

# Cetera Investment Services, LLC

## COVERDELL EDUCATION SAVINGS CUSTODIAL ACCOUNT

Form **5305-EA** (Rev. October 2016) Department of the Treasury Internal Revenue Service

(Under section 530 of the Internal Revenue Code)

Amendment

Do Not File  
with the Internal  
Revenue Service

The depositor, whose name appears on the Application, is establishing a Coverdell education savings account under Section 530 for the benefit of the designated beneficiary, whose name appears on the Application, exclusively to pay for the qualified elementary, secondary, and higher education expenses within the meaning of Section 530(b)(2) of such beneficiary.

The depositor and the custodian make the following agreement:

### Article I

The custodian may accept additional cash contributions provided the designated beneficiary has not attained the age of 18 as of the date such contributions are made. Contributions by an individual contributor may be made for the tax year of the designated beneficiary by the due date of the beneficiary's tax return for that year (excluding extensions). Total contributions that are not rollover contributions described in section 530(d)(5) are limited to \$2,000 for the tax year. In the case of an individual contributor, the \$2,000 limitation for any year is phased out between modified adjusted gross income (AGI) of \$95,000 and \$110,000. For married individuals filing jointly, the phase-out occurs between modified AGI of \$190,000 and \$220,000. Modified AGI is defined in section 530(c)(2).

### Article II

No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or a common investment fund (within the meaning of section 530(b)(1)(D)).

### Article III

1. Any balance to the credit of the designated beneficiary on the date on which he or she attains age 30 shall be distributed to him or her within 30 days of such date.
2. Any balance to the credit of the designated beneficiary shall be distributed within 30 days of his or her death unless the designated death beneficiary is a family member of the designated beneficiary and is under the age of 30 on the date of death. In such case, that family member shall become the designated beneficiary as of the date of death.

### Article IV

The depositor shall have the power to direct the custodian regarding the investment of the above-listed amount assigned to the custodial account (including earnings thereon) in the investment choices offered by the custodian. The responsible individual, however, shall have the power to redirect the custodian regarding the investment of such amounts, as well as the power to direct the custodian regarding the investment of all additional contributions (including earnings thereon) to the custodial account. In the event that the responsible individual does not direct the custodian regarding the investment of additional contributions (including earnings thereon), the initial investment direction of the depositor also will govern all additional contributions made to the custodial account until such time as the responsible individual otherwise directs the custodian. Unless otherwise provided in this agreement, the responsible individual also shall have the power to direct the custodian regarding the administration, management, and distribution of the account.

### Article V

The "responsible individual" named by the depositor shall be a parent or guardian of the designated beneficiary. The custodial account shall have only one responsible individual at any time. If the responsible individual becomes incapacitated or dies while the designated beneficiary is a minor under state law, the successor responsible individual shall be the person named to succeed in that capacity by the preceding responsible individual in a witnessed writing or, if no successor is so named, the successor responsible individual shall be the designated beneficiary's other parent or successor guardian. Unless otherwise directed by checking the option below, at the time that the designated beneficiary attains the age of majority under state law, the designated beneficiary becomes the responsible individual. If a family member under the age of majority under state law becomes the designated beneficiary by reason of being a named death beneficiary, the responsible individual shall be such designated beneficiary's parent or guardian.

### Complete these options on the Application.

**Option** (*This provision is effective only if checked*): The responsible individual shall continue to serve as the responsible individual for the custodial account after the designated beneficiary attains the age of majority under state law and until such time as all assets have been distributed from the custodial account and the custodial account terminates. If the responsible individual becomes incapacitated or dies after the designated beneficiary reaches the age of majority under state law, the responsible individual shall be the designated beneficiary.

### Article VI

The responsible individual  may or  **may not** change the beneficiary designated under this agreement to another member of the designated beneficiary's family described in section 529(e)(2) in accordance with the custodian's procedures.

### Article VII

1. The depositor agrees to provide the custodian with all information necessary to prepare any reports required by section 530(h).
2. The custodian agrees to submit to the Internal Revenue Service (IRS) and responsible individual the reports prescribed by the IRS.

### Article VIII

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III will be controlling. Any additional articles inconsistent with section 530 and the related regulations will be invalid.

### Article IX

This agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. Other amendments may be made with the consent of the depositor and the custodian whose signatures appear below.

### Article X

**10.01 Your CESA Documents.** This IRS Form 5305 agreement, and any amendments or additional provisions to such agreement (the "Agreement") set forth the terms and conditions governing the Designated Beneficiary's CESA and your relationship with us. Articles I through IX of the IRS 5305 agreement have been reviewed and approved by the IRS. The agreement will be accompanied by a disclosure statement, which sets forth various rules governing CESAs, and may also be accompanied by other documents such as an application or death beneficiary designation. Unless it would be inconsistent to do so, words and phrases used in this document should be construed so the singular includes the plural and the plural includes the singular.

**10.02 Definitions.** The Internal Revenue Service (IRS) Form 5305 contains a detailed definitions section. The definitions found in such section apply to this Agreement. The IRS refers to you as the Depositor, and us as the Custodian. References to "you" and "your" will mean the Depositor, and "we," "us," and "our" will mean the Custodian. The terms "you" and "your" will apply to you. In the event you appoint a third party, or have a third party appointed on your behalf, including the Responsible Individual, to handle certain transactions affecting the CESA, such third party will be your agent and will be considered "you" for purposes of this Agreement. Various documents may refer to the Depositor as the Contributor. Additionally, references to "CESA" will mean this custodial account. For purposes of this Agreement, the Depositor is responsible for not only establishing the CESA, but making the initial contribution as well.

**10.03 Additional Provisions.** Additional provisions may be attached to, and made a part of, this Agreement by either party. The provisions must be in writing, agreed to by us, and in a format acceptable to us.

**10.04 Our Fees and Expenses.** We may charge reasonable fees and are entitled to reimbursement for any expenses we incur in establishing and maintaining the Designated Beneficiary's CESA. We may change the fees at any time by providing the Responsible Individual with notice of such changes. We will provide the Responsible Individual with fee disclosures and policies. Fees may be deducted directly from the CESA assets, and/or billed separately to the Designated Beneficiary. The payment of fees has no effect on your contributions. Additionally,

we have the right to liquidate the CESA assets to pay such fees and expenses. If the Responsible Individual does not direct us on the liquidation we will liquidate the assets of our choice, and will not be responsible for any losses or claims that may arise out of the liquidation.

**10.05 Amendments.** We may amend the CESA in any respect, and at any time including retroactively, to comply with applicable laws governing CESA and the corresponding regulations. Any other amendments shall require the Responsible Individual's consent, by action or no action, and will be preceded by written notice to the Responsible Individual. In certain instances the governing law or our policies may require us to secure your or the Responsible Individual's written consent before an amendment can be applied to the CESA. Unless otherwise required, you and the Responsible Individual are deemed to automatically consent to an amendment, which means that a written approval is not required for the amendment to apply to the CESA. If you or the Responsible Individual wants to withhold consent to an amendment we must receive a written objection within 30 days of the receipt date of the amendment.

**10.06 Notice and Delivery.** Any notice mailed to the Responsible Individual will be deemed delivered and received by the Responsible Individual five days after the postmark date. This fifth day following the postmark is the receipt date. Notices will be mailed to the last address we have in our records. The Responsible Individual is responsible for ensuring that we have the proper mailing address. Upon the Responsible Individual's consent, we may provide him or her with notice in a delivery format other than by mail. Such formats may include various electronic deliveries. Any notice, including terminations, change in personal information, or contributions, mailed to us will be deemed delivered when actually received by us. All notices must be in writing unless our policies and procedures provide for oral notices.

**10.07 Applicable Laws.** This Agreement will be construed and interpreted in accordance with the laws of, and venue in, our state of domicile.

**10.08 Disqualifying Provisions.** Any provision of this Agreement that would disqualify the CESA will be disregarded to the extent necessary to maintain the account as a CESA.

**10.09 Interpretation.** If any question arises as to the meaning of any provision of this Agreement, then we shall be authorized to interpret any such provision, and our interpretation will be binding upon all parties.

**10.10 Representations and Indemnity.** You and the Responsible Individual represent that any information you, the Responsible Individual, and/or any agents provide to us is accurate and complete, and that your or the Responsible Individual's actions comply with this Agreement and applicable laws governing CESAs. You and the Responsible Individual understand that we will rely on the information provided by you, and that we have no duty to inquire about or investigate such information. We are not responsible for any losses or expenses that may result from your or the Responsible Individual's information, direction, or actions, including your failure to act. You and the Responsible Individual agree to hold us harmless, to indemnify, and to defend us against any and all actions or claims arising from, and liabilities and losses incurred by reason of your or the Responsible Individual's information, direction, or actions. Additionally, you and the Responsible Individual represent that it is your responsibility to seek the guidance of a tax or legal professional for CESA issues.

We are not responsible for determining whether CESA contributions or distributions comply with this Agreement and/or the federal laws governing CESAs. We are not responsible for any taxes, judgments, penalties, or expenses incurred in connection with this CESA, or any losses that are a result of events beyond our control. We have no responsibility to process transactions in our normal course of business until after we have received appropriate direction and documentation. We are not responsible for interpreting or directing death beneficiary designations or divisions, court orders, penalty exception determinations, or other similar circumstances.

If the Designated Beneficiary dies before taking a full distribution from the CESA, and no appropriate death beneficiary has been named to inherit the CESA assets, the Responsible Individual must ensure that all remaining CESA assets are distributed to the Designated Beneficiary's estate within 30 days following the date of the Designated Beneficiary's death.

**10.11 Designated Beneficiary as Responsible Individual.** Unless you, in your capacity as the Depositor, elect in writing otherwise in the Application or establishment documents, the Designated Beneficiary will

serve as the Responsible Individual for this CESA after the Designated Beneficiary attains the age of majority under the applicable state law, and until such time as all of the CESA assets have been withdrawn from this CESA, and/or the CESA is terminated by the Responsible Individual or us. If the Responsible Individual becomes incapacitated or dies after the Designated Beneficiary reaches the age of majority under applicable state law, the Responsible Individual will be the Designated Beneficiary unless a successor responsible individual has been named.

**10.12 Change of Designated Beneficiary.** Unless you, in your capacity as the Depositor, elect in writing otherwise in the Application or establishment documents, the Responsible Individual can change the Designated Beneficiary of this CESA to another family member of the Designated Beneficiary as described in Section 529(e)(2) of the Internal Revenue Code. We may require the Responsible Individual to provide information and documentation in a format acceptable to us before we will process any beneficiary designation change.

**10.13 Investment of CESA Assets.** This CESA is being offered in conjunction with broker-dealers affiliated with us. The investment services and options are provided by those affiliated broker-dealers. Your investment account will be held by Pershing, LLC.

Your broker-dealer will provide you with information regarding the self-directed investment options available to you, including non-deposit investments such as annuities, mutual funds, stocks, bonds and government, municipal and U.S. Treasury securities. Deposit investments may also be available, including savings, share and/or money market accounts, and certificates of deposit. These investments are subject to investment risks, including possible loss of the principal amount invested.

Contributions will be invested by your broker-dealer in accordance with your instructions. If you fail to provide instructions, we will either return the contribution to your employer or hold all or part of it. We are not responsible for any losses you may incur by failing to provide appropriate investment directions to your broker-dealer. Your investments will generally be registered in our name or in Pershing or its nominee's name for the benefit of your CESA.

Based on our policies and those of your broker-dealer, we may allow you to delegate investment responsibility to your agent. You are solely responsible for the actions of your agent, as neither we nor your broker-dealer will monitor your agent's actions. We are not responsible for the suitability of your investments.

Certain investment fees may be charged to your CESA and cannot be paid by you. In those instances, we, your broker-dealer and/or Pershing may liquidate your investments to pay these fees and expenses, federal tax levies or other assessments on your CESA. If you do not give us, your broker-dealer or Pershing direction regarding which investments to liquidate, the investments to liquidate will be chosen by us, your broker-dealer or Pershing.

**10.14 Distributions.** Withdrawal requests must be in a format acceptable to us, and/or on forms provided by us. We may require the Responsible Individual to elect a distribution reason, provide documentation, and provide a proper tax identification number, before we process a distribution. The withdrawals may be subject to taxes and penalties. Distributions will be in cash based on our policies.

**10.15 Cash or In-Kind Contributions.** We may or may not accept transfers, rollovers, and other similar contributions in cash or in-kind from other CESAs. Prior to completing such transactions we may require that the Responsible Individual provide certain information in a format acceptable to us. In-kind contributions will be valued according to our policies and procedures at the time of the contribution.

**10.16 Reports and Records.** We will maintain the records necessary for IRS reporting on this CESA. Required reports will be provided to the Designated Beneficiary, or in some instances the Responsible Individual, and the IRS. If the Responsible Individual believes that a report is inaccurate or incomplete he/she must notify us in writing within 30 days following the receipt date. The investments may require additional state and federal reporting.

**10.17 Termination.** The Responsible Individual may terminate this Agreement, without our consent by providing us with a written notice of termination. A termination and the resulting distribution or transfer will be processed and completed as soon as administratively feasible following the receipt of proper notice. At the time of termination we may hold back or reserve the sum necessary to cover any fees and expenses, taxes, or investment penalties.

**10.18 Our Resignation.** We can resign at any time by providing the Responsible Individual with 30 days written notice prior to the resignation date, or within five days of our receipt of the Responsible Individual's written objection to an amendment. In the event you or the Responsible Individual materially breach this Agreement, we can terminate this Agreement by providing the Responsible Individual with five days prior written notice. Upon our resignation, the Responsible Individual must appoint a qualified successor custodian or trustee. The CESA assets will be transferred to the successor custodian or trustee once we have received appropriate direction. Transfers will be completed within a reasonable time following our resignation notice and the payment of your remaining fees or expenses. We reserve the right to hold back or reserve CESA assets to pay any remaining fees or expenses. If the Responsible Individual fails to provide us with acceptable transfer direction within 30 days from the date of the notice, we can transfer the assets to a successor custodian or trustee of our choice or liquidate the assets and distribute them to him/her in cash.

**10.19 Successor Organization.** If we merge with, purchase, or are acquired by, another organization, such organization, if qualified, may automatically become the successor custodian or trustee of the CESA.

**10.20 Arbitration Clause. THIS AGREEMENT CONTAINS A PREDISPUTE ARBITRATION CLAUSE. BY SIGNING AN ARBITRATION AGREEMENT THE PARTIES AGREE AS FOLLOWS:**

- (A) ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.
- (B) ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.
- (C) THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.
- (D) THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION

HAS BEEN SUBMITTED BY ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.

- (E) THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.
- (F) THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.
- (G) THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.

YOU AGREE THAT ANY DISPUTE BETWEEN YOU AND US ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO ARBITRATION CONDUCTED UNDER THE THEN APPLICABLE PROVISIONS OF THE CODE OF ARBITRATION PROCEDURE OF FINRA. ARBITRATION MUST BE COMMENCED WITHIN THE APPLICABLE STATUTE OF LIMITATIONS. THE ARBITRATION AWARD SHALL BE FINAL AND JUDGMENT MAY BE ENTERED ON THE AWARD IN ANY COURT, STATE OR FEDERAL, HAVING JURISDICTION.

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; OR WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (I) THE CLASS CERTIFICATION IS DENIED; OR (II) THE CLASS IS DECERTIFIED; OR (III) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

## IRS FORM 5305-EA INSTRUCTIONS

### General Instructions

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

#### Purpose of Form

Form 5305-EA is a model custodial account agreement that meets the requirements of section 530(b)(1) and has been pre-approved by the IRS. A Coverdell education savings account (ESA) is established after the form is fully executed by both the depositor and the custodian. This account must be created in the United States for the exclusive purpose of paying the qualified elementary, secondary, and higher education expenses of the designated beneficiary.

If the model account is a trust account, see **Form 5305-E**, Coverdell Education Savings Trust Account.

**Do not** file Form 5305-EA with the IRS. Instead, the depositor must keep the completed form in its records.

#### Definitions

**Custodian.** The custodian must be a bank or savings and loan association, as defined in Section 408(n), or any person who has the approval of the IRS to act as custodian. Any person who may serve as a custodian of a traditional IRA may serve as the custodian of a Coverdell ESA.

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

**Designated Beneficiary.** The designated beneficiary is the individual on whose behalf the custodial account has been established.

**Family Member.** Family members of the designated beneficiary include his or her spouse, child, grandchild, sibling, parent, niece or nephew, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, and the spouse of any such individual. A first cousin, but not his or her spouse, is also a "family member."

**Responsible Individual.** The responsible individual, generally, is a parent or guardian of the designated beneficiary. However, under certain circumstances, the responsible individual may be the designated beneficiary.

#### Identification Numbers

The depositor's and designated beneficiary's social security numbers will serve as their identification numbers. If the depositor is a nonresident alien and does not have an identification number, write "Foreign" on the return for which is filed to report the depositor's information. The designated beneficiary's social security number is the identification number of his or her Coverdell ESA. If the designated beneficiary is a nonresident alien, the designated beneficiary's

individual taxpayer identification number is the identification number of his or her Coverdell ESA. An employer identification number (EIN) is required only for a Coverdell ESA for which a return is filed to report unrelated business income. An EIN is required for a common fund created for Coverdell ESAs.

### Specific Instructions

**Note:** *The age limitation restricting contributions, distributions, rollover contributions, and change of beneficiary are waived for a designated beneficiary with special needs.*

**Article X.** Article X and any that follow may incorporate additional provisions that are agreed to by the depositor and custodian to complete the agreement. They may include, for example, provisions relating to: definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the custodian, custodian's fees, state law requirements, treatment of excess contributions, and prohibited transactions with the depositor, designated beneficiary, or responsible individual, etc. Attach additional pages as necessary.

**Optional provisions in Article V and Article VI.** Form 5305-EA may be reproduced in a manner that provides only those optional provisions offered by the custodian.

## COVERDELL EDUCATION SAVINGS ACCOUNT (CESA) DISCLOSURE STATEMENT

**This Disclosure Statement and Additional Guidance.** This Disclosure Statement provides you with a summary of the federal laws governing CESAs. It is important to seek the guidance of a tax or legal professional before completing any CESA establishment documents. The first reference for questions concerning CESAs should be the documents you received at the time the CESA was created or amended. Those documents include an Internal Revenue Service (IRS) Form 5305-E or EA agreement, any additional provisions or amendments to such document, application, and this Disclosure Statement. For more information, refer to IRS Publication 970, *Tax Benefits for Higher Education*, IRS Publication 553, *Highlights of Tax Changes*, IRS Notice 97-60 and its successor, your local IRS office, or the IRS's website at [www.irs.gov](http://www.irs.gov). This Disclosure Statement provides answers to common questions concerning CESAs.

**What is a Coverdell Education Savings Account (CESA)?** The Coverdell Education Savings Account (CESA), previously known as an Education IRA, is a nondeductible account that features federal income tax-free and penalty tax-free withdrawals for a child's eligible education expenses. Specifically, a CESA is a trust or custodial account that is created or organized in the United States exclusively for the purpose of paying the qualified elementary, secondary, and higher education expenses of the designated beneficiary of a CESA.

**For whom may a CESA be established?** Internal Revenue Code (IRC) Section 530(b)(1)(A)(ii) states that a CESA may not be established for any child after the date he/she attains the age of 18. The child is referred to as the Designated Beneficiary. The age 18 restriction does not apply to children with special needs as defined by the Secretary of the Treasury.

**Where may a CESA be opened or established?** A CESA may be opened or established with any bank, savings and loan, credit union, or other organization that has been approved to serve as a non-bank trustee or custodian of an individual retirement account (IRA), if such organization is offering CESAs.

**Who may establish and contribute to a CESA?** Any individual or entity, including a corporation or tax-exempt organizations, may establish and contribute to a CESA on behalf of a Designated Beneficiary. An individual may have the amount of his/her eligible contribution reduced if his/her income exceeds certain levels. There are income restrictions on contributing individuals. The contributing individual or entity is referred to as a "depositor" or a "grantor" in the IRS Forms 5305 agreements. For purposes of this Disclosure Statement, such individual or entity is referred to as the Contributor. There is no requirement that a relationship exist between the Contributor and the Designated Beneficiary. A Contributor may even be the Responsible Individual if he/she is the parent or legal guardian of the Designated Beneficiary. A Designated Beneficiary may even act as a Contributor to his/her own CESA. There is no restriction on the number of CESAs that a Contributor may contribute to, or that may be maintained for a Designated Beneficiary.

**What are the income restrictions that apply to Contributors who are individuals?** For an individual, the allowable CESA contributions depend on his/her modified adjusted gross income (MAGI), as defined by the IRS in its various federal income tax return instructions. Essentially, the more income an individual has, the less he/she may contribute to a CESA. An individual may contribute up to \$2,000 to any number of CESAs if the individual's MAGI for the taxable year is no more than \$95,000 [\$190,000 for married individuals filing a joint federal income tax return ("married filers")]. The \$2,000 maximum contribution per Designated Beneficiary is gradually reduced for an individual with MAGI between \$95,000 and \$110,000 (\$190,000 and \$220,000 for married filers). An individual with MAGI of \$110,000 or more (\$220,000 or more for married filers) cannot make contributions to any Designated Beneficiary's CESA.

**Who is responsible for the administration and maintenance of the CESA on behalf of the Designated Beneficiary?** The Designated Beneficiary's parent or legal guardian is named as the Responsible

Individual, which means that he/she has control over the CESA and its assets until the Designated Beneficiary reaches the age of majority under state law, or in many cases, until the CESA assets are fully distributed and the CESA agreement is terminated. The CESA establishment agreement provides the Contributor with the option of electing to have the Responsible Individual continue to act as the Responsible Individual once the Designated Beneficiary reaches the age of majority under applicable state law. The Responsible Individual's responsibilities are set forth in Article IV of IRS Form 5305-E or EA.

**Does the Contributor have any control over the CESA after its establishment and receipt of the initial contribution?** The Contributor's control generally ends with establishing the CESA, making the initial contribution, and directing the investment of such contribution. Some agreements also provide the Contributor with the options of electing whether the Designated Beneficiary will become the Responsible Individual at the age of majority, and whether the Responsible Individual may name a new Designated Beneficiary.

**When may a Contributor start contributing to a CESA for a Designated Beneficiary?** A Contributor can start making contributions at any time after the birth of the Designated Beneficiary. The Designated Beneficiary must be a life in being.

**How much may be contributed to a CESA for a Designated Beneficiary?** Up to \$2,000 per year in aggregate contributions may be made for the benefit of a Designated Beneficiary. The contributions may be placed in a single CESA or in multiple CESAs, and a CESA may receive contributions from multiple Contributors.

**What is the deadline for making CESA contributions each year?** Contributions by individuals for a taxable year may be made at any time during the taxable year up to, and including, the federal income tax return due date, excluding extensions, for that taxable year. The due date for most taxpayers is April 15. The IRS has not yet addressed a contribution deadline for contributions made by non-individual entities.

**May contributions be made to both a qualified state tuition program and a CESA on behalf of the same Designated Beneficiary in the same taxable year?** Contributions may be made to both a CESA and a qualified state tuition program, such as a Section 529 plan, in the same taxable year.

**What happens if more than \$2,000 is contributed to a Designated Beneficiary's CESA for the calendar year?** If a Designated Beneficiary's aggregate CESA contributions for the calendar year exceed \$2,000, an excess contribution exists for any contribution in excess of \$2,000. The excess contribution must be removed within five months of the last day of the taxable year to avoid a six percent penalty tax on the amount of the excess contribution. The penalty tax applies to the excess amount for each year it remains in the CESA.

**May contributions other than cash be made to a CESA?** The \$2,000 annual contributions must be in cash. However, contributions that are completed by rollovers or transfers from other CESAs may be in cash or in kind.

**May Contributors take a deduction for contributions made to a CESA?** CESA contributions are not deductible on federal income tax returns.

**May a military death gratuity be rolled over to a CESA?** If a person serving in the military dies from injuries received in such service and the Designated Beneficiary of the CESA is the beneficiary of either a military death gratuity or an amount under a Servicemembers Group Life Insurance (SGLI) program for such person, all or part of the amount may be rolled over to the Designated Beneficiary's CESA. If the death occurred on or after June 17, 2008, the rollover contribution must be completed within one year of when each amount is received. If the death occurred prior to June 17, 2008, amounts received are no longer eligible for rollover.

**How are the CESA assets used to pay for qualified education expenses?** The Responsible Individual may withdraw assets from the CESA to pay for qualified education expenses. The withdrawals are tax-free and penalty tax-free if the withdrawals are used for qualified education expenses. If the withdrawals are not used for such education expenses, the Designated Beneficiary is subject to income taxes and possibly penalty taxes.

**What are qualified education expenses?** Education expenses are defined differently for elementary and secondary education versus higher education. Qualified elementary and secondary education expenses include certain expenses incurred as a requirement of the Designated Beneficiary's enrollment or attendance at a public, private, or religious school offering kindergarten through grade 12, as determined by state law. The expenses include:

- a. tuition, fees, academic tutoring, books, supplies, and other equipment;
- b. special needs services in the case of a special needs beneficiary;
- c. room and board, uniforms, transportation, and supplemental items and services, including extended day programs, which are required or provided by the school in connection with enrollment or attendance; and
- d. purchase of any computer technology or equipment as defined in Internal Revenue Code Section 170(e)(6)(F)(i), Internet access and related services, if such technology, equipment, or services will be used by the Designated Beneficiary and his/her family during any of the years the Designated Beneficiary is in school, and excludes software designed for sports, games and hobbies, which is not predominantly educational in nature.

Qualified higher education expenses include certain expenses incurred as a requirement of the Designated Beneficiary's enrollment or attendance, either part-time or full-time, at an eligible educational institution. An eligible educational institution is any college, university, vocational school, or other postsecondary educational institution that is described in Section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. The eligible institutions include virtually all accredited public, private, nonprofit, and proprietary postsecondary institutions. Qualified expenses include the following:

- a. tuition, fees, books, supplies, and equipment;
- b. amounts contributed to a qualified state tuition program;
- c. room and board, which is generally the institution's posted room and board charge, or expenses reasonably incurred for room and board for students living off-campus and not at home, for a Designated Beneficiary who is at least a half-time student at the institution.

**What happens when a designated beneficiary withdraws assets from a CESA to pay for college?** Generally, the withdrawal is tax-free to the Designated Beneficiary to the extent the amount of the withdrawal does not exceed the Designated Beneficiary's qualified education expenses. If the Designated Beneficiary withdraws an amount from a CESA and does not have any qualified education expenses during the taxable year, a portion of the distribution is taxable. The taxable portion is the portion that represents earnings that have accumulated tax-deferred in the CESA. The taxable portion of the distribution is also subject to a 10 percent additional penalty tax unless an exception applies.

**Is a distribution from a CESA taxable if the distribution is contributed to another CESA?** Any amount distributed from a CESA and rolled over to another CESA for the benefit of the same Designated Beneficiary, or certain family members of the Designated Beneficiary, is not taxable. An amount is rolled over if it is paid to another CESA on a date within 60 days after the date of the distribution. Members of the Designated Beneficiary's family include the Designated Beneficiary's children and their descendants, siblings and their children, parents and grandparents, stepparents, and spouses of all the foregoing. A first cousin of the Designated Beneficiary is also considered a family member. The \$2,000 annual contribution limit does not apply to these rollover contributions.

**Rather than rolling over money from one CESA to another, may the Designated Beneficiary of the CESA be changed from one individual to another without triggering a tax?** The Designated Beneficiary may be changed to another individual if the terms of the governing documents used to create the CESA permit a change in designated beneficiaries, and the new Designated Beneficiary is a member of the previous Designated Beneficiary's family as previously defined in this document.

**What happens to the assets remaining in a CESA after the Designated Beneficiary finishes his/her education?** There are two options. The remaining CESA assets may be withdrawn for the Designated Beneficiary, and he/she will be subject to both income tax and the additional 10 percent tax on the portion of the distribution that represents earnings if he/she does not have any qualified education expenses in the same taxable year as the distribution. Alternatively, if the amount in the Designated Beneficiary's CESA is withdrawn and rolled over to another CESA for the benefit of a member of the Designated Beneficiary's family, the amount rolled over will not be taxable. All CESA assets must be distributed by the time a Designated Beneficiary attains age 30. Any assets remaining in a CESA at such time must be distributed within 30 days following the date of the Designated Beneficiary's 30th birthday. The age 30 restriction does not apply to Designated Beneficiaries with special needs.

**What happens if the Designated Beneficiary dies before CESA assets are totally distributed?** In the event the Designated Beneficiary dies before attaining age 30, any remaining CESA assets will be distributed or deemed distributed as of 30 days following the date of death. An exception to the distribution requirement exists if the designated death beneficiary is younger than age 30 at the time of death and is a member of the Designated Beneficiary's family. In such case, the designated death beneficiary will become the Designated Beneficiary of the CESA.

**May a Designated Beneficiary claim a Hope Scholarship Credit or Lifetime Learning Credit for the Designated Beneficiary's expenses in a taxable year in which he/she receives money from a CESA on a tax-free basis?** The Designated Beneficiary or his/her may claim a Hope Scholarship Credit or Lifetime Learning Credit for his/her expenses in a taxable year in which the Designated Beneficiary receives a CESA distribution on a tax-free basis if the Credit and CESA distribution are not used for the same expenses.

## IMPORTANT DISCLOSURES

1. I acknowledge receipt of a fee schedule applicable to the maintenance of this account.
2. I acknowledge receipt of the CESA Disclosure Statement included in this packet which explains that certain charges and penalties may apply to my CESA.
3. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions, including broker-dealers,

- to obtain, verify and record information that identifies each person who opens an account. When I open an account, I understand that you will ask for my name, address, date of birth and other information that will allow you to identify me. You may also ask to see my drivers license or other identifying documents.
4. Cetera Investment Services may retain agents to perform services related to this agreement, including tax reporting services.



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 30 2012

Marcia S. Wagner, Esq.  
The Wagner Law Group  
99 Summer Street, 13<sup>th</sup> Floor  
Boston, MA 02110

Re: Cetera Investment Services LLC

Dear Ms. Wagner:

Pursuant to provisions of a Power of Attorney and Declaration of Representative, or other proper authorization currently on file with the Internal Revenue Service, we are forwarding to you a copy of the Notice of Approval that was issued to your client, Cetera Investment Services LLC.

If you have any questions, please contact Darnell C. Hardy (Identification No. 1001492668) at (202) 283-9647.

Sincerely,

A handwritten signature in cursive script that reads "Carlton A. Watkins".

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosure  
Copy of Notice of Approval



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

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

NOV 30 2012

Cetera Investments Services LLC  
400 First Street South  
St. Cloud, MN 56301

EIN Number: 41-148334

Ladies and Gentlemen:

In a letter dated October 1, 2012, as supplemented by information provided November 28 and 30, 2012, your authorized representative requested a written notice of approval that Cetera Investment Services LLC (the immediate successor to PrimeVest Financial Services, Inc.) may act as a passive nonbank custodian for plans qualified under section 401 and accounts described in section 403(b)(7), a passive nonbank trustee or nonbank custodian of individual retirement arrangements (IRAs) established under sections 408, 408A, and 530, and a passive nonbank custodian of eligible deferred compensation plans described in section 457(b).

Section 401(f)(1) of the Code provides that a custodial account shall be treated as a qualified trust under this section if such custodial account would, except for the fact it is not a trust, constitute a qualified trust under this section. Section 401(f)(2) provides that the custodian must be a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will hold the assets will be consistent with the requirements of section 401 of the Code. Section 401(f) also provides that in the case of a custodial account treated as a qualified trust, the person holding the assets of such account shall be treated as the trustee thereof.

Section 403(b)(7)(A) of the Code requires, in part, that for amounts paid by an employer to a custodial account to be treated as amounts contributed to an annuity contract for his employee, the custodial account must satisfy the requirements of section 401(f)(2). That section also requires, in order for the amounts paid by an employer to be treated as amounts contributed to an annuity contract for his employee, that the amounts are to be invested in regulated investment company stock to be held in the custodial account, and under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, separates from service, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

## Cetera Investment Services LLC

Section 408(a)(2) of the Code requires that the trustee of an IRA be a bank (as defined in section 408(n) of the Code) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of section 408.

Section 408(h) of the Code provides that a custodial account shall be treated as a trust under this section if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an IRA described in subsection (a). Section 408(h) also provides that, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

Section 408A of the Code provides, in general, that a Roth IRA shall be treated in the same manner as an individual retirement plan. Section 7701(a)(37)(A) defines an individual retirement plan as an individual retirement account described in section 408.

Section 530(b)(1)(B) of the Code (dealing with Coverdell education savings accounts) requires that the trustee of such an account be a bank (as defined in section 408(n)) or another person who demonstrates to the satisfaction of the Secretary that the manner in which that person will administer the trust will be consistent with the requirements of this section or who has so demonstrated with respect to any individual retirement plan.

Section 530(g) of the Code (dealing with Coverdell education savings accounts) provides that a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an account described in subsection (b)(1). For purposes of title 29, the Code, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

Section VII of Notice 98-8, 1998-4 I.R.B. 6 (guidance relating to the requirements applicable to eligible deferred compensation plans described in section 457(b) of the Code), provides, in pertinent part, that for purposes of the trust requirements of section 457(g)(1), a custodial account will be treated as a trust if the custodian is a bank, as described in section 408(n), or a person who meets the nonbank trustee requirements of section VIII of this notice, and the account meets the requirements of section VI of this notice, other than the requirement that it be a trust. Section VIII provides that the custodian of a custodial account may be a person other than a bank only if the person

Cetera Investment Services LLC

demonstrates to the satisfaction of the Commissioner that the manner in which the person will administer the custodial account will be consistent with the requirements of section 457(g)(1) and (g)(3) of the Code. To do so, the person must demonstrate that the requirements of paragraphs (2)-(6) of section 1.408-2(e) of the regulations relating to nonbank trustees will be met.

Section 1.408-2(e) of the regulations contain the requirements that such other person must comply with in order to act as trustee or custodian, for purposes of sections 220, 401(f), 403(b)(7), 408(a)(2), 408(h), 408A, 457(b) and 530 of the Code. One of the requirements of section 1.408-2(e) states that such person must file a written application with the Commissioner of the Internal Revenue Service demonstrating, as set forth in that section, its ability to act as a trustee or custodian.

Based on all the information submitted to this office and all the representations made in the application, we have concluded that Cetera Investment Services LLC meets the requirements of section 1.408-2(e) of the regulations and, therefore, is approved to act as a passive nonbank custodian for plans qualified under section 401 and accounts described in section 403(b)(7), a passive nonbank trustee or nonbank custodian of individual retirement arrangements (IRAs) established under sections 408, 408A, and 530, and a passive nonbank custodian of eligible deferred compensation plans described in section 457(b).

This letter authorizes Cetera Investment Services LLC to act as a passive nonbank trustee or custodian. When Cetera Investment Services LLC acts as a passive nonbank trustee or custodian (within the meaning of section 1.408-2(e)(6)(i)(A) of the regulations), it is authorized only to acquire and hold particular investments specified by the trust instrument or custodial agreement. It may not act as a passive trustee or custodian if under the written trust instrument or custodial agreement it has discretion to direct investments of the trust (or custodial) funds.

This letter while authorizing Cetera Investment Services LLC to act as a trustee or custodian does not authorize it to pool accounts in a common investment fund (other than a mutual fund) within the meaning of section 1.408-2(e)(5)(viii)(C) of the regulations. Cetera Investment Services LLC may not act as a trustee or custodian unless it undertakes to act only under trust instruments or custodial agreements that contain a provision to the effect that the grantor is to substitute another trustee or custodian upon notification by the Commissioner that such substitution is required because Cetera Investment Services LLC has failed to comply with the requirements of section 1.408-2(e) of the regulations or is not keeping such records, or making such returns or rendering such statements as are required by forms or regulations. For example, one such form is Form 990-T for IRAs that have \$1000 or more of unrelated business taxable income that is subject to tax by section 511(b)(1) of the Code.

**Cetera Investment Services LLC**

**Cetera Investment Services LLC is required to notify the Internal Revenue Service Commissioner, TE/GE, Attn: T:EP:RA, P.O. Box 27063, McPherson Station, Washington, D.C. 20038, in writing, of any change which affects the continuing accuracy of any representations made in its application. Further, the continued approval of Cetera Investment Services LLC to act as a passive nonbank custodian for plans qualified under section 401 and accounts described in section 403(b)(7), a passive nonbank trustee or nonbank custodian of individual retirement arrangements (IRAs) established under sections 408, 408A, and 530, and a passive nonbank custodian of eligible deferred compensation plans described in section 457(b) is contingent upon the continued satisfaction of the criteria set forth in section 1.408-2(e) of the regulations.**

**This Notice of Approval is not transferable to any other entity. An entity that is a member of a controlled group of corporations, within the meaning of section 1563(a) of the Code, may not rely on an approval letter issued to another member of the same controlled group. Furthermore, any entity that goes through an acquisition, merger, consolidation or other type of reorganization may not necessarily be able to rely on the approval letter issued to such entity prior to the acquisition, merger, consolidation or other type of reorganization. Such entity may have to apply for a new notice of approval in accordance with section 1.408-2(e) of the regulations.**

**This Notice of Approval constitutes a notice that Cetera Investment Services LLC may act as a passive nonbank trustee or custodian for plans qualified under section 401 and accounts described in section 403(b)(7), a passive nonbank trustee or nonbank custodian of individual retirement arrangements (IRAs) established under sections 408, 408A, and 530, and a passive nonbank trustee or custodian of eligible deferred compensation plans described in section 457(b) and does not bear upon its capacity to act as a trustee or custodian under any other applicable law. This is not an endorsement of any investment. The Internal Revenue Service does not review or approve investments or recommend retirement plans.**

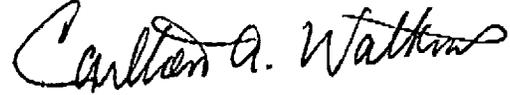
**This Notice of Approval is effective as of the date of this letter and will remain in effect until withdrawn by Cetera Investment Services LLC or revoked by the Service. This notice of approval does not authorize Cetera Investment Services LLC to accept any fiduciary account before this notice becomes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

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

Cetera Investment Services LLC

If you have any questions, please contact Darnell C. Hardy (Identification No. 1001492668) at (202) 283-9647.

Sincerely,

A handwritten signature in black ink that reads "Carlton A. Watkins". The signature is written in a cursive style with a large, prominent initial 'C'.

Carlton A. Watkins  
Manager, Employee Plans Technical Group 1  
Tax Exempt and Government Entities Division