the Company.

5.6.2 The Company, its receiver or its trustee, as the case may be (but not the Manager personally), shall indemnify and defend the Manager and the officers of the Company against and hold them harmless from any and all losses, judgments, costs, damages, liabilities, fines, claims and expenses (including, but not limited to, reasonable attorneys' fees and court costs, which shall be paid by the Company as incurred) that may be made or imposed upon such persons and any amounts paid in settlement of any claims sustained by the Company by reason of any act or inaction which is determined by the Manager or the officers of the Company, as the case may be, in good faith to have been in the best interests of the Company so long as such conduct shall not constitute willful misconduct or gross negligence.

5.6.3 In the event of settlement of any action, suit or proceeding brought or threatened, such indemnification shall apply to all matters covered by the settlement except for matters as to which the Company is advised by counsel retained by the Company that the person seeking indemnification, in the opinion of counsel, did not act in good faith. The foregoing right of indemnification shall be in addition to any rights to which the Manager or the officers of the Company may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

5.6.4 Any right of indemnity granted under this Section 5.6.4 may be satisfied only out of the assets of the Company, and neither the Manager nor any officer of the Company shall be personally liable with respect to any such claim for indemnification.

5.6.5 The Manager shall have the power to purchase and maintain insurance in reasonable amounts on behalf of itself and the officers, employees and agents of the Company against any liability incurred by them in their capacities as such, whether or not the Company has the power to indemnify them against such liability.

5.7 **Member has no Management Power**. Except as otherwise expressly provided herein, the Member shall take no part in or interfere in any manner with the management, conduct or control of the Company's business or investments and the Member shall have no right or authority to act for or bind the Company in any manner whatsoever. The Member shall have only the right to vote on specified matters as set forth in this Agreement, if any, or as required by the Act.

ARTICLE 6

BOOKS AND RECORDS

6.1 **Books of Account**. Complete books of account shall be kept by the Manager at the principal office of the Company, or at such other office as the Manager may designate.

6.2 **Bank Accounts**. The Manager may maintain one or more bank accounts for such funds of the Company as he, she, or it shall choose to deposit therein, and withdrawals therefrom shall be made upon such signature or signatures as the Manager shall determine.

6.3 **Fiscal Year**. The fiscal year of the Company shall begin on January 1 and end on December 31, except as otherwise required.

6.4 **Tax Election**. The Manager shall have the authority to cause the Company to make any election required or permitted to be made for income tax purposes if the Manager determines, in his, her, or its sole judgment, that such election is in the best interests of the Company.

6.5 **Tax Matters**. The Manager shall be the "tax matter partner" of the Company, and it or its authorized agent shall be the only person authorized to prepare, execute and file tax returns and tax reports on behalf of the Company and to represent the Company before the Internal Revenue Service and any state or local taxing authority.

6.6 **Title to Assets**. Title to, and all right and interest in and to, the Company's assets, shall be acquired in the name of and held by the Company, or if acquired in any other name, held for the benefit of the Company.

6.7 **Bankruptcy of the Member**. The bankruptcy of the Member will not cause the Member to cease to be a Member of the Company, and upon the occurrence of such event, the Company shall continue without dissolution.

ARTICLE 7

DISSOLUTION AND TERMINATION

7.1 **Dissolution**. The Company shall be dissolved and terminated upon the earliest to occur of the following:

7.1.1 the entry of a decree of judicial dissolution of the Company; or

7.1.2 when the provisions of Section 7.3 below have been met; or

7.1.3 when otherwise determined by the Manager.

7.2 **Distribution of Assets**. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs (including the sale of the assets of the Company in an orderly manner), and the assets of the Company shall be applied in the manner, and in the order of priority, as set forth under the Act.

7.3 **Termination**. The Company shall terminate when all property owned by the Company shall have been disposed of and the assets, after payment of, or due provision has been taken for, liabilities to Company creditors, shall have been distributed. Upon such termination, the Manager or the Company's officers shall execute and cause to be filed all documents necessary in connection with the termination of the Company.

ARTICLE 8

MISCELLANEOUS

8.1 **Admission of Additional Member**. One or more additional members may be admitted to the Company with the prior written consent of the Manager.

8.2 **Severability**. If any of the provisions of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions hereof which can be given effect without the invalid provision, and to this end the provisions of this Agreement are intended to be and shall be deemed severable.

8.3 **Governing Law**. This Agreement shall be governed and construed in accordance with the laws of the State of Florida without regard to the conflicts of law rules of said state.

8.4 **Amendments**. This Agreement may be amended or modified from time to time only upon the written consent of the Manager (which consent may be evidenced by the execution of an amendment and restatement of this Agreement).

8.5 **No Third Party Beneficiaries**. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the Company or any other person not a party to this Agreement.

IN WITNESS WHEREOF, the undersigned Member has caused this counterpart signature page to this Limited Liability Company Agreement to be duly executed on the date set forth below, and to be effective as of the date set forth below.

MEMBER

IRA FINANCIAL TRUST COMPANY, CUSTODIAN FOR THE BENEFIT OF THE DOUGLAS BRIAN LANCIANO IRA

By: Adam Bergman, Trust Officer

Date: 7.14.23

MANAGER

DOUGLAS BRIAN LANCIANO

By: Douglas Brian Lanciano

Date: 6-30-2023

EXHIBIT A

Member	Capital Contribution	Percentage Interest
IRA FINANCIAL TRUST COMPANY, CUSTODIAN FOR THE BENEFIT OF THE DOUGLAS BRIAN LANCIANO IRA 5024 S BUR OAK PLACE, SUITE 200 SIOUX FALLS, SD 57108	$	100%

EXHIBIT B

Checkpoint Contents
Federal Library
Federal Source Materials
Code, Regulations, Committee Reports & Tax Treaties
Internal Revenue Code
Current Code
Subtitle D Miscellaneous Excise Taxes §§4001-5000
Chapter 43 QUALIFIED PENSION, ETC., PLANS §§4971-4980G
§4975 Tax on prohibited transactions.

Internal Revenue Code

8.5.1 § 4975 Tax on prohibited transactions.

(a) Initial taxes on disqualified person.
There is hereby imposed a tax on each prohibited transaction. The rate of tax shall be equal to 15 percent of the amount involved with respect to the prohibited transaction for each year (or part thereof) in the taxable period. The tax imposed by this subsection shall be paid by any disqualified person who participates in the prohibited transaction (other than a fiduciary acting only as such).

(b) Additional taxes on disqualified person.
In any case in which an initial tax is imposed by subsection (a) on a prohibited transaction and the transaction is not corrected within the taxable period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this subsection shall be paid by any disqualified person who participated in the prohibited transaction (other than a fiduciary acting only as such).

(c) Prohibited transaction.

(1) General rule.
For purposes of this section, the term "prohibited transaction" means any direct or indirect—

(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;

(B) lending of money or other extension of credit between a plan and a disqualified person;

(C) furnishing of goods, services, or facilities between a plan and a disqualified person;

(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;

(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or

(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.

(2) Special exemption.
The Secretary shall establish an exemption procedure for purposes of this subsection. Pursuant to such procedure, he may grant a conditional or unconditional exemption of any disqualified person or transaction, orders of disqualified persons or transactions, from all or part of the restrictions imposed by paragraph (1) of this subsection . Action under this subparagraph may be taken only after consultation and coordination with the Secretary of Labor. The Secretary may not grant an exemption under this paragraph unless he finds that such exemption is—

(A) administratively feasible,

(B) in the interests of the plan and of its participants and beneficiaries, and

(C) protective of the rights of participants and beneficiaries of the plan.

Before granting an exemption under this paragraph, the Secretary shall require adequate notice to be given to interested persons and shall publish notice in the Federal Register of the pendency of such exemption and shall afford interested persons an opportunity to present views. No exemption may be granted under this paragraph with respect to a transaction described in subparagraph (E) or (F) of paragraph (1) unless the Secretary affords an opportunity for a hearing and makes a determination on the record with respect to the findings required under subparagraphs (A) , (B) , and (C) of this paragraph , except that in lieu of such hearing the Secretary may accept any record made by the Secretary of Labor with respect to an application for exemption under section 408(a) of title I of the Employee Retirement Income Security Act of 1974 .

(3) Special rule for individual retirement accounts.
An individual for whose benefit an individual retirement account is established and his beneficiaries shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be an individual retirement account by reason of the application of section 408(e) (2) (A) or if section 408(e) (4) applies to such account.

(4) Special rule for Archer MSAs.
An individual for whose benefit an Archer MSA (within the meaning of section 220(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 220(e)(2) applies to such transaction.

(5) Special rule for Coverdell education savings accounts.
An individual for whose benefit a Coverdell education savings account is established and any contributor to such account shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if section 530(d) applies with respect to such transaction.

(6) Special rule for health savings accounts.
An individual for whose benefit a health savings account (within the meaning of section 223(d)) is established shall be exempt from the tax imposed by this section with respect to any transaction concerning such account (which would otherwise be taxable under this section) if, with respect to such transaction, the account ceases to be a health savings account by reason of the application of section 223(e) (2) to such account.

(d) Exemptions.
Except as provided in subsection (f) (6), the prohibitions provided in subsection (c) shall not apply to—

(1) any loan made by the plan to a disqualified person who is a participant or beneficiary of the plan if such loan—

(A) is available to all such participants or beneficiaries on a reasonably equivalent basis,

(B) is not made available to highly compensated employees (within the meaning of section 414(q)) in an amount greater than the amount made available to other employees,

(C) is made in accordance with specific provisions regarding such loans set forth in the plan,

(D) bears a reasonable rate of interest, and

(E) is adequately secured;

(2) any contract, or reasonable arrangement, made with a disqualified person for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor;

(3) any loan to a leveraged employee stock ownership plan (as defined in subsection (e) (7)), if—

(A) such loan is primarily for the benefit of participants and beneficiaries of the plan, and

(B) such loan is at a reasonable rate of interest, and any collateral which is given to a disqualified person by the plan consists only of qualifying employer securities (as defined in subsection (e) (8));

(4) the investment of all or part of a plan's assets in deposits which bear a reasonable interest rate in a bank or similar financial institution supervised by the United States or a State, if such bank or other institution is a fiduciary of such plan and if—

(A) the plan covers only employees of such bank or other institution and employees of affiliates of such bank or other institution, or

(B) such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or institution or affiliates thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment;

(5) any contract for life insurance, health insurance, or annuities with one or more insurers which are qualified to do business in a State if the plan pays no more than adequate consideration, and if each such insurer or insurers is—

(A) the employer maintaining the plan, or

(B) a disqualified person which is wholly owned (directly or indirectly) by the employer establishing the plan, or by any person which is a disqualified person with respect to the plan, but only if the total premiums and annuity considerations written by such insurers for life insurance, health insurance, or annuities for all plans (and their employers) with respect to which such insurers are disqualified persons (not including premiums or annuity considerations written by the employer maintaining the plan) do not exceed 5 percent of the total premiums and annuity considerations written for all lines of insurance in that year by such insurers (not including premiums or annuity considerations written by the employer maintaining the plan);

(6) the provision of any ancillary service by a bank or similar financial institution supervised by the United States or a State, if such service is provided at not more than reasonable compensation, if such bank or other institution is a fiduciary of such plan, and if—

(A) such bank or similar financial institution has adopted adequate internal safeguards which assure that the provision of such ancillary service is consistent with sound banking and financial practice, as determined by Federal or State supervisory authority, and

(B) the extent to which such ancillary service is provided is subject to specific guidelines issued by such bank or similar financial institution (as determined by the Secretary after consultation with Federal and State supervisory authority), and under such guidelines the bank or similar financial institution does not provide such ancillary service—

(i) in an excessive or unreasonable manner, and

(ii) in a manner that would be inconsistent with the best interests of participants and beneficiaries of employee benefit plans;

(7) the exercise of a privilege to convert securities, to the extent provided in regulations of the Secretary, but only if the plan receives no less than adequate consideration pursuant to such conversion;

(8) any transaction between a plan and a common or collective trust fund or pooled investment fund maintained by a disqualified person which is a bank or trust company supervised by a State or Federal agency or between a plan and a pooled investment fund of an insurance company qualified to do business in a State if—

(A) the transaction is a sale or purchase of an interest in the fund,

(B) the bank, trust company, or insurance company receives not more than reasonable compensation, and

(C) such transaction is expressly permitted by the instrument under which the plan is maintained, or by a fiduciary (other than the bank, trust company, or insurance company, or an affiliate thereof) who has authority to manage and control the assets of the plan;

(9) receipt by a disqualified person of any benefit to which he may be entitled as a participant or beneficiary in the plan, so long as the benefit is computed and paid on a basis which is consistent with the terms of the plan as applied to all other participants and beneficiaries;

(10) receipt by a disqualified person of any reasonable compensation for services rendered, or for the reimbursement of expenses properly and actually incurred, in the performance of his duties with the plan, but no person so serving who already receives full-time pay from an employer or an association of employers, whose employees are participants in the plan or from an employee organization whose members are participants in such plan shall receive compensation from such fund, except for reimbursement of expenses properly and actually incurred;

(11) service by a disqualified person as a fiduciary in addition to being an officer, employee, agent, or other representative of a disqualified person;

(12) the making by a fiduciary of a distribution of the assets of the trust in accordance with the terms of the plan if such assets are distributed in the same manner as provided under section 4044 of title IV of the Employee Retirement Income Security Act of 1974 (relating to allocation of assets);

(13) any transaction which is exempt from section 406 of such Act by reason of section 408(e) of such Act (or which would be so exempt if such section 406 applied to such transaction) or which is exempt from section 406 of such Act by reason of section 408(b)(12) of such Act;

(14) any transaction required or permitted under part 1 of subtitle E of title IV or section 4223 of the Employee Retirement Income Security Act of 1974 , but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F) ;

(15) a merger of multiemployer plans, or the transfer of assets or liabilities between multiemployer plans, determined by the Pension Benefit Guaranty Corporation to meet the requirements of section 4231 of such Act, but this paragraph shall not apply with respect to the application of subsection (c)(1)(E) or (F) ;

(16) a sale of stock held by a trust which constitutes an individual retirement account under section 408(a) to the individual for whose benefit such account is established if—

(A) such stock is in a bank (as defined in section 581) or a depository institution holding company (as defined in section 3(w) (1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w) (1)),

(B) such stock is held by such trust as of the date of the enactment of this paragraph,

(C) such sale is pursuant to an election under section 1362(a) by such bank or company,

(D) such sale is for fair market value at the time of sale (as established by an independent appraiser) and the terms of the sale are otherwise at least as favorable to such trust as the terms that would apply on a sale to an unrelated party,

(E) such trust does not pay any commissions, costs, or other expenses in connection with the sale, and

(F) the stock is sold in a single transaction for cash not later than 120 days after the S corporation election is made;

(17) Any transaction in connection with the provision of investment advice described in subsection (e) (3) (B) to a participant or beneficiary in a plan that permits such participant or beneficiary to direct the investment of plan assets in an individual account, if—

(A) the transaction is—

(i) the provision of the investment advice to the participant or beneficiary of the plan with respect to a security or other property available as an investment under the plan,

(ii) the acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice, or

(iii) the direct or indirect receipt of fees or other compensation by the fiduciary adviser or an affiliate thereof (or any employee, agent, or registered representative of the fiduciary adviser or affiliate) in connection with the provision of the advice or in connection with an acquisition, holding, or sale of a security or other property available as an investment under the plan pursuant to the investment advice; and

(B) the requirements of subsection (f) (8) are met,

(18) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and disqualified person (other than a fiduciary described in subsection (e) (3)) with respect to a plan if—

(A) the transaction involves a block trade,

(B) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor), does not exceed 10 percent of the aggregate size of the block trade,

(C) the terms of the transaction, including the price, are at least as favorable to the plan as an arm's length transaction, and

(D) the compensation associated with the purchase and sale is not greater than the compensation associated with an arm's length transaction with an unrelated party,

(19) any transaction involving the purchase or sale of securities, or other property (as determined by the Secretary of Labor), between a plan and a disqualified person if—

(A) the transaction is executed through an electronic communication network, alternative trading system, or similar execution system or trading venue subject to regulation and oversight by—

(i) the applicable Federal regulating entity, or

(ii) such foreign regulatory entity as the Secretary of Labor may determine by regulation,

(B) either—

(i) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the execution system in accordance with applicable rules of the Securities and Exchange Commission or other relevant governmental authority, or

(ii) neither the execution system nor the parties to the transaction take into account the identity of the parties in the execution of trades,

(C) the price and compensation associated with the purchase and sale are not greater than the price and compensation associated with an arm's length transaction with an unrelated party,

(D) if the disqualified person has an ownership interest in the system or venue described in subparagraph (A) , the system or venue has been authorized by the plan sponsor or other independent fiduciary for transactions described in this paragraph , and

(E) not less than 30 days prior to the initial transaction described in this paragraph executed through any system or venue described in subparagraph (A) , a plan fiduciary is provided written or electronic notice of the execution of such transaction through such system or venue,

(20) transactions described in subparagraphs (A), (B), and (D) of subsection (c)(1) between a plan and a person that is a disqualified person other than a fiduciary (or an affiliate) who has or exercises any discretionary authority or

control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of subsection (e)(3)(B)) with respect to those assets, solely by reason of providing services to the plan or solely by reason of a relationship to such a service provider described in subparagraph (F), (G), (H), or (I) of subsection (e)(2) , or both, but only if in connection with such transaction the plan receives no less, nor pays no more, than adequate consideration,

(21) any foreign exchange transactions, between a bank or broker-dealer (or any affiliate of either) and a plan (as defined in this section) with respect to which such bank or broker-dealer (or affiliate) is a trustee, custodian, fiduciary, or other disqualified person, if—

(A) the transaction is in connection with the purchase, holding, or sale of securities or other investment assets (other than a foreign exchange transaction unrelated to any other investment in securities or other investment assets),

(B) at the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties, or the terms afforded by the bank or broker-dealer (or any affiliate of either) in comparable arm's-length foreign exchange transactions involving unrelated parties,

(C) the exchange rate used by such bank or broker-dealer (or affiliate) for a particular foreign exchange transaction does not deviate by more than 3 percent from the interbank bid and asked rates for transactions of comparable size and maturity at the time of the transaction as displayed on an independent service that reports rates of exchange in the foreign currency market for such currency, and

(D) the bank or broker-dealer (or any affiliate of either) does not have investment discretion, or provide investment advice, with respect to the transaction,

(22) any transaction described in subsection (c) (1) (A) involving the purchase and sale of a security between a plan and any other account managed by the same investment manager, if—

(A) the transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available,

(B) the transaction is effected at the independent current market price of the security (within the meaning of section 270.17a-7(b) of title 17, Code of Federal Regulations),

(C) no brokerage commission, fee (except for customary transfer fees, the fact of which is disclosed pursuant to subparagraph (D)), or other remuneration is paid in connection with the transaction,

(D) a fiduciary (other than the investment manager engaging in the cross-trades or any affiliate) for each plan participating in the transaction authorizes in advance of any cross-trades (in a document that is separate from any other written agreement of the parties) the investment manager to engage in cross trades at the investment manager's discretion, after such fiduciary has received disclosure regarding the conditions under which cross trades may take place (but only if such disclosure is separate from any other agreement or disclosure involving the asset management relationship), including the written policies and procedures of the investment manager described in subparagraph (H) ,

(E) each plan participating in the transaction has assets of at least $100,000,000, except that if the assets of a plan are invested in a master trust containing the assets of plans maintained by employers in the same controlled group (as defined in section 407(d) (7) of the Employee Retirement Income Security Act of 1974), the master trust has assets of at least $100,000,000,

(F) the investment manager provides to the plan fiduciary who authorized cross trading under subparagraph (D) a quarterly report detailing all cross trades executed by the investment manager in which the plan participated during such quarter, including the following information, as applicable: (i) the identity of each security bought or sold; (ii) the number of shares or units traded, (iii) the parties involved in the cross-trade; and (iv) trade price and the method used to establish the trade price,

(G) the investment manager does not base its fee schedule on the plan's consent to cross trading, and no other service (other than the investment opportunities and cost savings available through a cross trade) is conditioned on the plan's consent to cross trading,

(H) the investment manager has adopted, and cross-trades are effected in accordance with, written cross-trading policies and procedures that are fair and equitable to all accounts participating in the cross-trading program, and that include a description of the manager's pricing policies and procedures, and the manager's policies and procedures for allocating cross trades in an objective manner among accounts participating in the cross-trading program, and

(I) the investment manager has designated an individual responsible for periodically reviewing such purchases and sales to ensure compliance with the written policies and procedures described in subparagraph (H) , and following such review, the individual shall issue an annual written report no later than 90 days following the period to which it relates signed under penalty of perjury to the plan fiduciary who authorized cross trading under subparagraph (D) describing the steps performed during the course of the review, the level of compliance, and any specific instances of non-compliance.

The written report shall also notify the plan fiduciary of the plan's right to terminate participation in the investment manager's cross-trading program at any time, or

(23) except as provided in subsection (f)(11) , a transaction described in subparagraph (A), (B), (C), or (D) of subsection (c)(1) in connection with the acquisition, holding, or disposition of any security or commodity, if the transaction is corrected before the end of the correction period.

(e) Definitions.

(1) Plan.
For purposes of this section, the term "plan" means—

(A) a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a) , which trust or plan is exempt from tax under section 501(a) ,

(B) an individual retirement account described in section 408(a),

(C) an individual retirement annuity described in section 408(b),

(D) an Archer MSA described in section 220(d),

(E) a health savings account described in section 223(d),

(F) a Coverdell education savings account described in section 530, or

(G) a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be described in any preceding subparagraph of this paragraph.

(2) Disqualified person.
For purposes of this section, the term "disqualified person" means a person who is—

(A) a fiduciary;

(B) a person providing services to the plan;

(C) an employer any of whose employees are covered by the plan;

(D) an employee organization any of whose members are covered by the plan;

(E) an owner, direct or indirect, of 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,

(ii) the capital interest or the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A) , (B) , (C) , or (E) ;

(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of—

(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,

(ii) the capital interest or profits interest of such partnership, or

(iii) the beneficial interest of such trust or estate,

is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C) , (D) , or (E) ;

(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or

(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).

The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).

(3) Fiduciary.
For purposes of this section, the term "fiduciary" means any person who—

(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,

(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or

(C) has any discretionary authority or discretionary responsibility in the administration of such plan.

Such term includes any person designated under section 405(c) (1) (B) of the Employee Retirement Income Security Act of 1974.

(4) Stockholdings.
For purposes of paragraphs (2) (E) (i) and (G) (i) there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c) (4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6).

(5) Partnerships; trusts.
For purposes of paragraphs (2)(E)(ii) and (iii) , (G)(ii) and (iii) , and (I) the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are the members within the meaning of paragraph (6) .

(6) Member of family.
For purposes of paragraph (2) (F), the family of any individual shall include his spouse, ancestor, lineal descendant, and any spouse of a lineal descendant.

(7) Employee stock ownership plan.
The term "employee stock ownership plan" means a defined contribution plan—

> (A) which is a stock bonus plan which is qualified, or a stock bonus and a money purchase plan both of which are qualified under section 401(a) , and which are designed to invest primarily in qualifying employer securities; and
>
> (B) which is otherwise defined in regulations prescribed by the Secretary.

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h), section 409(o), and, if applicable, section 409(n), section 409(p), and section 664(g) and, if the employer has a registration-type class of securities (as defined in section 409(e) (4)), it meets the requirements of section 409(e).

(8) Qualifying employer security.
The term "qualifying employer security" means any employer security within the meaning of section 409(l). If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section , except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

(9) Section made applicable to withdrawal liability payment funds.
For purposes of this section —

> (A) In general. The term "plan" includes a trust described in section 501(c) (22).

(B) Disqualified person. In the case of any trust to which this section applies by reason of subparagraph (A), the term "disqualified person" includes any person who is a disqualified person with respect to any plan to which such trust is permitted to make payments under section 4223 of the Employee Retirement Income Security Act of 1974.

(f) Other definitions and special rules.
For purposes of this section —

(1) Joint and several liability.
If more than one person is liable under subsection (a) or (b) with respect to any one prohibited transaction, all such persons shall be jointly and severally liable under such subsection with respect to such transaction.

(2) Taxable period.
The term "taxable period" means, with respect to any prohibited transaction, the period beginning with the date on which the prohibited transaction occurs and ending on the earliest of—

(A) the date of mailing a notice of deficiency with respect to the tax imposed by subsection (a) under section 6212,

(B) the date on which the tax imposed by subsection (a) is assessed, or

(C) the date on which correction of the prohibited transaction is completed.

(3) Sale or exchange; encumbered property.
A transfer of real or personal property by a disqualified person to a plan shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien which the plan assumes or if it is subject to a mortgage or similar lien which a disqualified person placed on the property within the 10-year period ending on the date of the transfer.

(4) Amount involved.
The term "amount involved" means, with respect to a prohibited transaction, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that, in the case of services described in paragraphs (2) and (10) of subsection (d) the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the tax imposed by subsection (a), shall be determined as of the date on which the prohibited transaction occurs; and

(B) in the case of the tax imposed by subsection (b), shall be the highest fair market value during the taxable period.

(5) Correction.
The terms "correction" and "correct" mean, with respect to a prohibited transaction, undoing the transaction to the extent possible, but in any case placing the plan in a financial position not worse than that in which it would be if the disqualified person were acting under the highest fiduciary standards.

(6) Exemptions not to apply to certain transactions.

(A) In general. In the case of a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c) (3)), the exemptions provided by subsection (d) (other than paragraphs (9) and (12)) shall not apply to a transaction in which the plan directly or indirectly—

(i) lends any part of the corpus or income of the plan to,

(ii) pays any compensation for personal services rendered to the plan to, or

(iii) acquires for the plan any property from, or sells any property to,

any such owner-employee, a member of the family (as defined in section 267(c) (4)) of any such owner-employee, or any corporation in which any such owner-employee owns, directly or indirectly, 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(B) Special rules for shareholder-employees, etc.

(i) In general. For purposes of subparagraph (A), the following shall be treated as owner-employees:

(I) A shareholder-employee.

(II) A participant or beneficiary of an individual retirement plan (as defined in section 7701(a) (37)).

(III) An employer or association of employees which establishes such an individual retirement plan under section 408(c).

(ii) Exception for certain transactions involving shareholder-employees. Subparagraph (A) (iii) shall not apply to a transaction which consists of a sale of employer securities to an employee stock ownership plan (as defined in subsection (e) (7)) by a shareholder-employee, a member of the family (as defined in section 267(c) (4)) of such shareholder-employee, or a corporation in which such a shareholder-employee owns stock representing a 50 percent or greater interest described in subparagraph (A).

(iii) Loan exception. For purposes of subparagraph (A) (i), the term "owner-employee" shall only include a person described in subclause (II) or (III) of clause (i).

(C) Shareholder-employee. For purposes of subparagraph (B), the term "shareholder-employee" means an employee or officer of an S corporation

who owns (or is considered as owning within the meaning of section 318(a) (1)) more than 5 percent of the outstanding stock of the corporation on any day during the taxable year of such corporation.

(7) S corporation repayment of loans for qualifying employer securities. A plan shall not be treated as violating the requirements of section 401 or 409 or subsection (e)(7) , or as engaging in a prohibited transaction for purposes of subsection (d)(3) , merely by reason of any distribution (as described in section 1368(a)) with respect to S corporation stock that constitutes qualifying employer securities, which in accordance with the plan provisions is used to make payments on a loan described in subsection (d)(3) the proceeds of which were used to acquire such qualifying employer securities (whether or not allocated to participants). The preceding sentence shall not apply in the case of a distribution which is paid with respect to any employer security which is allocated to a participant unless the plan provides that employer securities with a fair market value of not less than the amount of such distribution are allocated to such participant for the year which (but for the preceding sentence) such distribution would have been allocated to such participant.

(8) Provision of investment advice to participant and beneficiaries.

(A) In general. The prohibitions provided in subsection (c) shall not apply to transactions described in subsection (d) (17) if the investment advice provided by a fiduciary adviser is provided under an eligible investment advice arrangement.

(B) Eligible investment advice arrangement. For purposes of this paragraph, the term "eligible investment advice arrangement" means an arrangement—

(i) which either—

(I) provides that any fees (including any commission or other compensation) received by the fiduciary adviser for investment advice or with respect to the sale, holding, or acquisition of any security or other property for purposes of investment of plan assets do not vary depending on the basis of any investment option selected, or

(II) uses a computer model under an investment advice program meeting the requirements of subparagraph (C) in connection with the provision of investment advice by a fiduciary adviser to a participant or beneficiary, and

(ii) with respect to which the requirements of subparagraphs (D), (E), (F), (G), (H), and (I) are met.

(C) Investment advice program using computer model.

(i) In general. An investment advice program meets the requirements of this subparagraph if the requirements of clauses (ii), (iii), and (iv) are met.

(ii) Computer model. The requirements of this clause are met if the investment advice provided under the investment advice program is provided pursuant to a computer model that—

(I) applies generally accepted investment theories that take into account the historic returns of different asset classes over defined periods of time,

(II) utilizes relevant information about the participant, which may include age, life expectancy, retirement age, risk tolerance, other assets or sources of income, and preferences as to certain types of investments,

(III) utilizes prescribed objective criteria to provide asset allocation portfolios comprised of investment options available under the plan,

(IV) operates in a manner that is not biased in favor of investments offered by the fiduciary adviser or a person with a material affiliation or contractual relationship with the fiduciary adviser, and

(V) takes into account all investment options under the plan in specifying how a participant's account balance should be invested and is not inappropriately weighted with respect to any investment option.

(iii) Certification.

(I) In general. The requirements of this clause are met with respect to any investment advice program if an eligible investment expert certifies, prior to the utilization of the computer model and in accordance with rules prescribed by the Secretary of Labor, that the computer model meets the requirements of clause (ii).

(II) Renewal of certifications. If, as determined under regulations prescribed by the Secretary of Labor, there are material modifications to a computer model, the requirements of this clause are met only if a certification described in subclause (I) is obtained with respect to the computer model as so modified.

(III) Eligible investment expert. The term "eligible investment expert" means any person which meets such requirements as the Secretary of Labor may provide and which does not bear any material affiliation or contractual relationship with any investment adviser or a related person thereof (or any employee, agent, or registered representative of the investment adviser or related person).

(iv) Exclusivity of recommendation. The requirements of this clause are met with respect to any investment advice program if—

(I) the only investment advice provided under the program is the advice generated by the computer model described in clause (ii), and

(II) any transaction described in (d) (17) (A) (ii) occurs solely at the direction of the participant or beneficiary.

Nothing in the preceding sentence shall preclude the participant or beneficiary from requesting investment advice other than that described in clause (i), but only if such request has not been solicited by any person connected with carrying out the arrangement.

(D) Express authorization by separate fiduciary. The requirements of this subparagraph are met with respect to an arrangement if the arrangement is expressly authorized by a plan fiduciary other than the person offering the investment advice program, any person providing investment options under the plan, or any affiliate of either.

(E) Audits.

(i) In general. The requirements of this subparagraph are met if an independent auditor, who has appropriate technical training or experience and proficiency and so represents in writing—

(I) conducts an annual audit of the arrangement for compliance with the requirements of this paragraph, and

(II) following completion of the annual audit, issues a written report to the fiduciary who authorized use of the arrangement which presents its specific findings regarding compliance of the arrangement with the requirements of this paragraph.

(ii) Special rule for individual retirement and similar plans. In the case of a plan described in subparagraphs (B) through (F) (and so much of subparagraph (G) as relates to such subparagraphs) of subsection (e)(1), in lieu of the requirements of clause (i) , audits of the arrangement shall be conducted at such times and in such manner as the Secretary of Labor may prescribe.

(iii) Independent auditor. For purposes of this subparagraph, an auditor is considered independent if it is not related to the person offering the arrangement to the plan and is not related to any person providing investment options under the plan.

(F) Disclosure. The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides to a participant or a beneficiary before the initial provision of the investment advice with regard to

any security or other property offered as an investment option, a written notification (which may consist of notification by means of electronic communication)—

(I) of the role of any party that has a material affiliation or contractual relationship with the fiduciary adviser, in the development of the investment advice program and in the selection of investment options available under the plan,

(II) of the past performance and historical rates of return of the investment options available under the plan,

(III) of all fees or other compensation relating to the advice that the fiduciary adviser or any affiliate thereof is to receive (including compensation provided by any third party) in connection with the provision of the advice or in connection with the sale, acquisition, or holding of the security or other property,

(IV) of any material affiliation or contractual relationship of the fiduciary adviser or affiliates thereof in the security or other property,

(V) the manner, and under what circumstances, any participant or beneficiary information provided under the arrangement will be used or disclosed,

(VI) of the types of services provided by the fiduciary adviser in connection with the provision of investment advice by the fiduciary adviser,

(VII) that the adviser is acting as a fiduciary of the plan in connection with the provision of the advice, and

(VIII) that a recipient of the advice may separately arrange for the provision of advice by another adviser, that could have no material affiliation with and receive no fees or other compensation in connection with the security or other property, and

(ii) at all times during the provision of advisory services to the participant or beneficiary, the fiduciary adviser—

(I) maintains the information described in clause (i) in accurate form and in the manner described in subparagraph (H),

(II) provides, without charge, accurate information to the recipient of the advice no less frequently than annually,

(III) provides, without charge, accurate information to the recipient of the advice upon request of the recipient, and

(IV) provides, without charge, accurate information to the recipient of the advice concerning any material change to the information required to be provided to the recipient of the advice at a time reasonably contemporaneous to the change in information.

(G) Other conditions. The requirements of this subparagraph are met if—

(i) the fiduciary adviser provides appropriate disclosure, in connection with the sale, acquisition, or holding of the security or other property, in accordance with all applicable securities laws,

(ii) the sale, acquisition, or holding occurs solely at the direction of the recipient of the advice,

(iii) the compensation received by the fiduciary adviser and affiliates thereof in connection with the sale, acquisition, or holding of the security or other property is reasonable, and

(iv) the terms of the sale, acquisition, or holding of the security or other property are at least as favorable to the plan as an arm's length transaction would be.

(H) Standards for presentation of information.

(i) In general. The requirements of this subparagraph are met if the notification required to be provided to participants and beneficiaries under subparagraph (F) (i) is written in a clear and conspicuous manner and in a manner calculated to be understood by the average plan participant and is sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of the information required to be provided in the notification.

(ii) Model form for disclosure of fees and other compensation. The Secretary of Labor shall issue a model form for the disclosure of fees and other compensation required in subparagraph (F) (i) (III) which meets the requirements of clause (i).

(I) Maintenance for 6 years of evidence of compliance. The requirements of this subparagraph are met if a fiduciary adviser who has provided advice referred to in subparagraph (A) maintains, for a period of not less than 6 years after the provision of the advice, any records necessary for determining whether the requirements of the preceding provisions of this paragraph and of subsection (d) (17) have been met. A transaction prohibited under subsection (c) shall not be considered to have occurred solely because the records are lost or destroyed prior to the end of the 6-year period due to circumstances beyond the control of the fiduciary adviser.

(J) Definitions. For purposes of this paragraph and subsection (d) (17) —

(i) Fiduciary adviser. The term "fiduciary adviser" means, with respect to a plan, a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) by the person to a participant or beneficiary of the plan and who is—

(I) registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) or under the laws of the State in which the fiduciary maintains its principal office and place of business,

(II) a bank or similar financial institution referred to in subsection (d) (4) or a savings association (as defined in section 3(b) (1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b) (1)), but only if the advice is provided through a trust department of the bank or similar financial institution or savings association which is subject to periodic examination and review by Federal or State banking authorities,

(III) an insurance company qualified to do business under the laws of a State,

(IV) a person registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.),

(V) an affiliate of a person described in any of subclauses (I) through (IV), or

(VI) an employee, agent, or registered representative of a person described in subclauses (I) through (V) who satisfies the requirements of applicable insurance, banking, and securities laws relating to the provision of the advice.

For purposes of this title, a person who develops the computer model described in subparagraph (C)(ii) or markets the investment advice program or computer model shall be treated as a person who is a fiduciary of the plan by reason of the provision of investment advice referred to in subsection (e)(3)(B) to a participant or beneficiary and shall be treated as a fiduciary adviser for purposes of this paragraph and subsection (d)(17) , except that the Secretary of Labor may prescribe rules under which only 1 fiduciary adviser may elect to be treated as a fiduciary with respect to the plan.

(ii) Affiliate. The term "affiliate" of another entity means an affiliated person of the entity (as defined in section 2(a) (3) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a) (3))).

(iii) Registered representative. The term "registered representative" of another entity means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) (substituting the entity for the broker or dealer referred to in such section) or a person described in section

202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(17)) (substituting the entity for the investment adviser referred to in such section).

(9) Block trade.
The term "block trade" means any trade of at least 10,000 shares or with a market value of at least $200,000 which will be allocated across two or more unrelated client accounts of a fiduciary.

(10) Adequate consideration.
The term "adequate consideration" means—

(A) in the case of a security for which there is a generally recognized market—

(i) the price of the security prevailing on a national securities exchange which is registered under section 6 of the Securities Exchange Act of 1934, taking into account factors such as the size of the transaction and marketability of the security, or

(ii) if the security is not traded on such a national securities exchange, a price not less favorable to the plan than the offering price for the security as established by the current bid and asked prices quoted by persons independent of the issuer and of the party in interest, taking into account factors such as the size of the transaction and marketability of the security, and

(B) in the case of an asset other than a security for which there is a generally recognized market, the fair market value of the asset as determined in good faith by a fiduciary or fiduciaries in accordance with regulations prescribed by the Secretary of Labor.

(11) Correction period.

(A) In general. For purposes of subsection (d)(23) , the term "correction period" means the 14-day period beginning on the date on which the disqualified person discovers, or reasonably should have discovered, that the transaction would (without regard to this paragraph and subsection (d)(23)) constitute a prohibited transaction.

(B) Exceptions.

(i) Employer securities. Subsection (d) (23) does not apply to any transaction between a plan and a plan sponsor or its affiliates that involves the acquisition or sale of an employer security (as defined in section 407(d) (1) of the Employee Retirement Income Security Act of 1974) or the acquisition, sale, or lease of employer real property (as defined in section 407(d) (2) of such Act).

(ii) Knowing prohibited transaction. In the case of any disqualified person, subsection (d) (23) does not apply to a transaction if, at the time the transaction is entered into, the disqualified person knew (or reasonably should have known) that the transaction

would (without regard to this paragraph) constitute a prohibited transaction.

(C) Abatement of tax where there is a correction. If a transaction is not treated as a prohibited transaction by reason of subsection (d)(23) , then no tax under subsection (a) and (b) shall be assessed with respect to such transaction, and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment.

(D) Definitions. For purposes of this paragraph and subsection (d) (23) —

(i) Security. The term "security" has the meaning given such term by section 475(c) (2) (without regard to subparagraph (F) (iii) and the last sentence thereof).

(ii) Commodity. The term "commodity" has the meaning given such term by section 475(e) (2) (without regard to subparagraph (D) (iii) thereof).

(iii) Correct. The term "correct" means, with respect to a transaction—

(I) to undo the transaction to the extent possible and in any case to make good to the plan or affected account any losses resulting from the transaction, and

(II) to restore to the plan or affected account any profits made through the use of assets of the plan.

(g) Application of section.
This section shall not apply—

(1) in the case of a plan to which a guaranteed benefit policy (as defined in section 401(b) (2) (B) of the Employee Retirement Income Security Act of 1974) is issued, to any assets of the insurance company, insurance service, or insurance organization merely because of its issuance of such policy;

(2) to a governmental plan (within the meaning of section 414(d)); or

(3) to a church plan (within the meaning of section 414(e)) with respect to which the election provided by section 410(d) has not been made.

In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940, the assets of such plan shall be deemed to include such security but shall not, by reason of such investment, be deemed to include any assets of such company.

(h) Notification of Secretary of Labor.
Before sending a notice of deficiency with respect to the tax imposed by subsection (a) or (b), the Secretary shall notify the Secretary of Labor and provide him a reasonable opportunity to obtain a correction of the prohibited transaction or to comment on the imposition of such tax.

(i) Cross reference.
For provisions concerning coordination procedures between Secretary of Labor and Secretary of the Treasury with respect to application of tax imposed by this section and for authority to waive imposition of the tax imposed by subsection (b), see section 3003 of the Employee Retirement Income Security Act of 1974.

EXHIBIT C

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Internal Revenue Code

8.5.1 § 408 Individual retirement accounts.

(a) Individual retirement account.
For purposes of this section , the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(c) , 403(a)(4) , 403(b)(8) , or 457(e)(16) , no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(A) .

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section .

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account is nonforfeitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(b) Individual retirement annuity.
For purposes of this section, the term "individual retirement annuity" means an annuity

contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

(1) The contract is not transferable by the owner.

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed the dollar amount in effect under section 219(b) (1) (A), and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a) (9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection , no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 701/2; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed the dollar amount in effect under section 219(b)(1)(A) .

(c) Accounts established by employers and certain associations of employees. A trust created or organized in the United States by an employer for the exclusive benefit of his employees or their beneficiaries, or by an association of employees (which may include employees within the meaning of section 401(c) (1)) for the exclusive benefit of its members or their beneficiaries, shall be treated as an individual retirement account (described in subsection (a)), but only if the written governing instrument creating the trust meets the following requirements:

(1) The trust satisfies the requirements of paragraphs (1) through (6) of subsection (a).

(2) There is a separate accounting for the interest of each employee or member (or spouse of an employee or member).

The assets of the trust may be held in a common fund for the account of all individuals who have an interest in the trust.

(d) Tax treatment of distributions.

(1) In general.
Except as otherwise provided in this subsection, any amount paid or distributed out of an individual retirement plan shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

(2) Special rules for applying section 72.
For purposes of applying section 72 to any amount described in paragraph (1) —

(A) all individual retirement plans shall be treated as 1 contract,

(B) all distributions during any taxable year shall be treated as 1 distribution, and

(C) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

For purposes of subparagraph (C), the value of the contract shall be increased by the amount of any distributions during the calendar year.

(3) Rollover contribution.
An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general. Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to this paragraph).

For purposes of clause (ii) , the term "eligible retirement plan" means an eligible retirement plan described in clause (iii) , (iv) , (v) , or (vi) of section 402(c)(8)(B) .

(B) Limitation. This paragraph does not apply to any amount described in subparagraph (A) (i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual

received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph.

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general. In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity. An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted.

(i) In general. If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i) or (ii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan. For purposes of clause (i), the term "eligible plan" means any account, annuity, contract, or plan referred to in subparagraph (A).

(E) Denial of rollover treatment for required distributions. This paragraph shall not apply to any amount to the extent such amount is required to be distributed under subsection (a) (6) or (b) (3).

(F) Frozen deposits. For purposes of this paragraph, rules similar to the rules of section 402(c) (7) (relating to frozen deposits) shall apply.

(G) Simple retirement accounts. In the case of any payment or distribution out of a simple retirement account (as defined in subsection (p)) to which section 72(t)(6) applies, this paragraph shall not apply unless such payment or distribution is paid into another simple retirement account.

(H) Application of section 72.

(i) In general. If—

(I) a distribution is made from an individual retirement plan, and

(II) a rollover contribution is made to an eligible retirement plan described in section 402(c) (8) (B) (iii), (iv), (v), or (vi) with respect to all or part of such distribution,

then, notwithstanding paragraph (2), the rules of clause (ii) shall apply for purposes of applying section 72.

(ii) Applicable rules. In the case of a distribution described in clause (i) —

(I) section 72 shall be applied separately to such distribution,

(II) notwithstanding the pro rata allocation of income on, and investment in, the contract to distributions under section 72, the portion of such distribution rolled over to an eligible retirement plan described in clause (i) shall be treated as from income on the contract (to the extent of the aggregate income on the contract from all individual retirement plans of the distributee), and

(III) appropriate adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(I) Waiver of 60-day requirement. The Secretary may waive the 60-day requirement under subparagraphs (A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.

(4) Contributions returned before due date of return.
Paragraph (1) does not apply to the distribution of any contribution paid during a taxable year to an individual retirement account or for an individual retirement annuity if—

(A) such distribution is received on or before the day prescribed by law (including extensions of time) for filing such individual's return for such taxable year,

(B) no deduction is allowed under section 219 with respect to such contribution, and

(C) such distribution is accompanied by the amount of net income attributable to such contribution.

In the case of such a distribution, for purposes of section 61, any net income described in subparagraph (C) shall be deemed to have been earned and receivable in the taxable year in which such contribution is made.

(5) Distributions of excess contributions after due date for taxable year and certain excess rollover contributions.

(A) In general. In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed the dollar amount in effect under section 219(b)(1)(A) , paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 with respect to such excess contribution.

If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of the preceding sentence shall be increased by the lesser of the amount of such contributions or the dollar limitation in effect under section 415(c)(1)(A) for such taxable year.

(B) Excess rollover contributions attributable to erroneous information. If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) the information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

For purposes of this paragraph, the amount allowable as a deduction under section 219 shall be computed without regard to section 219(g).

(6) Transfer of account incident to divorce.
The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his spouse or former spouse under a divorce or separation instrument described in subparagraph (A) of section 71(b) (2) is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

(7) Special rules for simplified employee pensions or simple retirement accounts.

(A) Transfer or rollover of contributions prohibited until deferral test met. Notwithstanding any other provision of this subsection or section 72(t), paragraph (1) and section 72(t) (1) shall apply to the transfer or distribution from a simplified employee pension of any contribution under a salary reduction arrangement described in subsection (k) (6) (or any income allocable thereto) before a determination as to whether the requirements of subsection (k) (6) (A) (iii) are met with respect to such contribution.

(B) Certain exclusions treated as deductions. For purposes of paragraphs (4) and (5) and section 4973, any amount excludable or excluded from gross income under section 402(h) or 402(k) shall be treated as an amount allowable or allowed as a deduction under section 219.

(8) Distributions for charitable purposes.

(A) In general. So much of the aggregate amount of qualified charitable distributions with respect to a taxpayer made during any taxable year which does not exceed $100,000 shall not be includible in gross income of such taxpayer for such taxable year.

(B) Qualified charitable distribution. For purposes of this paragraph, the term "qualified charitable distribution" means any distribution from an individual retirement plan (other than a plan described in subsection (k) or (p))—

(i) which is made directly by the trustee to an organization described in section 170(b)(1)(A) (other than any organization described in section 509(a)(3) or any fund or account described in section 4966(d)(2)), and

(ii) which is made on or after the date that the individual for whose benefit the plan is maintained has attained age 70 1/2.

A distribution shall be treated as a qualified charitable distribution only to the extent that the distribution would be includible in gross income without regard to subparagraph (A).

(C) Contributions must be otherwise deductible. For purposes of this paragraph, a distribution to an organization described in subparagraph (B)(i) shall be treated as a qualified charitable distribution only if a deduction for the entire distribution would be allowable under section 170 (determined without regard to subsection (b) thereof and this paragraph).

(D) Application of section 72. Notwithstanding section 72 , in determining the extent to which a distribution is a qualified charitable distribution, the entire amount of the distribution shall be treated as includible in gross income without regard to subparagraph (A) to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts in all individual retirement plans of the individual were distributed during such taxable year and all such plans were treated as 1 contract for purposes of determining under section 72 the aggregate amount which would have been so includible. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(E) Denial of deduction. Qualified charitable distributions which are not includible in gross income pursuant to subparagraph (A) shall not be taken into account in determining the deduction under section 170.

(F) Termination. This paragraph shall not apply to distributions made in taxable years beginning after December 31, 2009.

(9) Distribution for health savings account funding.

(A) In general. In the case of an individual who is an eligible individual (as defined in section 223(c)) and who elects the application of this paragraph for a taxable year, gross income of the individual for the taxable year does not include a qualified HSA funding distribution to the extent such distribution is otherwise includible in gross income.

(B) Qualified HSA funding distribution. For purposes of this paragraph, the term "qualified HSA funding distribution" means a distribution from an individual retirement plan (other than a plan described in subsection (k) or (p)) of the employee to the extent that such distribution is contributed to the health savings account of the individual in a direct trustee-to-trustee transfer.

(C) Limitations.

(i) Maximum dollar limitation. The amount excluded from gross income by subparagraph (A) shall not exceed the excess of—

(I) the annual limitation under section 223(b) computed on the basis of the type of coverage under the high deductible health plan covering the individual at the time of the qualified HSA funding distribution, over

(II) in the case of a distribution described in clause (ii) (II), the amount of the earlier qualified HSA funding distribution.

(ii) One-time transfer.

(I) In general. Except as provided in subclause (II), an individual may make an election under subparagraph (A) only for one qualified HSA funding distribution during the lifetime of the individual. Such an election, once made, shall be irrevocable.

(II) Conversion from self-only to family coverage. If a qualified HSA funding distribution is made during a month in a taxable year during which an individual has self-only coverage under a high deductible health plan as of the first day of the month, the individual may elect to make an additional qualified HSA funding distribution during a subsequent month in such taxable year during which the individual has family coverage under a high deductible health plan as of the first day of the subsequent month.

(D) Failure to maintain high deductible health plan coverage.

(i) In general. If, at any time during the testing period, the individual is not an eligible individual, then the aggregate amount of all contributions to the health savings account of the individual made under subparagraph (A) —

(I) shall be includible in the gross income of the individual for the taxable year in which occurs the first month in the testing period for which such individual is not an eligible individual, and

(II) the tax imposed by this chapter for any taxable year on the individual shall be increased by 10 percent of the amount which is so includible.

(ii) Exception for disability or death. Subclauses (I) and (II) of clause (i) shall not apply if the individual ceased to be an eligible individual by reason of the death of the individual or the individual becoming disabled (within the meaning of section 72(m)(7)).

(iii) Testing period. The term "testing period" means the period beginning with the month in which the qualified HSA funding distribution is contributed to a health savings account and ending on the last day of the 12th month following such month.

(E) Application of section 72. Notwithstanding section 72, in determining the extent to which an amount is treated as otherwise includible in gross income for purposes of subparagraph (A), the aggregate amount distributed from an individual retirement plan shall be treated as includible in gross income to the extent that such amount does not exceed the aggregate amount which would have been so includible if all amounts from

all individual retirement plans were distributed. Proper adjustments shall be made in applying section 72 to other distributions in such taxable year and subsequent taxable years.

(e) Tax treatment of accounts and annuities.

(1) Exemption from tax.
Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).

(2) Loss of exemption of account where employee engages in prohibited transaction.

(A) In general. If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph —

(i) the individual for whose benefit any account was established is treated as the creator of such account, and

(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.

(B) Account treated as distributing all its assets. In any case in which any account ceases to be an individual retirement account by reason of subparagraph (A) as of the first day of any taxable year, paragraph (1) of subsection (d) applies as if there were a distribution on such first day in an amount equal to the fair market value (on such first day) of all assets in the account (on such first day).

(3) Effect of borrowing on annuity contract.
If during any taxable year the owner of an individual retirement annuity borrows any money under or by use of such contract, the contract ceases to be an individual retirement annuity as of the first day of such taxable year. Such owner shall include in gross income for such year an amount equal to the fair market value of such contract as of such first day.

(4) Effect of pledging account as security.
If, during any taxable year of the individual for whose benefit an individual retirement account is established, that individual uses the account or any portion thereof as security for a loan, the portion so used is treated as distributed to that individual.

(5) Purchase of endowment contract by individual retirement account.
If the assets of an individual retirement account or any part of such assets are

used to purchase an endowment contract for the benefit of the individual for whose benefit the account is established—

(A) to the extent that the amount of the assets involved in the purchase are not attributable to the purchase of life insurance, the purchase is treated as a rollover contribution described in subsection (d)(3) , and

(B) to the extent that the amount of the assets involved in the purchase are attributable to the purchase of life, health, accident, or other insurance, such amounts are treated as distributed to that individual (but the provisions of subsection (f) do not apply).

(6) Commingling individual retirement account amounts in certain common trust funds and common investment funds.
Any common trust fund or common investment fund of individual retirement account assets which is exempt from taxation under this subtitle does not cease to be exempt on account of the participation or inclusion of assets of a trust exempt from taxation under section 501(a) which is described in section 401(a) .

(f) Repealed.

(g) Community property laws.
This section shall be applied without regard to any community property laws.

(h) Custodial accounts.
For purposes of this section , a custodial account shall be treated as a trust 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 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 individual retirement account described in subsection (a) . For purposes of this title, 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.

(i) Reports.
The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions aggregating $10 or more in any calendar year and such other matters as the Secretary may require. The reports required by this subsection —

(1) shall be filed at such time and in such manner as the Secretary prescribes, and

(2) shall be furnished to individuals—

(A) not later than January 31 of the calendar year following the calendar year to which such reports relate, and

(B) in such manner as the Secretary prescribes.

In the case of a simple retirement account under subsection (p) , only one report under this subsection shall be required to be submitted each calendar year to the Secretary (at the time provided under paragraph (2)) but, in addition to the report under this subsection , there shall be furnished, within 31 days after each calendar year, to the individual on whose behalf the account is maintained a statement with respect to the account balance as of the close of, and the account activity during, such calendar year.

(j) Increase in maximum limitations for simplified employee pensions.
In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A) .

(k) Simplified employee pension defined.

(1) In general.
For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c) (2) are met.

(2) Participation requirements.
This paragraph is satisfied with respect to a simplified employee pension for a year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 21,

(B) has performed service for the employer during at least 3 of the immediately preceding 5 years, and

(C) received at least $450 in compensation (within the meaning of section 414(q) (4)) from the employer for the year.

For purposes of this paragraph, there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b) (3). For purposes of any arrangement described in subsection (k) (6), any employee who is eligible to have employer contributions made on the employee's behalf under such arrangement shall be treated as if such a contribution was made.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general. The requirements of this paragraph are met with respect to a simplified employee pension for a year if for such year the contributions made by the employer to simplified employee pensions for his employees

do not discriminate in favor of any highly compensated employee (within the meaning of section 414(q)).

(B) Special rules. For purposes of subparagraph (A), there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b) (3).

(C) Contributions must bear uniform relationship to total compensation. For purposes of subparagraph (A) , and except as provided in subparagraph (D) , employer contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)) shall be considered discriminatory unless contributions thereto bear a uniform relationship to the compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension.

(D) Permitted disparity. For purposes of subparagraph (C), the rules of section 401(1) (2) shall apply to contributions to simplified employee pensions (other than contributions under an arrangement described in paragraph (6)).

(4) Withdrawals must be permitted.
A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula.
The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Employee may elect salary reduction arrangement.

(A) Arrangements which qualify.

(i) In general. A simplified employee pension shall not fail to meet the requirements of this subsection for a year merely because, under the terms of the pension, an employee may elect to have the employer make payments—

(I) as elective employer contributions to the simplified employee pension on behalf of the employee, or

(II) to the employee directly in cash.

(ii) 50 percent of eligible employees must elect. Clause (i) shall not apply to a simplified employee pension unless an election described in clause (i)(I) is made or is in effect with respect to not less than 50 percent of the employees of the employer eligible to participate.

(iii) Requirements relating to deferral percentage. Clause (i) shall not apply to a simplified employee pension for any year unless the deferral percentage for such year of each highly compensated employee eligible to participate is not more than the product of—

(I) the average of the deferral percentages for such year of all employees (other than highly compensated employees) eligible to participate, multiplied by

(II) 1.25.

(iv) Limitations on elective deferrals. Clause (i) shall not apply to a simplified employee pension unless the requirements of section 401(a) (30) are met.

(B) Exception where more than 25 employees. This paragraph shall not apply with respect to any year in the case of a simplified employee pension maintained by an employer with more than 25 employees who were eligible to participate (or would have been required to be eligible to participate if a pension was maintained) at any time during the preceding year.

(C) Distributions of excess contributions.

(i) In general. Rules similar to the rules of section 401(k) (8) shall apply to any excess contribution under this paragraph. Any excess contribution under a simplified employee pension shall be treated as an excess contribution for purposes of section 4979.

(ii) Excess contribution. For purposes of clause (i), the term "excess contribution" means, with respect to a highly compensated employee, the excess of elective employer contributions under this paragraph over the maximum amount of such contributions allowable under subparagraph (A) (iii).

(D) Deferral percentage. For purposes of this paragraph, the deferral percentage for an employee for a year shall be the ratio of—

(i) the amount of elective employer contributions actually paid over to the simplified employee pension on behalf of the employee for the year, to

(ii) the employee's compensation (not in excess of the first $200,000) for the year.

(E) Exception for State and local and tax-exempt pensions. This paragraph shall not apply to a simplified employee pension maintained by—

(i) a State or local government or political subdivision thereof, or any agency or instrumentality thereof, or

(ii) an organization exempt from tax under this title.

(F) Exception where pension does not meet requirements necessary to insure distribution of excess contributions. This paragraph shall not apply with respect to any year for which the simplified employee pension does not meet such requirements as the Secretary may prescribe as are necessary to insure that excess contributions are distributed in accordance with subparagraph (C) , including—

(i) reporting requirements, and

(ii) requirements which, notwithstanding paragraph (4) , provide that contributions (and any income allocable thereto) may not be withdrawn from a simplified employee pension until a determination has been made that the requirements of subparagraph (A)(iii) have been met with respect to such contributions.

(G) Highly compensated employee. For purposes of this paragraph, the term "highly compensated employee" has the meaning given such term by section 414(q).

(H) Termination. This paragraph shall not apply to years beginning after December 31, 1996. The preceding sentence shall not apply to a simplified employee pension of an employer if the terms of simplified employee pensions of such employer, as in effect on December 31, 1996, provide that an employee may make the election described in subparagraph (A) .

(7) Definitions.
For purposes of this subsection and subsection (1) —

(A) Employee, employer, or owner-employee. The terms "employee", "employer", and "owner-employee" shall have the respective meanings given such terms by section 401(c).

(B) Compensation. Except as provided in paragraph (2) (C), the term "compensation" has the meaning given such term by section 414(s).

(C) Year. The term "year" means—

(i) the calendar year, or

(ii) if the employer elects, subject to such terms and conditions as the Secretary may prescribe, to maintain the simplified employee pension on the basis of the employer's taxable year.

(8) Cost-of-living adjustment.
The Secretary shall adjust the $450 amount in paragraph (2)(C) at the same time and in the same manner as under section 415(d) and shall adjust the $200,000 amount in paragraphs (3)(C) and (6)(D)(ii) at the same time, and by the same

amount, as any adjustment under section 401(a)(17)(B) ; except that any increase in the $450 amount which is not a multiple of $50 shall be rounded to the next lowest multiple of $50.

(9) Cross reference.
For excise tax on certain excess contributions, see section 4979.

(l) Simplified employer reports.

(1) In general.
An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(2) Simple retirement accounts.

(A) No employer reports. Except as provided in this paragraph, no report shall be required under this section by an employer maintaining a qualified salary reduction arrangement under subsection (p).

(B) Summary description. The trustee of any simple retirement account established pursuant to a qualified salary reduction arrangement under subsection (p) and the issuer of an annuity established under such an arrangement shall provide to the employer maintaining the arrangement, each year a description containing the following information:

(i) The name and address of the employer and the trustee or issuer.

(ii) The requirements for eligibility for participation.

(iii) The benefits provided with respect to the arrangement.

(iv) The time and method of making elections with respect to the arrangement.

(v) The procedures for, and effects of, withdrawals (including rollovers) from the arrangement.

(C) Employee notification. The employer shall notify each employee immediately before the period for which an election described in subsection (p) (5) (C) may be made of the employee's opportunity to make such election. Such notice shall include a copy of the description described in subparagraph (B).

(m) Investment in collectibles treated as distributions.

(1) In general.
The acquisition by an individual retirement account or by an individually-directed account under a plan described in section 401(a) of any

collectible shall be treated (for purposes of this section and section 402) as a distribution from such account in an amount equal to the cost to such account of such collectible.

(2) Collectible defined.
For purposes of this subsection, the term "collectible" means—

(A) any work of art,

(B) any rug or antique,

(C) any metal or gem,

(D) any stamp or coin,

(E) any alcoholic beverage, or

(F) any other tangible personal property specified by the Secretary for purposes of this subsection.

(3) Exception for certain coins and bullion.
For purposes of this subsection, the term "collectible" shall not include—

(A) any coin which is—

(i) a gold coin described in paragraph (7), (8), (9), or (10) of section 5112(a) of title 31, United States Code,

(ii) a silver coin described in section 5112(e) of title 31, United States Code,

(iii) a platinum coin described in section 5112(k) of title 31, United States Code, or

(iv) a coin issued under the laws of any State, or

(B) any gold, silver, platinum, or palladium bullion of a fineness equal to or exceeding the minimum fineness that a contract market (as described in section 7 of the Commodity Exchange Act, 7 U.S.C. 7) requires for metals which may be delivered in satisfaction of a regulated futures contract,

if such bullion is in the physical possession of a trustee described under subsection (a) of this section.

(n) Bank.
For purposes of subsection (a) (2), the term "bank" means—

(1) any bank (as defined in section 581),

(2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and

(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(o) Definitions and rules relating to nondeductible contributions to individual retirement plans.

(1) In general.
Subject to the provisions of this subsection, designated nondeductible contributions may be made on behalf of an individual to an individual retirement plan.

(2) Limits on amounts which may be contributed.

(A) In general. The amount of the designated nondeductible contributions made on behalf of any individual for any taxable year shall not exceed the nondeductible limit for such taxable year.

(B) Nondeductible limit. For purposes of this paragraph —

(i) In general. The term "nondeductible limit" means the excess of—

(I) the amount allowable as a deduction under section 219 (determined without regard to section 219(g)), over

(II) the amount allowable as a deduction under section 219 (determined with regard to section 219(g)).

(ii) Taxpayer may elect to treat deductible contributions as nondeductible. If a taxpayer elects not to deduct an amount which (without regard to this clause) is allowable as a deduction under section 219 for any taxable year, the nondeductible limit for such taxable year shall be increased by such amount.

(C) Designated nondeductible contributions.

(i) In general. For purposes of this paragraph, the term "designated nondeductible contribution" means any contribution to an individual retirement plan for the taxable year which is designated (in such manner as the Secretary may prescribe) as a contribution for which a deduction is not allowable under section 219.

(ii) Designation. Any designation under clause (i) shall be made on the return of tax imposed by chapter 1 for the taxable year.

(3) Time when contributions made.
In determining for which taxable year a designated nondeductible contribution is made, the rule of section 219(f) (3) shall apply.

(4) Individual required to report amount of designated nondeductible contributions.

(A) In general. Any individual who—

(i) makes a designated nondeductible contribution to any individual retirement plan for any taxable year, or

(ii) receives any amount from any individual retirement plan for any taxable year,

shall include on his return of the tax imposed by chapter 1 for such taxable year and any succeeding taxable year (or on such other form as the Secretary may prescribe for any such taxable year) information described in subparagraph (B).

(B) Information required to be supplied. The following information is described in this subparagraph:

(i) The amount of designated nondeductible contributions for the taxable year.

(ii) The amount of distributions from individual retirement plans for the taxable year.

(iii) The excess (if any) of—

(I) the aggregate amount of designated nondeductible contributions for all preceding taxable years, over

(II) the aggregate amount of distributions from individual retirement plans which was excludable from gross income for such taxable years.

(iv) The aggregate balance of all individual retirement plans of the individual as of the close of the calendar year in which the taxable year begins.

(v) Such other information as the Secretary may prescribe.

(C) Penalty for reporting contributions not made. For penalty where individual reports designated nondeductible contributions not made, see section 6693(b).

(p) Simple retirement accounts.

(1) In general.
For purposes of this title, the term "simple retirement account" means an individual retirement plan (as defined in section 7701(a)(37))—

(A) with respect to which the requirements of paragraphs (3), (4), and (5) are met; and

(B) with respect to which the only contributions allowed are contributions under a qualified salary reduction arrangement.

(2) Qualified salary reduction arrangement.

(A) In general. For purposes of this subsection, the term "qualified salary reduction arrangement" means a written arrangement of an eligible employer under which—

(i) an employee eligible to participate in the arrangement may elect to have the employer make payments—

(I) as elective employer contributions to a simple retirement account on behalf of the employee, or

(II) to the employee directly in cash,

(ii) the amount which an employee may elect under clause (i) for any year is required to be expressed as a percentage of compensation and may not exceed a total of the applicable dollar amount for any year,

(iii) the employer is required to make a matching contribution to the simple retirement account for any year in an amount equal to so much of the amount the employee elects under clause (i)(I) as does not exceed the applicable percentage of compensation for the year, and

(iv) no contributions may be made other than contributions described in clause (i) or (iii).

(B) Employer may elect 2-percent nonelective contribution.

(i) In general. An employer shall be treated as meeting the requirements of subparagraph (A) (iii) for any year if, in lieu of the contributions described in such clause, the employer elects to make nonelective contributions of 2 percent of compensation for each employee who is eligible to participate in the arrangement and who has at least $5,000 of compensation from the employer for the year. If an employer makes an election under this subparagraph for any year, the employer shall notify employees of such election within a reasonable period of time before the 60-day period for such year under paragraph (5)(C) .

(ii) Compensation limitation. The compensation taken into account under clause (i) for any year shall not exceed the limitation in effect for such year under section 401(a) (17).

(C) Definitions. For purposes of this subsection —

(i) Eligible employer—

(I) In general. The term "eligible employer" means, with respect to any year, an employer which had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding year.

(II) 2-year grace period. An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer. If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

(ii) Applicable percentage.

(I) In general. The term "applicable percentage" means 3 percent.

(II) Election of lower percentage. An employer may elect to apply a lower percentage (not less than 1 percent) for any year for all employees eligible to participate in the plan for such year if the employer notifies the employees of such lower percentage within a reasonable period of time before the 60-day election period for such year under paragraph (5)(C) . An employer may not elect a lower percentage under this subclause for any year if that election would result in the applicable percentage being lower than 3 percent in more than 2 of the years in the 5-year period ending with such year.

(III) Special rule for years arrangement not in effect. If any year in the 5-year period described in subclause (II) is a year prior to the first year for which any qualified salary reduction arrangement is in effect with respect to the employer (or any predecessor), the employer shall be treated as if the level of the employer matching contribution was at 3 percent of compensation for such prior year.

(D) Arrangement may be only plan of employer.

(i) In general. An arrangement shall not be treated as a qualified salary reduction arrangement for any year if the employer (or any

predecessor employer) maintained a qualified plan with respect to which contributions were made, or benefits were accrued, for service in any year in the period beginning with the year such arrangement became effective and ending with the year for which the determination is being made. If only individuals other than employees described in subparagraph (A) of section 410(b)(3) are eligible to participate in such arrangement, then the preceding sentence shall be applied without regard to any qualified plan in which only employees so described are eligible to participate.

(ii) Qualified plan. For purposes of this subparagraph , the term "qualified plan" means a plan, contract, pension, or trust described in subparagraph (A) or (B) of section 219(g)(5) .

(E) Applicable dollar amount; cost-of-living adjustment.

(i) In general. For purposes of subparagraph (A) (ii), the applicable dollar amount shall be the amount determined in accordance with the following table:

For years beginning in calendar year:	The applicable dollar amount:
2002	$7,000
2003	$8,000
2004	$9,000
2005 or thereafter	$10,000.

(ii) Cost-of-living adjustment. In the case of a year beginning after December 31, 2005, the Secretary shall adjust the $10,000 amount under clause (i) at the same time and in the same manner as under section 415(d), except that the base period taken into account shall be the calendar quarter beginning July 1, 2004, and any increase under this subparagraph which is not a multiple of $500 shall be rounded to the next lower multiple of $500.

(3) Vesting requirements.
The requirements of this paragraph are met with respect to a simple retirement account if the employee's rights to any contribution to the simple retirement account are nonforfeitable. For purposes of this paragraph, rules similar to the rules of subsection (k) (4) shall apply.

(4) Participation requirements.

(A) In general. The requirements of this paragraph are met with respect to any simple retirement account for a year only if, under the qualified salary reduction arrangement, all employees of the employer who—

(i) received at least $5,000 in compensation from the employer during any 2 preceding years, and

(ii) are reasonably expected to receive at least $5,000 in compensation during the year,

are eligible to make the election under paragraph (2) (A) (i) or receive the nonelective contribution described in paragraph (2) (B).

(B) Excludable employees. An employer may elect to exclude from the requirement under subparagraph (A) employees described in section 410(b) (3).

(5) Administrative requirements.
The requirements of this paragraph are met with respect to any simple retirement account if, under the qualified salary reduction arrangement—

(A) an employer must—

(i) make the elective employer contributions under paragraph (2)(A)(i) not later than the close of the 30-day period following the last day of the month with respect to which the contributions are to be made, and

(ii) make the matching contributions under paragraph (2) (A) (iii) or the nonelective contributions under paragraph (2) (B) not later than the date described in section 404(m) (2) (B),

(B) an employee may elect to terminate participation in such arrangement at any time during the year, except that if an employee so terminates, the arrangement may provide that the employee may not elect to resume participation until the beginning of the next year, and

(C) each employee eligible to participate may elect, during the 60-day period before the beginning of any year (and the 60-day period before the first day such employee is eligible to participate), to participate in the arrangement, or to modify the amounts subject to such arrangement, for such year.

(6) Definitions.
For purposes of this subsection —

(A) Compensation.

(i) In general. The term "compensation" means amounts described in paragraphs (3) and (8) of section 6051(a). For purposes of the preceding sentence, amounts described in section 6051(a) (3) shall be determined without regard to section 3401(a) (3).

(ii) Self-employed. In the case of an employee described in subparagraph (B), the term "compensation" means net earnings from self-employment determined under section 1402(a) without regard to any contribution under this subsection. The preceding sentence shall be applied as if the term "trade or business" for purposes of section 1402 included service described in section 1402(c) (6).

(B) Employee. The term "employee" includes an employee as defined in section 401(c) (1).

(C) Year. The term "year" means the calendar year.

(7) Use of designated financial institution.
A plan shall not be treated as failing to satisfy the requirements of this subsection or any other provision of this title merely because the employer makes all contributions to the individual retirement accounts or annuities of a designated trustee or issuer. The preceding sentence shall not apply unless each plan participant is notified in writing (either separately or as part of the notice under subsection (l) (2) (C)) that the participant's balance may be transferred without cost or penalty to another individual account or annuity in accordance with subsection (d) (3) (G).

(8) Coordination with maximum limitation under subsection (a).
In the case of any simple retirement account, subsections (a)(1) and (b)(2) shall be applied by substituting "the sum of the dollar amount in effect under paragraph (2)(A)(ii) of this subsection and the employer contribution required under subparagraph (A)(iii) or (B)(i) of paragraph (2) of this subsection , whichever is applicable" for "the dollar amount in effect under section 219(b)(1)(A) ".

(9) Matching contributions on behalf of self-employed individuals not treated as elective employer contributions.
Any matching contribution described in paragraph (2)(A)(iii) which is made on behalf of a self-employed individual (as defined in section 401(c)) shall not be treated as an elective employer contribution to a simple retirement account for purposes of this title.

(10) Special rules for acquisitions, dispositions, and similar transactions.

(A) In general. An employer which fails to meet any applicable requirement by reason of an acquisition, disposition, or similar transaction shall not be treated as failing to meet such requirement during the transition period if—

(i) the employer satisfies requirements similar to the requirements of section 410(b) (6) (C) (i) (II); and

(ii) the qualified salary reduction arrangement maintained by the employer would satisfy the requirements of this subsection after the transaction if the employer which maintained the arrangement before the transaction had remained a separate employer.

(B) Applicable requirement. For purposes of this paragraph, the term "applicable requirement" means—

(i) the requirement under paragraph (2) (A) (i) that an employer be an eligible employer;

(ii) the requirement under paragraph (2) (D) that an arrangement be the only plan of an employer; and

(iii) the participation requirements under paragraph (4).

(C) Transition period. For purposes of this paragraph, the term "transition period" means the period beginning on the date of any transaction described in subparagraph (A) and ending on the last day of the second calendar year following the calendar year in which such transaction occurs.

(q) Deemed IRAs under qualified employer plans.

(1) General rule.
If—

(A) a qualified employer plan elects to allow employees to make voluntary employee contributions to a separate account or annuity established under the plan, and

(B) under the terms of the qualified employer plan, such account or annuity meets the applicable requirements of this section or section 408A for an individual retirement account or annuity,

then such account or annuity shall be treated for purposes of this title in the same manner as an individual retirement plan and not as a qualified employer plan (and contributions to such account or annuity as contributions to an individual retirement plan and not to the qualified employer plan). For purposes of subparagraph (B), the requirements of subsection (a) (5) shall not apply.

(2) Special rules for qualified employer plans.
For purposes of this title, a qualified employer plan shall not fail to meet any requirement of this title solely by reason of establishing and maintaining a program described in paragraph (1).

(3) Definitions.
For purposes of this subsection —

(A) Qualified employer plan. The term "qualified employer plan" has the meaning given such term by section 72(p)(4)(A)(i) ; except that such term shall also include an eligible deferred compensation plan (as defined in section 457(b)) of an eligible employer described in section 457(e)(1)(A) .

(B) Voluntary employee contribution. The term "voluntary employee contribution" means any contribution (other than a mandatory contribution within the meaning of section 411(c) (2) (C))—

(i) which is made by an individual as an employee under a qualified employer plan which allows employees to elect to make contributions described in paragraph (1) , and

(ii) with respect to which the individual has designated the contribution as a contribution to which this subsection applies.

(r) Cross references.

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4973.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.