UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

JOHN P. UTSICK,
ROBERT YEAGER,
DONNA YEAGER,
WORLDWIDE ENTERTAINMENT, INC.
THE ENTERTAINMENT GROUP FUND, INC.,
AMERICAN ENTERPRISES, INC. and
ENTERTAINMENT FUNDS, INC.

Defendants.
_______________________________________/

CASE NO.: 06-20975-CIV-HUCK/SIMONTON

FILED BY ___ D.C. MAY 22 PM 12 CLARENCE MADDOX CLERK U.S. DIST. CT. S.D. OF FLA. - MIA

MOTION OF 1ST SOURCE BANK FOR LIMITED INTERVENTION

Pursuant to Fed. R. Civ. P. 24(b), and with the consent of the Plaintiff Securities and Exchange Commission (hereinafter "SEC") and the court-appointed Receiver, 1st Source Bank (hereinafter "1st Source" or "the Bank"), a custodian of IRA accounts, hereby moves to intervene in this for the limited purpose of moving for interpleader relief, as set forth in the Motion of 1ST Source Bank For Entry Of An Order Authorizing The Interpleader Of Funds, Directing Disposition Of Assets, in IRA Accounts For Which It Serves As Custodia And For Other Relief Related Thereto With Incorporated Memorandum of Law (hereinafter "1st Source's Motion for Interpleader And Other Relief"), attached hereto as Exhibit 1.

The basis for this motion to intervene is as follows:

1. As set forth in greater detail in 1st Source's Motion for Interpleader And Other Relief, the Bank is a custodian of IRA cash funds and is contractually obligated to disburse or distribute those funds, upon demand by the account holders. Due to the appointment of the Receiver in *The Big Four-Oh, LLC, et al. v. The Entertainment Group Fund, Inc., et ano.*, 06-20089-Civ-Huck/Simonton (hereinafter "the Predecessor Case") and publicity surrounding the failures of the

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Receivership entities and related entities, 1ST Source has been inundated with requests from account holders to immediately disburse or distribute cash funds held in their IRA accounts.

2. Beginning on March 20, 2006, however, the Receiver has taken the position that cash funds currently held in IRA accounts at 1st Source Bank are or may be funds recoverable by the Receiver in this litigation. Further, the Receiver has formally demanded of the Bank that it not disburse or distribute said funds to the account holders. Accordingly, the Bank is a disinterested stakeholder in custody of funds subject to competing demands – by Receiver and the account holders.

3. In addition, under applicable IRS regulations, the Bank is required to disburse certain sums to certain account holders. The Receiver's demand upon 1st Source that it neither disburse nor distribute funds is in conflict with the Bank's obligations under IRS regulations that require it, under certain circumstances, to distribute funds to account holders.

4. Thus, the Bank is a disinterested stakeholder that is subject to two sets of competing demands – between the Receiver and the account holders, and between the Receiver and the IRS – with respect to funds held in IRA accounts at the Bank. 1st Source therefore seeks this intervention so that the Receiver, the account holders, and the IRS can interplead their claims against the Bank, and the Bank can discharge its duties to those parties and not be exposed to double or multiple liability. *See* Fed. R. Civ. P. 22.

5. The Bank initially sought interpleader relief in the Predecessor case[1] At a hearing in that case on April 13, 2006, the Court ordered the Bank to seek this relief in this case through a motion for a limited intervention and to file such papers on or before May 22, 2006.

6. Pursuant to Fed. R. Civ. P. 24(b), permissive intervention is appropriate, *inter alia*, "when an applicant's claim or defense and the main action have a question of law or fact in

[1] At the time of the Receiver's initial demand, the Receiver had been appointed in the Predecessor Case. Since being appointed Receiver in this action, however, the Receiver has orally confirmed that its prior demand is applicable in this action, which succeeds and supersedes the Predecessor Case.

common." Here, because the Bank is a custodian of IRA accounts for account holders who seek to retain their funds, but which funds are subject to the demands of the Receiver in this case, the Bank meets the requirements of Rule 24(b). The claims of the Receiver and the defenses of the account holders are the same in the main action as in the proposed interpleader.

7. The SEC and the Receiver consent to the Bank's motion to intervene.

Conclusion

For the foregoing reasons, the Bank's motion to intervene as of right should be granted. DATED this 22nd of May 2006.

Respectfully submitted,
TEW CARDENAS LLP
Counsel for 1st Source Bank
Four Seasons Tower
1441 Brickell Avenue
Miami, Florida 33131
(305) 536-1112 Telephone
(305) 536-1116 Facsimile

By:______________________
David M. Levine, Esq.
Florida Bar No. 0328731
Jonathan Etra, Esq.
Florida Bar No. 0686905

@PFDesktop\::ODMA/MHODMA/DMS_NT;MIAMI;462244;2

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Defendants.
_______________________________________/

MOTION OF 1ST SOURCE BANK FOR ENTRY OF AN ORDER AUTHORIZING THE INTERPLEADER OF FUNDS, DIRECTING DISPOSITION OF ASSETS IN IRA ACCOUNTS FOR WHICH IT SERVES AS CUSTODIAN AND FOR OTHER RELIEF RELATED THERETO WITH INCORPORATED MEMORANDUM OF LAW

In light of the Agreed Order Appointing Receiver dated April 20, 2006, and consistent with the Court's direction at the April 13th hearing in *The Big Four-Oh, LLC, et al. v. The Entertainment Group Fund, Inc., et ano.*, 06-20089-Civ-Huck/Simonton, 1st Source Bank, a custodian of IRA accounts, hereby interpleads cash deposits in certain of such IRA accounts and moves for entry of an order: (i) authorizing the interpleader, directing the disposition of such cash deposits and of other assets in the IRA accounts for which 1st Source is custodian, releasing and discharging the Bank from all claims relating to such funds, and awarding 1st Source Bank reasonable attorney's fees and out-of-pocket costs for such interpleader; and (ii) authorizing 1st Source Bank to collect annual IRA custodial fees in the manner described below for the sake of the account holders who benefit from retaining the IRA status of their investments. In support of this Motion, 1st Source Bank states as follows:

PRELIMINARY STATEMENT

First, 1st Source Bank ("1st Source" or "the Bank") is a disinterested stakeholder in possession of certain cash deposits in IRA accounts that are subject to competing claims among the Receiver, the Internal Revenue Service (hereinafter "IRS"), and the Bank's account holders.[1] Accordingly, the Bank seeks to interplead the disputed funds and obtain the Court's direction concerning the disposition of same. The Bank seeks an expedited resolution of this Motion because it is being inundated with demands by account holders to transfer or withdraw the IRA cash funds (and in some cases is subject to IRS requirements that some of the funds be disbursed to account holders), while the Receiver is demanding that the funds remain at the Bank, and not be transferred, withdrawn, or disbursed.

Second, the Bank is providing valuable custodial services which benefit the account holders and the Receiver, without compensation and at significant expense to the Bank. The Bank has the absolute right to resign its custodianship, but has not yet done so because of the many difficulties such action would cause for the account holders (who are creditors of the Receivership entities), and for the Receiver (to the ultimate detriment of the account holders and the estate). For these reasons, the Bank has not exercised its right to resign, and has voluntarily continued as custodian at great cost to the Bank so as not to burden the account holders and the Receiver with the complexities associated with these tax-advantaged accounts. But, the Bank should be compensated fairly if it is to continue to serve as IRA custodian. This Motion should also be resolved on an expedited basis because of the very serious effects of a potential resignation by the Bank upon the account holders and the Receiver.

BACKGROUND

The Bank is organized under the laws of the State of Indiana and is subject to regulatory supervision by the Federal Reserve Bank of Chicago, the Federal Deposit Insurance Corporation, and

[1] It is believed that the account holders are investors in some or all of the entities involved in this receivership, and, accordingly, are creditors in this case.

the Indiana Department of Financial Institutions. The Bank is a financial institution that is qualified to act as a custodian of IRA accounts, and is in the business of offering these services to the public. IRA custodians generally provide administrative banking functions on behalf of their account holders, consistent with IRS rules and regulations. For example, as part of its duties and responsibilities as an IRA custodian, the Bank is required to, among other things: keep the assets in a segregated, safe, and secure manner consistent with the wishes of the account holders and IRS regulations; collect income and proceeds from investments in such accounts; make distributions as requested by the account holders or as otherwise required under IRS regulations; return the funds to the account holders or transfer them to another qualified institution as requested by the account holders; provide required IRS reporting and informational returns that, among other things, reflect the fair market value of the assets in such accounts; and provide periodic account statements to the account holders on a timely basis.

In or about October 2005, Pilot Retirement Services, LLC ("Pilot") asked the Bank to act as IRA custodian for approximately 1300 of Pilot's clients. As explained by Pilot, American National Pensions and Pilot had previously served as IRA custodians for these Pilot clients. As a result, the approximately 1300 Pilot clients already had IRA accounts to be transferred to the Bank, which would then undertake to act as the new IRA custodian. The assets of these IRA accounts were invested primarily in promissory notes issued by the receivership entities or entities affiliated with the receivership entities.

Accordingly, on October 19, 2005, the Bank entered into a Safekeeping Agreement with Pilot, pursuant to which the Bank agreed to act as IRA custodian for approximately 1300 of Pilot's clients in exchange for fees to be paid by Pilot. A copy of the Safekeeping Agreement is annexed hereto as Exhibit A.[2]

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[2] Pilot represented to the Bank that Pilot had entered into Client Advisory Agreements with each of its approximately 1300 clients, and that the Client Advisory Agreements authorized Pilot to, *inter alia*, enter into the Safekeeping Agreement with the Bank and to direct the Bank in its handling of the custodial accounts, on behalf of Pilot's clients. A sample Client Advisory Agreement is attached hereto as Exhibit B.

The Safekeeping Agreement included the fee structure to compensate the Bank for the functions and responsibilities it was agreeing to undertake as IRA custodian. Under the Safekeeping Agreement, Pilot was to pay the Bank's custodial fees. This fee structure assumed that Pilot would continue to have all direct dealings with the account holders, and so the Bank was not to be responsible for these tasks.

At the time that the Bank took over custodianship of the accounts, Pilot sent notices to its approximately 1300 clients setting forth some of the Bank's rights and responsibilities as IRA custodian, a copy of which is annexed hereto as Exhibit C. The notices provided, for example, that the Bank had a right to charge the account holders fees for custodial services. *See* Exhibit C, Paragraph 8.04. The notices also provided that, upon an appropriate written request, the Bank would be bound to transfer or distribute funds, as requested by an account holder through Pilot. *See, e.g.*, Exhibit C, Paragraphs 8.12, 8.15. Finally, the notices also provided that the Bank had the right to resign as IRA custodian, by providing the account holder with written notice 30 days before the resignation date. *Id.*, Paragraph 8.16. In the event that the Bank were to exercise its right to resign as IRA custodian, the account holders would have to find a qualified financial institution to act as the successor IRA custodian during the 30-day notice period. If the account holders did not identify a successor IRA custodian, then, by operation of the Bank's resignation, the assets held in the IRA accounts would be distributed to the account holders and potentially lose their IRA status, causing potential financial harm to the account holders in the form of substantial tax penalties.

After entering into the Safekeeping Agreement, the Bank opened up IRA custodial accounts ("the Accounts") for each of the approximately 1300 Pilot clients. At the inception of the Accounts, the Bank deposited into each of these Accounts: (a) an amount of cash, and/or (b) one or more promissory notes issued by companies, which, it now appears, are currently the subject of this receivership or may be affiliated with receivership entities.

In accordance with the Safekeeping Agreement, the Bank, as the successor custodian, relied upon Pilot for information about the status of the initial IRA holdings of each account holder, including the precise amount of cash and the specific note or notes belonging to the individual

account holders. For Pilot clients that were in existence as of October 22, 2005, the only information available to the Bank about those clients came from Pilot. Pilot, and Pilot alone, represented to the Bank how much cash, and/or which promissory notes belonged to which account holder. Pilot did ***not*** provide the Bank with any of its documents which would verify any account information, such as the source of funds, concerning the existing clients.[3]

It took much work, and the time and attention of numerous Bank executives and other employees, to perform all the tasks necessary to open and begin serving as the IRA custodian for the Accounts.[4] Once the Accounts were set up, the Bank performed the usual and customary service of an IRA custodian, performing administrative banking functions on behalf of the account holders.[5]

On or about March 1, 2006, Pilot sent notification to the account holders that it was closing its business and terminating the Client Advisory Agreements. Such notice directed the account holders to the Receiver and the Bank. The Bank has since been inundated with inquiries and requests from account holders (because of Pilot's termination), many of whom had just learned of this receivership and that their investments in promissory notes were potentially at risk.

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[3] The 1300 Accounts presently contain approximately 1600 of such promissory notes representing an aggregate of approximately $138 million in principal and accrued interest and earnings, as reported by Pilot as of December 31, 2005.

[4] These tasks included, among others, obtaining proper customer identification forms and executed IRS W-9 forms from the 1300 account holders and setting up the internal systems, working through Pilot, that would be necessary to ensure that the Accounts were properly handled.

[5] As such, for example, when promissory note investments matured, the proper account holders were credited with the cash proceeds of the matured notes received from the appropriate obligor. When account holders added funds to their Accounts, the Bank accepted those deposits into the Accounts, as requested by the account holders through Pilot or, after Pilot ceased to operate, directly by the account holders. When account holders purchased new promissory notes that were available for sale, the Bank accepted delivery of those notes in the Accounts. When account holders wanted cash transferred out of their Accounts (for example, to other qualified custodial accounts), the Bank effectuated such transfers, as requested by the account holder through Pilot or, later, directly by the account holders

TEW CARDENAS LLP
Four Seasons Tower, 15th Floor, 1441 Brickell Avenue, Miami, Florida 33131-3407 • 305-536-1112

Although the Bank has a right to resign as custodian, it has not yet elected to do so because of the many complications such resignation might cause for account holders and the Receiver. Instead, the Bank has continued to perform the custodial services and also has become responsible for direct interaction with the account holders while it seeks agreement with the Receiver and direction of the Court.

I. REQUEST TO INTERPLEAD CERTAIN IRA CASH FUNDS

A. THE BANK IS A DISINTERESTED STAKEHOLDER SUBJECT TO CONFLICTING DEMANDS FOR CERTAIN IRA CASH FUNDS

Since the Receiver was appointed in *The Big Four-Oh, LLC, et al. v. The Entertainment Group Fund, Inc., et ano.*, 06-20089-Civ-Huck/Simonton (hereinafter, "the Predecessor Case") on January 18, 2006, and as information about the Receiver's investigation has filtered to the various account holders, the Bank has received an increasing number of demands from numerous account holders to transfer IRA cash funds out of the Accounts. Most, if not all, of the requests have been to transfer the IRA cash funds to other qualified custodians. The Bank, as the IRA custodian, had been honoring these demands from the account holders, as it was required to do.

However, on March 20, 2006, the Receiver made a competing demand on certain of the IRA cash funds held in the Accounts. On that date, counsel for the Receiver provided a demand letter to counsel for the Bank, a copy of which is annexed hereto as Exhibit D (the "Demand Letter"). In the Demand Letter, counsel for the Receiver clarified that the Receiver would consent to the release those IRA cash funds held in the Accounts that were defined as "Direct Funds." According to the Demand Letter, the Direct Funds, as to which the Receiver is making no claim, are those IRA cash funds in the Accounts that were "received by 1st Source Bank on October 21st [of 2005], or thereafter, directly from individual investors or from other institutions (excluding Pilot Retirement Services, LLC), as opposed to [Worldwide Entertainment, Inc.], American Enterprises, Inc., or any of their affiliates." *See* Demand Letter, Exhibit D, at 1.

The Demand Letter further provided that the Receiver was making a formal demand on *all other IRA cash funds* in the Accounts at the Bank:

> [P]ursuant to the Receiver Order, the Receiver is vested with title to all of WWE's assets, wherever located. As of this point in time, the Receiver's not sure of what, if any, interest he has in the funds held by [1st Source] other than the Direct Funds. Accordingly, consistent with the Receiver Order, <u>the Receiver demands that you freeze any and all remaining [IRA cash funds in the Accounts] other than the Direct Funds pending an accounting and determination by the Courtof the Receiver's interest in said remaining funds</u>.

See Demand Letter, Exhibit D, at 1 (emphasis added).[6]

On or about March 29, 2006, the Receiver expanded the definition of Direct Funds, as to which the Receiver was **not** making a claim, to also include those IRA cash funds in the Accounts that were invested into the prior IRA accounts at American Pension Funds and at Pilot *before* October 21, 2005 from the individual investors or from other institutions (excluding Pilot Retirement Services), as opposed to Worldwide Entertainment, Inc., American Enterprises, Inc., or any of their affiliates and were never invested in promissory notes.

The Bank, however, has ***no*** ability to determine the source of funds that it inherited from Pilot – and therefore cannot separate Direct Funds from non-Direct Funds for such funds – unless sufficient supporting documents are provided to the Bank by account holders.

Following receipt of the Demand Letter and the subsequent expansion of the definition of Direct Funds, the Bank has continued to process transfers of IRA cash funds in the Accounts that fall within the expanded definition of Direct Funds, in accordance with the requests made upon the Bank by those account holders, but only to the extent that the account holders contact the Bank and provide sufficient documentation of the source of the funds. However, with respect to the remainder of the IRA cash funds in the Accounts, the Bank is in the position of a disinterested stakeholder subject to competing demands – (a) from the Receiver, who demands that such funds not be

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[6] At the time of the Receiver's initial demand, the Receiver had been appointed in the Predecessor Case. Since being appointed Receiver in this action, however, the Receiver has orally confirmed that its prior demand is applicable in this action, which succeeds and supersedes the Predecessor Case.

transferred or withdrawn from the Bank, and (b) from the account holders, who demand that the funds be transferred or withdrawn from the Bank.

In addition, under IRS regulations, the Bank, as an IRA custodian, is required to make certain minimum distributions from the cash funds in the Accounts for account holders over the age of 70 ½, upon request of the account holders at any time during the year, but no later than the end of the year. Otherwise, the account holder becomes subject to penalties for not reporting the required minimum distribution. Thus, the Bank is subject to an additional set of conflicting demands regarding funds other than Direct Funds – (a) from the Receiver, who demands that such funds not be transferred or withdrawn from the Bank, and (b) from the IRS, which demands that certain such funds be withdrawn from the Bank, in the form of required minimum distributions to certain account holders.

The Bank has no interest in these funds, except for its limited duties as custodian, and is prepared to tender the funds to the Court on entry of the appropriate order. Unless the Bank is allowed to interplead the funds, it will be at risk of multiple and inconsistent claims and judgments. The Bank is entitled to have this Court adjudicate the competing claims of the claimants and to establish the Bank's legal obligations with respect to the funds with finality.

B. THE NEED TO MAINTAIN THE ACCOUNTS AS IRA FUNDS FOR THE BENEFIT OF THE ACCOUNT HOLDERS

It would not be in the best interests of the account holders to physically transfer IRA funds into the registry of the Court as part of this requested interpleader. Transferring IRA funds to any entity that is not a qualified IRA custodian jeopardizes the IRA status of the funds, and could result in adverse tax and financial consequences to the account holders. Thus, the Bank respectfully requests that the IRA cash funds at issue be deemed to be under the jurisdiction and control of the Court for purposes of this interpleader, although the funds will physically continue to reside with the Bank (not the Court) to protect their IRA status for the benefit of the account holders, pending further order of the Court.

C. FUNDS ARE CONCENTRATED IN 160 ACCOUNTS

As of May 22, 2006, there is approximately $5.9 million cash in the Accounts. These funds are contained in only approximately 515 of the approximately 1300 accounts. The rest of the approximately 785 Accounts have only promissory notes in them.

Of the 515 Accounts with cash, at least approximately $5.6 million is concentrated in approximately 160 of the Accounts. The remaining 355 Accounts have, at most, an aggregate of approximately $262,000 in them.[7]

D. THE BANK'S INABILITY TO SEPARATE DIRECT FUNDS FROM NON-DIRECT FUNDS

At the April 13th hearing in the Predecessor Case, the Court indicated that the Bank should undertake and complete an accounting of the Accounts that would enable it to identify the funds that are subject to competing demands (*i.e.*, the non-Direct funds) and the account holders that are actually affected by the Receiver's Demand. This would require the Bank to undertake a forensic analysis of the source of funds presently held in the Accounts.

Unfortunately, however, the Bank is ***not*** able to perform this forensic analysis of the source of funds because the overwhelming majority of funds in the Accounts came from the transfer of

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[7] The basis for this is as follows. According to bank records, the 515 Accounts with cash fall into the following three categories: 186 Accounts with $500 or less; 169 Accounts with between $1,000 and $500; and 160 Accounts with more than $1,000.

In the unlikely event that the 186 Accounts with $500 or less each have exactly the maximum $500 in them, then there would be an aggregate of $93,000 in those 186 Accounts (186 x $500 = $93,000).

Further, in the unlikely event that the 169 Accounts with between $1,000 and $500 each have exactly the maximum $1,000 in them, then they there would be an aggregate of $169,000 in those 169 Accounts (169 x $1,000 = $169,000).

Thus, the maximum aggregate amount of the first two categories of Accounts is $262,000 ($93,000 + $169,000 = $262,000). This means that the great bulk of the approximately $5.9 million in the Accounts – at least $5.6 million – is concentrated in the 160 Accounts with more than $1,000.

funds from Pilot as of October 22, 2005. As noted above, pursuant to the Safekeeping Agreement, Pilot represented to the Bank which funds belong to which account holders, but provided none of the supporting documentation which would identify the source of the funds, and which would be needed to separate Direct Funds from non-Direct Funds. The Bank thus does not have the information needed to comply with the Court's direction.

To date, the Bank, with the expenditure of a considerable amount of time and resources, has been able to successfully analyze the source of funds *only* for those accounts in which the account holders have contacted the Bank and have provided sufficient back-up documentation to prove that the money in their individual Accounts are Direct Funds and therefore can be transferred out of the Bank. Without adequate documentation supplied by account holders, the Bank is not able to identify precisely which accounts have non-Direct Funds, which are the subject of competing demands.

D. THE JOINT PROPOSALS OF THE BANK AND THE RECEIVER

The Bank and counsel for the Bank have discussed with the Receiver and the Receiver's counsel the fact that the Bank is not able to identify the funds that are the subject of the competing demands due to a lack of records. The Bank and its counsel also pointed out that the great bulk of the funds are concentrated in 160 Accounts. Based on discussions with the Receiver, the Receiver and the Bank jointly propose the following for the Court's consideration:

First, that the Receiver be responsible for identifying the non-Direct Funds which are the subject of competing demands, through future discovery requests upon Pilot and, if necessary, upon individual account holders. The Bank is not able to perform this analysis, and the Receiver is committed to using his subpoena power to gather the documents necessary to sort out Direct funds from non-Direct funds. Although the Bank proposes to be discharged upon the entry of its proposed Order, it will provide documents and other information as requested by the Bank after its discharge.

Second, that the interpleader involve only those approximately 160 Accounts with more than $1,000 because they have the great bulk of the cash, and that the remaining 355 Accounts be excluded from the proposed interpleader, similar to a "convenience class" in bankruptcy court. Under this proposal, the Bank would be free to return the funds to the account holders of these 355

Accounts. The Receiver is not waiving this right to seek the recovery of funds from the holders of the 355 Accounts later in the receivership, for example, by imposing set-offs against the payment of claims. The Receiver is simply agreeing to the exemption of these 355 Accounts with relatively little cash to reduce the administrative burden of the requested interpleader proceeding.[8]

E. THE BANK SEEKS ITS REASONABLE FEES AND COSTS FOR ITS REQUEST TO INTERPLEAD FUNDS

A District Court has discretion to award the interpleading party its fees and costs in interpleading the funds, which are to be paid out of the funds being interpleaded. *Metro. Life Ins. Co. v. Carter*, No. 3:04-CV-668-J32HTS, 2005 WL 2810699, at *11 (M.D. Fla. 2005) ("Federal practice . . . has followed the traditional equity rule that gives the trial court discretion to allow a disinterested stakeholder to recover costs and attorney's fees from the stake itself"); *Prudential Ins. Co. of America v. Boyd*, 781 F.2d 1494, 1497-98 (11th Cir. 1986) ("The usual practice is to tax the costs and fees against the interpleader fund."); *In re Mandalay Shores Co-op. Housing Ass'n, Inc.*, 21 F.3d 380, 382-83 (11th Cir. 1994) ("It is axiomatic that an award of attorneys fees and costs in an interpleader action in bankruptcy is an equitable matter that lies within the sound discretion of the bankruptcy court."); 4 James Wm. Moore, Moore's Federal Practice § 22.06 (3d ed.2002).

Awarding fees and costs is appropriate when the party initiating the interpleader is "(1) a disinterested stakeholder, (2) who had conceded liability, (3) has deposited the disputed funds into court, and (4) has sought a discharge from liability." *Septembertide Publishing v. Stein and Day*, 884 F.2d 675 (2d Cir.1989).

Here, the Bank meets all of the requirements for the recovery of its attorneys fees and costs in bringing this Motion seeking to interplead the funds. The Bank accordingly requests that its

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[8] The Bank has reason to believe that a thorough accounting would determine that the funds in the accounts with $1,000 or less likely contain only Direct funds, to which the Receiver is making no claim. It is the Bank's understanding that when Pilot's predecessor opened accounts, it insisted that new account holders leave hundreds of dollars in the accounts, invested directly by the account holders, to be used to pay fees.

reasonable fees and costs be paid to the Bank out of the funds being interpleaded. At the hearing of this Motion, the Bank will set forth the fees and costs it seeks to recover.

II. REQUEST FOR CUSTODIAL FEES DUE TO 1ST SOURCE BANK'S CONTINUED ROLE AS IRA CUSTODIAN WITH RESPECT TO INTERPLEADED CASH FUNDS AND OTHER ASSETS

A. THE BANK HAS ALREADY INCURRED LOSSES AS IRA CUSTODIAN

Pursuant to the Safekeeping Agreement, between November 30, 2005 and February 28, 2006, the Bank billed Pilot approximately $147,000.00 for fees. Pilot paid the Bank approximately $44,000.00. The Bank exercised its right of setoff in respect of another approximately $26,000.00 that was on deposit in business accounts of Pilot at the Bank.

Since then and through today, the Bank has been operating as IRA custodian without any compensation for the work it performs and the responsibility it has undertaken, which has grown due to the resignation of Pilot and the pendency of the receivership.[9]

B. ON A GOING FORWARD BASIS, THE BANK IS PROVIDING THE ACCOUNT HOLDERS WITH VALUABLE CUSTODIAL AND RECORD-KEEPING SERVICES WITHOUT COMPENSATION, AND AT GREAT EXPENSE TO THE BANK, WHICH THE BANK CAN AVOID BY RESIGNING AS CUSTODIAN

Unlike the past costs, however, the Bank's future costs are avoidable because, as noted above, the Bank has an absolute right to resign as custodian, on 30 days notice.

The Bank will continue to have traditional custodial duties for some time because the Bank is proposing to act as IRA custodian of the intepleaded cash funds so that account holders do not adverse tax consequences from the interpleading of funds.

[9] The Bank understands that it is not the only victim and most likely not the largest victim in this receivership. It will likely have an unsecured claim in the receivership on account of this past loss, and the Bank will follow the procedures for the filing of unsecured claims in the receivership – just like all other victims, many of who are apparently the account holders.

In addition, most of the Accounts have non-intepleaded promissory notes in them. Unless all of the account holders arrange to have the promissory notes transferred to another qualified IRA custodian, the Bank will continue to act as IRA custodian for these Accounts, and perform all required and time-consuming tasks described above (*see supra* at 5 n. 4, 5) for free probably until the end of the receivership, unless it resigns as custodian. As one example, the Bank must prepare quarterly statements as of June 31, 2006, which will be mailed to each of the account holders in early July. As another example, on a periodic basis, the Bank, as custodian, will be required, under applicable IRA regulations, to file informational returns (IRS Form 5498) in which the Bank is required to provide the IRS with an estimate of the fair market value of the assets in each Account. Because so many Accounts contain promissory notes whose values have been cast into some doubt by the Receiver's reports, determining current fair market value of the notes may not be possible. The Bank is going to need expert legal advice and perhaps seek relief from the reporting requirement.[10] The Bank's willingness to remain as custodian saves the Receiver the trouble and

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[10] It is the Bank's general understanding that it must report on Forms 5498 the market value of the promissory note as the most recently determined fair market value. At this date, the Bank is reporting the fair market value as that value was last established by the issuer on December 31, 2005 (the face amounts plus accrued interest and earnings), before the receivership was established. The fair market value determination impacts the amount of the required minimum distribution for those holders over age 70 ½. On the other hand, the Bank is under a duty to report the value in a manner consistent with applicable IRS regulations. This can lead to disputes between the Bank and the account holders, which the Bank can completely avoid by simply resigning.

TEW CARDENAS LLP
Four Seasons Tower, 15th Floor, 1441 Brickell Avenue, Miami, Florida 33131-3407 • 305-536-1112

expense of dealing with these difficult tax reporting issues, but creates costs to the Bank.[11]

B. THE BANK HAS THUS FAR NOT RESIGNED AS IRA CUSTODIAN OUT OF CONCERN FOR THE ACCOUNT HOLDERS

The Bank has not resigned as custodian, to date, out of concern for the account holders. If the Bank were to provide its account holders with notice of resignation, the account holders would have 30 days to find a successor IRA custodian willing to take custody of the assets in the Accounts. Normally, this would be a relatively easy task because financial institutions earn fees for acting as IRA custodian. However, based on the Bank's knowledge of this industry, it will be difficult for account holders to move those assets to another IRA custodian, in light of the nature of these proceedings. Thus, if the Bank resigns, there is a chance that no successor custodian will be found and that these IRA assets would lose their IRA status, causing negative tax and financial consequences to the account holders. Any successor custodian willing to undertake this kind of custodial assignment would demand a substantial fee. It makes more sense for the Bank to continue to act as custodian and to be compensated fairly for its work. There is a chance, however, that some investors will be unable to find IRA custodians willing to take over the accounts.

The Receiver (and thus, indirectly, the account holders) would also suffer from the Bank's resignation. As one example, the Receiver's ability to respond to proofs of claims would be more difficult because the Receiver may have to consider the additional losses incurred by the account holders from losing the IRA status of their investments, if that were to happen. Moreover, the

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[11] Further, as noted above, when the Bank entered into the Safekeeping Agreement, it was with the understanding that Pilot would be responsible for all aspects of customer relations. Pilot is no longer performing that function, which has fallen to the Bank. Due to the uncertainty of the investments and the pendency of the receivership, the account holders are inundating the Bank with questions and demands. Currently, a senior executive at the Bank is personally handling the many calls which the Bank is receiving from account holders. These calls have been increasing over time as account holders become aware of this receivership. With each such communication, of course, there is the potential for a dispute between the account holders and the Bank. This is one more task that is a cost to the Bank and is a substantial benefit to the Receiver who otherwise would have to respond to these inquiries if the Bank resigned as custodian.

Receiver's job would become more challenging, if the Receiver were to get deluged with inquiries from account holders concerning the Bank's resignation.

The Bank does not want to see the account holders experience these difficulties. It is because of the Bank's desire to assist the account holders and the Receiver (who operates for the benefit of the account holders) that the Bank has refrained from resigning its custodianship. However, the Bank cannot continue to incur additional costs without appropriate compensation. A fair and reasonable fee is more than justified under these circumstances.

C. THE BANK'S REQUEST FOR FEES

The Bank seeks a fair and reasonable annual fee of $250 for each IRA account at the Bank for as long as the Bank continues to act as IRA custodian. The Bank's published fee schedule provides that its minimum custodial annual fee for a self-directed IRA account is $250, and that it normally charges an additional fee based upon on the value of the investments in the IRA account. Thus, the Bank's requested annual fee of $250 per account is the absolute minimum charged by the Bank for self-directed accounts according to its published fee schedules. It is already evident that performing custodial functions for these Accounts has involved and will continue to involve substantially more resources and expenses than with a typical self-directed IRA account, but the Bank is willing to continue serving as custodian for these Accounts, at its lowest published fee rate, for the benefit of the account holders and the Receiver.

To the extent that the Bank is not able to collect this fee from account holders, or from taking identifiable non-Direct funds from their accounts (as is the Bank's right), the Bank requests that it be permitted to deduct, from interpleaded funds that may exist in the individual Accounts, $250 per Account, and to continue to do so annual basis, as long as the Bank remains as IRA custodian.

For those Accounts in which there is no cash at all (as noted above, there are approximately 785 Accounts with no cash) and for those Accounts with insufficient cash to pay the annual fee, the Bank requests that its annual fees be paid out of distributions that the Receiver may make to the account holders. The Receiver consents to this procedure.

MEMORANDUM OF LAW

Resolution of this Motion through summary proceedings is appropriate. Summary proceedings is justified and well within the Court's discretion due to the equitable nature of the Receivership. *See, e.g., SEC v. Elliot*, 953 F.2d 1560, 1566-67 (11th Cir. 1992) ("The district court has broad powers and wide discretion to determine relief in an equity receivership . . . . This discretion derives from the inherent powers of an equity court to fashion relief. . . . In granting relief, it is appropriate for the district court to use summary proceedings"); *SEC v. Hardy*, 803 F.3d 1034, 1040 (9th Cir. 1986) ("[T]he use of summary proceedings to determine appropriate relief in equity proceedings, as opposed to plenary proceedings under the Federal rules, is within the jurisdictional authority of the district court.").

Applying these and other precedents, United States Magistrate Judge Barry L. Garber recently found that a summary procedure was appropriate in another receivership matter, *SEC v. Pension Fund of America, et al.*, 05-20863-Civ-Moore, with respect to a fraudulent transfer claim brought by the Receiver that otherwise would need to have been brought through commencement of an independent lawsuit. A copy of the Order of Magistrate Judge Garber is attached hereto as Exhibit F. If a receivership court employs a summary proceeding, that court must fashion appropriate procedural safeguards for the affected parties, including reasonable notice and a right to be heard. *See* Exhibit F, at 8-13.

Here, because of the pressing need to resolve the issues raised in the Motion, a summary proceeding is appropriate. Service by U.S. Mail of short form notice of the Motion in the form of Exhibit E upon the 1300 account holders using the addresses already in the Bank's computer system is adequate because (a) this is they way the Bank notifies the account holders of important matters that arise in the ordinary course of business, (b) the Bank, in its Motion, does not seek to deprive any account holder of any substantive rights, but, to the contrary, is acting responsibly in an effort to preserve the rights of the account holders, and (c) formal service of process on all account holders is impractical, costly, and would create an incredible delay. Service by U.S. Mail upon the Internal

Revenue Service should also be adequate, particularly since the IRS' interest in this matter is probably not great.

For the sake of efficiency, the Bank requests that the short form of the Motion in the form of Exhibit E be provided to the account holders *after* the filing of this Motion so that the notice can include the date of the hearing.

AN EXPEDITED RESOLUTION OF THE MOTION IS NECESSARY

Since receiving the Demand Letter, the Bank has been inundated with telephone calls from account holders. Many are demanding that the Bank immediately transfer their cash balances out of their Accounts at the Bank, most typically into an IRA account at another qualified financial institution. The Bank is able to honor those demands, consistent with the Demand Letter, only insofar as the cash funds sought are identifiable Direct Funds for which supporting documentation has been supplied to the Bank by account holders. To the extent that the account holders seek the remaining cash funds, however, the Bank is unable to reconcile the competing demands upon such remaining funds, and thus seeks to interplead those funds with the Court on an expedited basis.

It is also critically important that the Court consider the Bank's request for compensation on an expedited basis. The Bank is incurring losses for its continued IRA custodianship, and the Bank's resignation at this time is not in the best interests of the account holders or the receivership estate.

CONSENT OF RECEIVER

The Receiver and his counsel were provided with a copy of this Motion prior to its filing, and consent to all of the relief requested.

CONCLUSION

1st Source respectfully requests the following relief in connection with its request to interplead certain IRA cash funds in the Accounts:

a) The Receiver, the account holders, and the Internal Revenue Service (collectively, "the Respondents") be required to interplead their claims against the Bank with respect to all cash funds held in the approximately 160 Accounts that contain more than $1,000 each;

b) This Court enter an order authorizing the Interpleader, releasing and discharging the Bank from all claims by the Respondents related to such cash funds and from further liability related to such cash funds, and enjoining and restraining each and all of the Respondents from instituting any proceeding against the Bank relative to such cash funds;

c) The Court determine Respondents' respective rights to the interpleaded cash funds;

d) The Bank be authorized to maintain custody of the interpleaded funds and then to disburse such interpleaded cash funds upon entry of a final order which is not subject to rehearing, appeal, or stay determining the entitlement to such cash funds;

e) The Bank be awarded reasonable attorney's fees and costs associated with filing this interpleader motion; and

f) The Court grant any such further relief as this Court deems just and proper.

1st Source respectfully requests the following relief in connection with its request for custodial fees: To the extent that it cannot obtain fees from the account holders or from identifiable Direct funds (as is the Bank's right), 1st Source also respectfully requests that it be permitted to deduct $250 of interpleaded funds from each Account on annual basis until the custodianship ends,

or, if there is insufficient cash in any Account to cover such annual fees, that the Bank obtain such fees from the Receiver if and when the Receiver makes cash distributions to any such account holder.

DATED this 22 of May 2006.

Respectfully submitted,

TEW CARDENAS LLP
Counsel for 1st Source Bank
Four Seasons Tower
1441 Brickell Avenue
Miami, Florida 33131
(305) 536-1112 Telephone
(305) 536-1116 Facsimile

By:____________________
David M. Levine, Esq.
Florida Bar No. 0328731
Jonathan Etra, Esq.
Florida Bar No. 0686905

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that:

1. A true and correct copy of the above, attached to the Bank's Motion to Intervene, was served on May 22, 2006 through service of process in accordance with Fed. R. Civ. P. 5 (except insofar as individual parties, through counsel or the Receiver, indicated they would accept alternative service) upon:

U.S. Securities and Exchange Commission, Plaintiff

Michael I. Goldberg, Esq. The Receiver

John P. Utsick, Defendant

Robert Yeager, Defendant

Donna Yeager, Defendant

Worldwide Entertainment, Inc., Defendant

The Entertainment Group Fund, Inc., Defendant

American Enterprises, Inc., Defendant

Entertainment Funds, Inc., Defendant

2. A true and correct copy of the above was served on May 22, 2006 by U.S. Mail upon:

The Internal Revenue Service
Special Asst. U. S. Attorney
IRS District Counsel
Suite 1114
51 S. W. 1st Avenue
Miami, FL 33130

3. A true and correct copy of the short form notice, a copy of which is annexed hereto as Exhibit E, will be served by regular U.S. Mail upon account holders of Accounts at the 1st Source Bank at the addresses in the Bank's records.[12]

Jonathan Etra

@PFDesktop\::ODMA/MHODMA/DMS_NT;MIAMI;462245;1

[12] If requested, the Bank will file the list of addresses under seal.

SAFEKEEPING AGREEMENT

This Safekeeping Agreement (the "**Agreement**") is made on this 19th day of October, 2005 (the "**Effective Date**") by and between **Pilot Retirement Services LLC** ("**PRS**") and **1st Source Bank** (the "**Custodian**").

WHEREAS, PRS has transferred or will transfer various promissory notes, certificates of deposit and cash as agent for the numerous and named owners of such (the "**Clients**") to the Custodian;

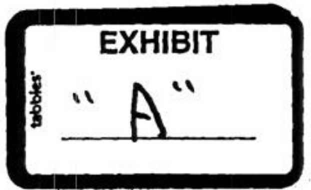
WHEREAS, the Custodian agrees to hold, administer and distribute those various promissory notes, certificates of deposit and cash in Individual Retirement Accounts for the benefit of each Client of PRS as a custodian and in accordance with the terms of the Agreement;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PRS and the Custodian, intending to be legally bound, hereby agree as follows:

1. **Custodial Property.** The custodial property shall consist initially of approximately 1,300 promissory notes and certificates of deposit and cash owned of record by the Clients of PRS (the "**Initial Deposit**"). PRS may, from time to time, add to the custodial property by transferring additional promissory notes, certificates of deposit and cash to the Custodian. Such additional property shall become property of the custodianship, and shall be subject to all of the provisions of this Agreement.

2. **Scope of Custodial Relationship.** The Custodian shall act as custodial agent only and shall not have any right to act for, bind, or otherwise obligate PRS.

3. **Duties of the Custodian.** The Custodian covenants and agrees that Custodian shall hold all property in safekeeping in fire-resistant vaults, fire-resistant cabinets, or related facilities. The Custodian further covenants and agrees that it shall keep all property clearly segregated from any and all other property in the facilities of the Custodian. The Custodian shall collect income and proceeds of sales, maturities and redemption. The Custodian shall distribute to PRS such of the income and principal as PRS from time to time may request, either orally or in writing, giving the Custodian reasonable time in which to make orderly liquidation or transfer for such purposes. Custodian will prepare and deliver to PRS Clients all necessary Internal Revenue Service Forms 5498 and 1099R as prescribed by law. PRS acknowledges that it has authority under the Client Advisory Agreement signed by each PRS Client to enter into this agreement with Custodian and agrees to prepare all account opening documents required by the Custodian and to require each PRS Client to execute these documents in a timely fashion. A copy of each PRS Client Advisory Agreement will be provided at the time the account is opened. PRS further agrees that Custodian will make no withdrawal or distribution from PRS Client's account until all documentation has been properly prepared and executed.



4. **Choice of Law.** This instrument and all dispositions hereunder shall be governed by and interpreted in accordance with the laws of the State of Indiana.

5. **Accounting.** Annually, the Custodian shall furnish each PRS Client a written statement of account to PRS of the Custodian's administration of the custodial property for each Client of PRS. PRS has the right to alter the frequency of such statements by mutual agreement with the Custodian. Monthly, the custodian shall furnish a written statement of all holdings in the accounts held by the Custodian for PRS Clients to be used by PRS for reconciliation.

6. **Confidentiality.** No person delivering property to the Custodian hereunder shall be required or privileged to see its application. The certificate of the Custodian that the Custodian is acting in compliance with this instrument shall fully protect all persons dealing with the Custodian.

7. **Compensation of the Custodian.** In consideration for rendering of the safekeeping services by the Custodian hereunder, PRS does hereby covenant and agree that it shall pay to the Custodian the following fees as outlined on Schedule A.

8. **Amendment and Termination.**

   (a) Amendment. This Agreement may be amended at any time by mutual consent of PRS and the Custodian.

   (b) Termination. This Agreement may be terminated by either party by giving at least 120 days prior written notice to the other of the intention to terminate Notice of termination shall be delivered personally to the other party or mailed by certified or registered mail addressed to the other party at such party's last known address. Upon termination, the Custodian shall deliver, as directed by PRS, all custodial property, provided there shall first be paid to the Custodian all funds due it. Upon such delivery, which shall be evidenced by receipt, all duties and liabilities of the Custodian hereunder shall terminate.

9. **Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement pursuant to judicial decree or otherwise shall not affect the validity or enforceability of other provisions of this Agreement, all of which shall remain in full force and effect.

10. **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, each of the parties hereto and to their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned individuals have executed this Agreement as of the Effective Date, and by doing so, represent and warrant that they have been or are specifically authorized to do so on behalf of the corporation or organization they represent.

PRS		1st Source Bank	
By:	[signature]	By:	[signature]
Name:		Name:	Steven J. Wessell
Title:	CEO	Title:	Senior Vice President
Date:	10/19/05	Date:	October 19, 2005

Safekeeping Agreement - Schedule A

In accordance with paragraph 7 of the Safekeeping Agreement dated October 19, 2005, PRS agrees to the following fee schedule. This fee schedule shall be in effect unless the schedule is modified by mutual consent or until the safekeeping agreement is terminated.

(a) A fee equal to $7.50 per promissory note or certificate of deposit for the promissory notes and certificates of deposit in the Initial Deposit.

(b) A fee equal to $15.00 per promissory note or certificate of deposit for the property in each subsequent deposit and withdrawal.

(c) A base fee equal to $100 annually for each PRS Client charged upon the opening date of each account and thereafter annually on the anniversary date.

(d) A promissory note face amount fee according to the following schedule:

Five (5) basis points (.05%) computed per annum and charged monthly on the first $50 million in face value of all promissory notes held under this agreement, and

Two and one-half (2 ½) basis points (.025%) computed per annum and charged monthly on the next $50 million in face value of all promissory notes held under this agreement.

To the extent that the face value of promissory notes exceeds $100 million, no market value fee will be charged on that portion over $100 million.

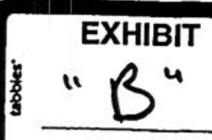
All fees shall be computed by the Custodian and paid by PRS monthly according to this agreement.

Client Advisory Agreement

4235 Fairfield Avenue
Fort Wayne, IN 46807
Telephone (877) 456-1479
Fax (260) 745-3424

Agreement, made this 14th day of November, 2005 between the below signed party (or parties) (hereinafter referred to as the "Client"), and Pilot Retirement Services, LLC ("PRS"), a registered investment adviser whose mailing address is 4235 Fairfield Avenue, Ft. Wayne, IN 46807, (hereinafter referred to as the "Adviser").

1) Scope of Engagement.
   a) The Client hereby appoints the Adviser as an Investment Adviser to perform the services hereinafter described, and the Adviser accepts such appointment. The Adviser shall be responsible for the implementation of the services for which it is engaged regarding those assets (which assets, together with all additions, substitutions and/or alterations thereto are hereinafter referred to as the "Assets" or "Account") designated by the Client to be subject to the terms and conditions of this agreement;
   b) The Adviser is authorized to buy, sell, and trade in stocks, bonds, mutual funds, interests in direct participation programs, other securities and/or contracts relating to the same, and/or other financial/investment products, on margin (only if written authorization has been granted) or otherwise, and to give instructions in furtherance of such authority to a registered broker-dealer, other financial institution, and/or the Custodian (*see paragraph 3 for further information regarding Custodian*) of the Assets;
   c) On a discretionary or non-discretionary basis, the Adviser may allocate all or a portion of the Assets, based upon the Client's stated investment objectives, among various investment alternatives, without restriction or limitation unless specifically stated in writing; and
   d) The Adviser may also provide and/or arrange for certain custodial services, which may include physical possession and safekeeping of assets (i.e. not cash or funds).
2) Client Acknowledgements.
   a) The Client agrees to provide information and/or documentation requested by Adviser in furtherance of this Agreement as it pertains to Client's objectives, needs and goals, and to keep Adviser informed of any changes regarding same. The Client acknowledges that Adviser cannot adequately perform its services for the Client unless the Client diligently performs his responsibilities under this Agreement. Adviser shall not be required to verify any information obtained from the Client, Client's attorney, accountant or other professionals, and is expressly authorized to rely thereon;
   b) Client authorizes Adviser to respond to inquiries from, and communicate and share information with, Client's attorney, accountant and other professionals to the extent necessary in furtherance of Adviser's services under this Agreement; and
   c) Client acknowledges and understands that the service(s) to be provided by Adviser under this Agreement is limited to individual investment advisory services on a "fee-for-service" basis.
   d) Discretionary authority.
      (1) ☐ Client hereby grants full discretionary trading authorization to Adviser
      (2) ☑ Client hereby restricts all discretionary trading authorization to Adviser
3) Custodian.
   a) On an ongoing basis, the Assets shall be held by an independent, Qualified Custodian, not the Adviser.
   b) For the purposes of this Agreement, the term, "Qualified Custodian," shall mean the financial institution designated by the Adviser and authorized by the client herein such as a broker-dealer or other financial institution maintaining Assets of the Client.
   c) Designation of Qualified Custodian. Unless specified otherwise, Qualified Custodian shall be **1st Source Bank** 10633 Coldwater Rd., Ft. Wayne, IN 46845, Tel: 260-338-5210, Fax: 260-338-5219.
   d) The Adviser is authorized to give instructions to Qualified Custodian with respect to all movements of money regarding the Assets and Custodian is hereby authorized and directed to effect such movements, distribute monies, and otherwise take such actions as the Adviser shall direct in connection with the performance of the Adviser's obligations in respect of the Assets held by Qualified Custodian; provided, that Adviser shall not have custody of or receive any distributions other than with respect to payment of advisory fees as specified in Section 4)a)iv below.
   e) Either Adviser or Qualified Custodian will send, at a minimum, quarterly statements showing all transactions occurring on behalf of the Client, if transactions occur monthly, such statements will be provided monthly to Client.
4) Adviser Compensation.
   a) Fee Assessment and Calculation.
      i. No increase in Adviser's fees shall be effective without prior written notification of at least thirty (30) days to the Client;
      ii. In addition to Adviser's administrative and/or service fee(s) and any custodial fees, the Client may also incur, relative to certain investment products (such as mutual funds, variable contracts, direct participation programs), charges imposed directly at the investment product level (e.g. advisory fees, administrative fees, and/or other expenses).
      iii. Any custodial fee(s) charged to the Client by the Qualified Custodian are exclusive of, and in addition to, *Adviser Compensation* as defined herein.Commission fees for securities trade executions may be billed to the Client by the broker-dealer and/or custodian of record for the client account, not Adviser. Should the transaction be a block trade for securities to be apportioned over various accounts, the commission(s) may be billed by such broker-dealer on pro rata basis according to the portion of the trade placed in each Client's account(s).
      iv. Client authorizes the Adviser to automatically deduct its fees in connection with this Agreement directly from the Client's Account(s).
   a) Minimum Fee. Adviser, in its sole discretion, shall generally impose a minimum fee of $35.00 quarterly for its services described herein.



b) Client acknowledges s/he will be solely and directly responsible for Adviser fees billed directly to Client.

c) Service and Fee Selection.

Service Type	Service Description		Discretion (F=full; N=none)
1 ☑	Self-Directed Accounts		☐ F ☑ N ☐ N/A
2 ☐	Pilot Portfolio Accounts		☐ F ☐ N ☐ N/A
3 ☐	Managed Accounts		☐ F ☐ N ☐ N/A
Service Type	Fee Description		Billing Method and Frequency (A=annually; Q=quarterly; M=monthly; AR=arrears; AD=advance; C=custodian; D=direct)
☑ Self-Directed Accounts	50 Basis Points (within the following amounts)		
	Minimum Fee	Maximum Fee	☐A - ☑Q - ☐M; ☐AR - ☐AD; ☐C - ☐D
	$150	$500	
☐ Pilot Portfolio Accounts	Account(s) Value	Rate	Billing Method and Frequency
	First $500,000	0.70 %	☐A - ☐Q - ☐M, ☐AR - ☐AD, ☐C - ☐D
	Next $500,000	0.60 %	
	Over $1,000,000	0.50 %	
	Minimum quarterly fee	$ 50	☐AR - ☐AD; ☐C - ☐D
☐ Managed Accounts	Account(s) Value	Rate	Billing Method and Frequency
	First $500,000	1.00 %	☐A - ☐Q - ☐M; ☐AR - ☐AD; ☐C - ☐D
	Next $500,000	0.80 %	
	Over $1,000,000	0.60 %	
	Minimum quarterly fee	$ 50	☐AR - ☐AD; ☐C - ☐D
☐ Hourly	$ 150 / Hour		☐A - ☐Q - ☐M, ☐AR - ☐AD; ☐C - ☐D
New account set-up fee			$ 150 (for self-directed accounts only)
Overnight mail (when requested)			$ 20
Wire transfer charge (when requested)			$ 20
Distribution via check			$ 10
Scheduled distribution via ACH			$ 25 one-time set up fee
Returned check fee			$ 25
Stop payment fee			$ 25
Account termination fee			$ 100
Client 1 Signature			
Client 2 Signature			

5) **Execution of Brokerage Transactions (when applicable).** Adviser is not a broker-dealer. If requested, Adviser will arrange for the execution of securities brokerage transactions for the Account through broker-dealers that Adviser reasonably believes will provide "best execution". In seeking best execution, the determinative factor is not always the lowest possible commission cost but whether the transaction represents the best qualitative execution, taking into consideration the full range of a broker-dealer's services including the value of research provided (if any), execution capability, commission rates, and responsiveness. Commissions and/or transaction fees are generally charged for effecting securities transactions (Any such fees are not charged by Adviser);

6) **Risk Acknowledgment.** Adviser does not guarantee the future performance of the Account or any specific level of performance, the success of any investment recommendation or strategy that Adviser may take or recommend for the Account, or the success of Adviser's overall advisory services related to the Account. Client understands that investment recommendations for the Account by Adviser may be subject to various market, interest rate, currency, economic, political and business risks, and that those investment decisions will not always result in profitable performance.

7) **Directions to the Adviser.** All directions, instructions and/or notices from the Client to the Adviser shall be in writing, including notification of a change in the Client's investment objective(s). The Adviser shall be fully protected in relying upon any direction, notice, or instruction until it has been duly advised in writing of changes therein.

8) **Adviser Liability.** Except as otherwise provided by federal or state securities laws, the Adviser, acting in good faith, shall not be liable for any action, omission, investment recommendation/decision, or loss in connection with this Agreement including, but not limited to, the investment of the Assets, or the acts and/or omissions of other professionals or third-party service providers recommended to the Client by the Adviser, including a broker-dealer and/or custodian. If the Account contains only a portion of the Client's total assets, Adviser shall only be responsible for those assets that the Client has designated to be the subject of the Adviser's investment management services under this Agreement without consideration to those additional assets not so designated by the Client.

9) **Proxies.** Unless the Client directs otherwise in writing, the Client shall be responsible for: (1) directing the manner in which proxies solicited by issuers of securities beneficially owned by the Client shall be voted, and (2) making all elections relative to any mergers, acquisitions, tender offers, bankruptcy proceedings or other types of events pertaining to the Assets. Adviser is authorized to instruct the Custodian to forward to Client copies of all proxies and shareholder communications relating to the Assets.

10) **Assignment.** This Agreement may not be assigned (within the meaning of the Investment Advisers Act of 1940) by either the Client or the Adviser without the prior written consent of the other party. The Client acknowledges and agrees that transactions that do not result in a change of actual control or management of the Adviser shall not be considered an assignment pursuant to Rule 202(a)(1)-1 under the Investment Advisers Act of 1940.

11) **Termination.** This Agreement will continue in effect until terminated by either party by written notice to the other (email notice will not suffice), which written notice must be signed by the terminating party and received by the other party at least thirty days in advance of the requested termination date. Termination of this Agreement will not affect (i) the validity of any action previously taken by Adviser under this Agreement; (ii) liabilities or obligations of the parties from transactions initiated before termination of this Agreement; or (iii) Client's obligation to pay advisory fees (prorated through the date of

termination). Upon the termination of this Agreement, Adviser will have no obligation to recommend or take any action with regard to the securities, cash or other investments in the Account.

12) **Non-Exclusive Management.** Adviser, its officers, employees, and agents, may have or take the same or similar positions in specific investments for their own account(s), or for the accounts of other clients, as the Adviser does for the Assets of Client. Client expressly acknowledges and understands that Adviser shall be free to render investment advice to others and that Adviser does not make its investment management services available exclusively to Client. Nothing in this Agreement shall impose upon the Adviser any obligation to purchase or sell, or to recommend for purchase or sale, for the Account any security which the Adviser, its principals, affiliates or employees, may purchase or sell for their own accounts or for the account of any other client, if in the reasonable opinion of the Adviser such investment would be unsuitable for the Account or if the Adviser determines in the best interest of the Account it would be impractical or undesirable.

13) **Death or Disability.** The death, disability or incompetence of Client will not terminate or change the terms of this Agreement. However, Client's executor, guardian, attorney-in-fact or other authorized representative may terminate this Agreement by giving thirty (30) days advance written notice to Adviser in accordance with the termination provisions described herein. The Client recognizes that the Custodian may not allow any further Account transactions until such time as the necessary documentation is provided to the Custodian.

14) **Arbitration.**
   a) Subject to the conditions and exceptions noted below, and to the extent not inconsistent with applicable law, in the event of any dispute pertaining to Adviser's services under this Agreement, both Adviser and Client agree to submit the dispute to arbitration in accordance with the auspices and rules of the American Arbitration Association ("AAA"), provided that the AAA accepts jurisdiction. Adviser and Client understand that such arbitration shall be final and binding, and that by agreeing to arbitration, both Adviser and Client are waiving their respective rights to seek remedies in court, including the right to a jury trial.
   b) Client acknowledges that he/she/it has had a reasonable opportunity to review and consider this arbitration provision prior to the execution of this Agreement. Client acknowledges and agrees that in the specific event of non-payment of any portion of Adviser Compensation pursuant to paragraph 2 of this Agreement, Adviser, in addition to the aforementioned arbitration remedy, shall be free to pursue all other legal remedies available to it under law, and shall be entitled to reimbursement of reasonable attorneys fees and other costs of collection of any monies due Adviser.

15) **Disclosure Statement.** The Client hereby acknowledges prior receipt of a copy of the Disclosure Statement of the Adviser as same is set forth on Part II of Form ADV. Client further acknowledges that he has had a reasonable opportunity (i.e. at least 48 hours) to review said Disclosure Statement, and to discuss the contents of same with professionals of his choosing, prior to the execution of this Agreement. If the Client has not received a copy of the Adviser's Disclosure Statement at least 48 hours prior to execution of this Agreement, he/she/it shall have 5 business days from the date of execution of this Agreement to terminate Adviser's services without penalty under this Agreement.

16) **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms or provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in such jurisdiction or any other jurisdiction.

17) **Client Conflicts.** If this Agreement is between the Adviser and related clients (i.e. husband and wife, life partners, etc.), Adviser's services shall be based upon the joint goals communicated to the Adviser. Adviser shall be permitted to rely upon instructions from either party with respect to disposition of the Assets, unless and until such reliance is revoked in writing to the Adviser. The Adviser shall not be responsible for any claims or damages resulting from such reliance or from any change in the status of the relationship between the clients.

18) **Privacy Notice.** The Client acknowledges prior receipt, understanding, and acceptance of the Adviser's *Privacy Notice.*

19) **Emergency Contact Information.**
   a) Name: Brady McArdle
   b) Phone: (260) 456-1054
   c) Email: bradymcardle@pilotholdingsgroup.com

20) **Applicable Law.** This Agreement supersedes and replaces, in its entirety, all previous investment advisory agreement(s) between the parties. To the extent not inconsistent with applicable law, this Agreement shall be governed by and construed in accordance with the laws of the State of Indiana.

21) **Authority.** The Client acknowledges that s/he/they/it has (have) all requisite legal authority to execute this Agreement, and that there are no encumbrances on the Assets. The Client correspondingly agrees to immediately notify the Adviser, in writing, if either of these representations should change.

IN WITNESS WHEREOF, the Client and Adviser have each executed this Agreement on the day, month and year written on the facing page, by signing the account form on the facing page and signing below.

[signature] 11/14/05

Customer's Signature — Date

Joint owner's Signature — Date

Associated person's Signature — Date

[signature] 11/29/05

Authorized supervisor's Signature — Date

TRADITIONAL INDIVIDUAL RETIREMENT CUSTODIAL ACCOUNT

Form **5305-A** (Rev. March 2002) Department of the Treasury Internal Revenue Service

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

Do Not File with Internal Revenue Service

☐ Amendment

The depositor and the custodian make the following agreement:

This IRS Form 5305-A is a reference copy only. It does not include the General Instructions. A complete IRS Form 5305-A, Disclosure Statement, and Financial Disclosure can be found in the Custodian's master file and is provided to the IRA owner as part of this IRA Organizer.

Article I. Except in the case of a rollover contribution described in section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), an employer contribution to a simplified employee pension plan as described in section 408(k), or a recharacterized contribution described in section 408A(d)(6), the custodian will accept only cash contributions up to $3,000 per year for tax years 2002 through 2004. That contribution limit is increased to $4,000 for tax years 2005 through 2007 and $5,000 for 2008 and thereafter. For individuals who have reached the age of 50 before the close of the tax year, the contribution limit is increased to $3,500 per year for tax years 2002 through 2004, $4,500 for 2005, $5,000 for 2006 and 2007, and $6,000 for 2008 and thereafter. For tax years after 2008, the above limits will be increased to reflect a cost-of-living adjustment, if any.

Article II. The depositor's interest in the balance in the custodial account is nonforfeitable.

Article III.

1. No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).

2. No part of the custodial account funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3), which provides an exception for certain gold, silver, and platinum coins, coins issued under the laws of any state, and certain bullion.

Article IV.

1. Notwithstanding any provision of this agreement to the contrary, the distribution of the depositor's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and the regulations thereunder, the provisions of which are herein incorporated by reference.

2. The depositor's entire interest in the custodial account must be, or begin to be, distributed not later than the depositor's required beginning date, April 1 following the calendar year in which the depositor reaches age 70½. By that date, the depositor may elect, in a manner acceptable to the custodian, to have the balance in the custodial account distributed in:

(a) A single sum or

(b) Payments over a period not longer than the life of the depositor or the joint lives of the depositor and his or her designated beneficiary.

3. If the depositor dies before his or her entire interest is distributed to him or her, the remaining interest will be distributed as follows:

(a) If the depositor dies on or after the required beginning date and:

(i) the designated beneficiary is the depositor's surviving spouse, the remaining interest will be distributed over the surviving spouse's life expectancy as determined each year until such spouse's death, or over the period in paragraph (a)(iii) below if longer. Any interest remaining after the spouse's death will be distributed over such spouse's remaining life expectancy as determined in the year of the spouse's death and reduced by 1 for each subsequent year, or, if distributions are being made over the period in paragraph (a)(iii) below, over such period.

(ii) the designated beneficiary is not the depositor's surviving spouse, the remaining interest will be distributed over the beneficiary's remaining life expectancy as determined in the year following the death of the depositor and reduced by 1 for each subsequent year, or over the period in paragraph (a)(iii) below if longer.

(iii) there is no designated beneficiary, the remaining interest will be distributed over the remaining life expectancy of the depositor as determined in the year of the depositor's death and reduced by 1 for each subsequent year.

(b) If the depositor dies before the required beginning date, the remaining interest will be distributed in accordance with (i) below or, if elected or there is no designated beneficiary, in accordance with (ii) below:

(i) The remaining interest will be distributed in accordance with paragraphs (a)(i) and (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), starting by the end of the calendar year following the year of the depositor's death. If, however, the designated beneficiary is the depositor's surviving spouse, then this distribution is not required to begin before the end of the calendar year in which the depositor would have reached age 70½. But, in such case, if the depositor's surviving spouse dies before distributions are required to begin, then the remaining interest will be distributed in accordance with (a)(ii) above (but not over the period in paragraph (a)(iii), even if longer), over such spouse's designated beneficiary's life expectancy, or in accordance with (ii) below if there is no such designated beneficiary.

(ii) The remaining interest will be distributed by the end of the calendar year containing the fifth anniversary of the depositor's death.

4. If the depositor dies before his or her entire interest has been distributed and if the designated beneficiary is not the depositor's surviving spouse, no additional contributions may be accepted in the account.

5. The minimum amount that must be distributed each year, beginning with the year containing the depositor's required beginning date, is known as the "required minimum distribution" and is determined as follows:

(a) The required minimum distribution under paragraph 2(b) for any year, beginning with the year the depositor reaches age 70½, is the depositor's account value at the close of business on December 31 of the preceding year divided by the distribution period in the uniform lifetime table in Regulations section 1.401(a)(9)-9. However, if the depositor's designated beneficiary is his or her surviving spouse, the required minimum distribution for a year shall not be more than the depositor's account value at the close of business on December 31 of the preceding year divided by the number in the joint and last survivor table in Regulations section 1.401(a)(9)-9. The required minimum distribution for a year under this paragraph (a) is determined using the depositor's (or, if applicable, the depositor and spouse's) attained age (or ages) in the year.

(b) The required minimum distribution under paragraphs 3(a) and 3(b)(i) for a year, beginning with the year following the year of the depositor's death (or the year the depositor would have reached age 70½, if applicable under paragraph 3(b)(i)) is the account value at the close of business on December 31 of the preceding year divided by the life expectancy (in the single life table in Regulations section 1.401(a)(9)-9) of the individual specified in such paragraphs 3(a) and 3(b)(i).

(c) The required minimum distribution for the year the depositor reaches age 70½ can be made as late as April 1 of the following year. The required minimum distribution for any other year must be made by the end of such year.

6. The owner of two or more traditional IRAs may satisfy the minimum distribution requirements described above by taking from one traditional IRA the amount required to satisfy the requirement for another in accordance with the regulations under section 408(a)(6).

Article V.

1. The depositor agrees to provide the custodian with all information necessary to prepare any reports required by section 408(i) and Regulations sections 1.408-5 and 1.408-6.

2. The custodian agrees to submit to the Internal Revenue Service (IRS) and depositor the reports prescribed by the IRS.

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

Article VII. This agreement will be amended as necessary to comply with the provisions of the Code and the related regulations. Other amendments may be made with the consent of the persons whose signatures appear on the Application that accompanies this Agreement.

Article VIII.

8.01 Your IRA Documents. The Internal Revenue Service (IRS) Forms 5305 series agreement for traditional IRAs, and any amendments or additional provisions to such agreement (the "Agreement") set forth the terms and conditions governing your individual retirement account (IRA) and your or, after your death, your beneficiary's relationship with us. Your agreement will be accompanied by a disclosure statement, which sets forth various IRA rules in simpler language, and a financial disclosure.

8.02 Definitions. The IRS Forms 5305 series agreement 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," "your," and "IRA owner" 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, to handle certain transactions affecting your IRA, such agent will be considered "you" for purposes of this Agreement. Additionally, references to "IRA" will mean the custodial account.

8.03 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.

8.04 Our Fees and Expenses. We may charge reasonable fees and are entitled to reimbursement for any expenses we incur in establishing and maintaining your IRA. We may change the fees at any time by providing you with notice of such changes. We will provide you with fee disclosures and policies. Fees may be deducted directly from your IRA assets, and/or billed separately to you. Fees billed separately to you and paid by you may be claimed on your federal income tax return as miscellaneous itemized deductions. The payment of fees has no effect on your contributions. Additionally, we have the right to liquidate your IRA assets to pay such fees and expenses. If you do 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.

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

8.06 Notice and Delivery. Any notice mailed to you will be deemed delivered and received by you, 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. You are responsible for ensuring that we have your proper mailing address. Upon your consent, we may provide you 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 based on our ordinary business practices. All notices must be in writing unless our policies and procedures provide for oral notices.

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

8.08 Disqualifying Provisions. Any provision of this Agreement that would disqualify the IRA will be disregarded to the extent necessary to maintain the account as an IRA.

8.09 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.

8.10 Representations and Indemnity. You represent that any information you and/or your agents provide to us is accurate and complete, and that your actions comply with this Agreement and applicable laws governing retirement plans. You 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 information, direction, or actions, including your failure to act. You 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 information, direction, or actions. Additionally, you represent that it is your responsibility to seek the guidance of a tax or legal professional for your IRA issues.

We are not responsible for determining whether any contributions or distributions comply with this Agreement and/or the federal laws governing retirement plans. We are not responsible for any taxes, judgments, penalties or expenses incurred in connection with your IRA, or any losses that are a result of events beyond our control. We have no responsibility to process transactions until after we have received appropriate direction and documentation, and we have had a reasonable opportunity to process the transactions. We are not responsible for interpreting or directing beneficiary designations or divisions, including separate accounting, court orders, penalty exception determinations, or other similar situations.

8.11 Investment of IRA Assets.

(a) **Investment of Contributions.** We will invest IRA contributions and reinvest your IRA assets as directed by you based on our then-current investment policies and procedures. If you fail to provide us with investment direction for a contribution, we will return or hold all or part of such contribution based on our policies and procedures. We will not be responsible for any loss of IRA income associated with your failure to provide appropriate investment direction.

(b) **Directing Investments.** All investment directions must be in a format or manner acceptable to us. You may invest in any IRA investments that you are qualified to purchase, and that we are authorized to offer and do offer at the time of the investment selection, and that are acceptable under the applicable laws governing retirement plans. Your IRA investments will be registered in our name or our nominee's name for the benefit of your IRA. Specific investment information may be provided at the time of the investment.

Based on our policies, we may allow you to delegate the investment responsibility of your IRA to an agent by providing us with written notice of delegation in a format acceptable to us. We will not review or guide your agent's decisions, and you are responsible for the agent's actions or failure to act. We are not responsible for directing your investments, or providing investment advice, including guidance on the suitability or potential market value of various investments. For investments in securities, we will exercise voting rights and other similar rights only at your direction, and according to our then-current policies and procedures.

(c) **Investment Fees and Asset Liquidation.** Certain investment-related fees, which apply to your IRA, must be charged to your IRA and cannot be paid by you. We have the right to liquidate your IRA assets to pay fees and expenses, federal tax levies, or other assessments on your IRA. If you do 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.

(d) **Deposit Investments.** The deposit investments provided by us may include savings, share, and/or money market accounts, and various certificates of deposit (CDs).

(e) **Non-Deposit Investments.** Non-deposit investments include investments in property, annuities, mutual funds, stocks, bonds, and government, municipal and U.S. Treasury securities, and other similar investments. Most, if not all, of the investments we offer are subject to investment risks, including possible loss of the principal amount invested. Special disclosures concerning your investments will be provided to you.

8.12 Distributions. Withdrawal requests must be in a format acceptable to us, and/or on forms provided by us. We may require you, or your beneficiary after your death, to elect a distribution reason, provide documentation, and provide a proper tax identification number before we process a distribution. These withdrawals may be subject to taxes, withholding, and penalties. Distributions will generally be in cash or in kind based on our policies. In-kind distributions will be valued according to our policies at the time of the distribution.

Required minimum distributions will be based on Treasury Regulations 1.401(a)(9) and 1.408-8 in addition to our then-current policies and procedures. The required minimum distribution regulations are described within the Disclosure Statement. In the event you, or your beneficiary after your death, fail to take a required minimum distribution we may do nothing, distribute your entire IRA balance, or distribute the amount of your required minimum distribution based on our own calculation.

8.13 Transfer and Rollover Contributions. We may accept transfers, rollovers, and other similar contributions in cash or in kind from other IRAs and eligible retirement plans. Prior to completing such transactions we may require that you 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.

8.14 Reports and Records. We will maintain the records necessary for IRS reporting on this IRA. Required reports will be provided to you, or your beneficiary after your death, and the IRS. If you believe that your report is inaccurate or incomplete you must notify us in writing within 30 days following the receipt date. Your investments may require additional state and federal reporting.

8.15 Termination. You 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 retain the sum necessary to cover any fees and expenses, taxes, or investment penalties.

8.16 Our Resignation. We can resign at any time by providing you with 30 days written notice prior to the resignation date, or within five days of our receipt of your written objection to an amendment. In the event you materially breach this Agreement, we can terminate this Agreement by providing you with five days prior written notice. Upon our resignation, you must appoint a qualified successor custodian or trustee. Your IRA 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 IRA fees or expenses. We reserve the right to retain IRA assets to pay any remaining fees or expenses. At the time of termination we may retain the sum necessary to cover any fees and expenses, taxes, or investment penalties. If you fail 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, distribute the assets to you in kind, or liquidate the assets and distribute them to you in cash.

8.17 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 your IRA.

Expert™ © 1982, 1998 Bankers Systems, Inc., St. Cloud, MN Form IRA-40-SD Rev. 6/1/2002

Kluger Peretz
Kaplan & Berlin

March 20, 2006

VIA FACSIMILE & U.S. MAIL
David M. Levine, Esq.
Tew Cardenas, LLP
1441 Brickell Avenue
Four Seasons Tower, 15th Floor
Miami, FL 33131

Re: Worldwide Entertainment Inc., et al./1st Source Bank

Dear Mr. Levine:

This follows our meeting held on even date at your offices. First, we thank you for agreeing to meet with us in connection with the above-captioned matter.

As you know, we represent Michael I. Goldberg, Receiver for The Entertainment Group, Fund, Inc. ("TEGFI"), and Worldwide Entertainment, Inc. ("WWE") ("TEGFI" and "WWE" collectively referred to as the "Receivership Entities"). The Receiver was appointed on January 18, 2006, pursuant to an Agreed Order ("Receiver Order") entered by the United States District Court, Southern District of Florida ("Court").

At our meeting, you disclosed to us that you represent 1st Source Bank who acts as custodian of various IRA accounts on behalf of approximately 1300 clients. Specifically, you explained that your client is presently holding in a custodial capacity the sum of approximately $5.6 million (assumed to be the balance as of today) on account of some for these clients. We have advised you that, to the extent that any portion of this sum was received by 1st Source Bank on October 21st or thereafter, directly from individual investors or from other institutions (excluding Pilot Retirement Services LLC), as opposed to WWE, American Enterprises, Inc. or any of their affiliates, (the "Direct Funds"), the Receiver will agree to release any claims that the Receivership Estate may have to such Direct Funds.

Moreover, pursuant to the Receiver Order, the Receiver is vested with title to all of WWE's assets, wherever located. As of this point in time, the Receiver's not sure of what, if any, interest he has in the funds held by your client other than the Direct Funds. Accordingly, consistent with the Receiver Order, the Receiver demands that you freeze any and all remaining other than the Direct Funds sums pending an accounting and determination by the Court of the Receiver's interest in said remaining funds. We shall move as rapidly as possible with you to obtain a determination by the Court on this issue.

{W:\Lit\4814\0002\M0294842 v.1; 3/20/2006 04:19 PM}

EXHIBIT A

Thank you in advance for your anticipated cooperation in this matter.

Very truly yours,

KLUGER, PERETZ, KAPLAN & BERLIN, P.L.

By: ______________________
Howard J. Berlin

Hjb/nq
cc. Michael I. Goldberg, Esq.

The Miami Center • 201 S. Biscayne Blvd. • Seventeenth Floor • Miami, FL 33131 • Ph: (305) 379-9000 • Fax: (305) 379-3428
2835 Executive Center Drive • Suite 300 • Boca Raton, FL 33431 • Ph: (561) 961-1830 • Fax: (561) 961-1831 • www.kpkb.com

<u>Notice Of Motion And Of Hearing On The Motion</u>

On May 22, 2006, 1st Source Bank (hereinafter "1st Source" or "the Bank") filed a Motion in the United States District Court in the Southern District of Florida, in the action entitled *U.S. Securities and Exchange Commission v. John P. Ustick, et al.*, No. 06-20975-Civ-Huck/Simonton (S.D. Fla.). This is the most recent action in which Michael I. Goldberg was appointed Receiver of Worldwide Entertainment, Inc. and other related entities.

A summary of the relief requested in the Motion,[1] and the bases for the relief, is set forth below. The full text of the Motion will soon be available on the Receiver's website, at www.entertainmentgroupinfo.com.

The Interpleading Of Funds

In its Motion, 1st Source seeks to interplead certain funds currently held in IRA accounts at the Bank, some of which may be funds held in your account.

An interpleader is a procedure used when there are competing claims to funds, and the entity initiating the interpleader (*i.e.*, 1st Source) has custody of the funds, but has no interest in them, except to ensure that the funds are given to the proper claimant. 1st Source is seeking to institute an interpleader procedure for these funds because there are competing claimants to the funds -- you and other account holders are claiming these funds as your own (to the extent they are in your accounts), and the Receiver is also claiming a right to these funds (at least at this point in his investigation). Because of the competing claims of account holders and the Receiver, 1st Source thus has no choice but to seek relief from the Court presiding over the receivership case so that the Court can decide the fate of the funds - whether they belong to the account holders or the Receiver.

Which funds are being intepleaded, if the Bank's Motion is granted, and thus are subject to the control of the Court, pending resolution of the interpleader procedure? The answer is: those cash funds in the accounts to which the Receiver is asserting rights. The Receiver is asserting rights to all cash funds in the accounts, except those funds that are currently in the accounts that the account holders can prove, with documentary evidence, have never been invested into any promissory note. In other words, the only cash funds excluded from the Receiver's demand are those funds that the investors can prove are fresh investment funds that are still sitting in their accounts and have never been used to purchase notes. All other cash funds are part of the Receiver's demand and therefore will be interpleaded, and subjected to the control of the court, if the Bank's Motion is granted.

Traditionally, when an entity seeks an interpleader, it physically transfers the funds at issue into an account controlled by the Court, often referred to as the Registry of the Court. 1st Source hopes it need not do that here. Because these are IRA Accounts, in order to minimize the chance of potential negative tax consequences of a distribution out of the IRA accounts (and into the Registry of the Court), 1st Source has instead suggested to the Court that the funds remain in 1st Source in interest-bearing accounts to retain their IRA status, but they be under the jurisdiction and control of the Court for purposes of the interpleader procedure, if the Bank's Motion is granted.

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[1] The Motion filed by the Bank is technically a motion to the intervene in the ongoing lawsuit for the purpose of pursuing the relief described herein.

EXHIBIT "E"

In its Motion, 1st Source has also asked the Court (i) to release and discharge the Bank upon the interpleader of the funds from the claims of the Receiver and the account holders related to the interpleaded funds; and (ii) for reasonable fees and out-of-pocket costs incurred by 1st Source in seeking to institute the interpleader procedure.

Request For Custodial Fees

In its Motion, the Bank has also requested that the Court provide it the means to collect a minimal $250 annual fee from the account holders, potentially including you, to the extent that you keep your accounts at the Bank.

Pilot Retirement Services, LLC (hereinafter "Pilot") had been paying the Bank's custodial fees, but is no longer in business. Due to the receivership, 1st Sources' job as IRA custodian for these accounts is far more work intensive than for the typical IRA account, and the Bank is currently not being paid. The Bank could simply avoid any of these responsibilities by exercising its right to resign as custodian, but that could cause potential adverse tax consequences to the account holders, in the event they cannot find another IRA custodian willing to act as successor IRA custodian. For the sake of the account holders, therefore, the Bank is willing to continue to act as custodian for a minimal fee to be paid by the account holders. According to the Bank's published fees schedules, the minimum fee it charges is a $250 annual fee and an additional annual fee based on the value of the investments in the account. Despite the extra amount of work due to the receivership, the Bank is charging each of its account holders a minimal annual fee of $250, to the extent they keep their investments at the Bank.

The Bank has an absolute right to charge this fee and to deduct the fee from funds held in the accounts. The Bank's request in its Motion relates to the means of collecting this fee, if there is not enough non-interpleaded cash in the accounts to cover the fees. In its Motion, the Bank has requested that the Court agree that the Bank can then collect the annual fees from the interpleaded funds (assuming that the account holders have sufficient interpleaded cash funds in their accounts). Further, if there is insufficient cash of any kind in the accounts to pay the fees, the Bank has requested that the fees be paid by the Receiver to the Bank out of any distribution that the Receiver may make to the account holders.

Hearing On The Motion

A hearing on the Motion will take place on April ___, at ____ before the Honorable Paul C. Huck, at the following location:

United States District Court, Southern District of Florida
James Lawrence King Federal Justice Bldg.99 N.E. 4th Street, Suite 1067
Courtroom 6, 10th Floor
Miami, Florida 33132
Phone Number: (305) 523-5520

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE COMMISSION,

CASE NO.: 06-20975-CIV-HUCK/SIMONTON

Plaintiff,

vs.

JOHN P. UTSICK,
ROBERT YEAGER,
DONNA YEAGER,
WORLDWIDE ENTERTAINMENT, INC.
THE ENTERTAINMENT GROUP FUND, INC.,
AMERICAN ENTERPRISES, INC. and
ENTERTAINMENT FUNDS, INC.

Defendants.

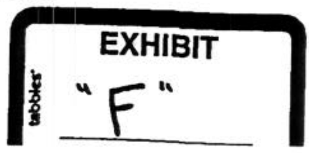
_______________________________________/

ORDER ON THE MOTION OF 1ST SOURCE BANK FOR ENTRY OF AN ORDER AUTHORIZING THE INTERPLEADER OF FUNDS, DIRECTING DISPOSITION OF ASSETS IN IRA ACCOUNTS FOR WHICH IT SERVES AS CUSTODIAN AND FOR OTHER RELIEF RELATED THERETO

THIS CAUSE was heard by the Court on __________, 2006 on the Motion of 1ST Source Bank For Entry Of An Order Authorizing The Interpleader Of Funds, Directing Disposition of Assets In IRA Accounts For Which It Severs As Custodian And For Other Relief Related Thereto, and Incorporated Memorandum of Law (hereinafter "the Motion"). The Court, having reviewed the Motion, having heard the arguments of the parties, and being otherwise duly advised in the premises, finds that timely and sufficient notice of the Motion and the hearing thereon was given to the parties in interest, and that the relief requested was also consented to by Michael Goldberg, as Receiver. Accordingly, the Court hereby

ORDERS and ADJUDGES as follows:

1. The request in the Motion for interpleader relief is GRANTED, as follows:



a) The Receiver, the account holders, and the Internal Revenue Service (collectively, "the Respondents") are required to interplead their claims against the 1st Source Bank ("1st Source" or "the Bank") with respect to all cash funds held in the approximately 160 Accounts at the Bank that contain more than $1,000 each;

b) The Bank is released and discharged from all claims by the Respondents related to such cash funds, and each and all Respondents are enjoined and restrained from instituting any proceeding against the Bank relative to such cash funds;

c) The Court will determine Respondents' respective rights to the interpleaded cash funds;

d) The Bank is authorized to maintain custody of the interpleaded funds and then to disburse such interpleaded cash funds upon entry of a final order which is not subject to rehearing, appeal, or stay determining the entitlement to such cash funds; and

e) The Bank, upon submission to the Court of time and expenses rendered, will be awarded reasonable attorney's fees and costs associated with filing this interpleader motion.

2. The Request in the Motion for other relief is GRANTED, as follows:

a) Insofar as the Bank cannot obtain fees from the account holders or from identifiable Direct funds (as defined in the Motion), 1st Source may deduct

$250 of interpleaded funds from each Account on annual basis until the Bank custodianship ends, or, if there is insufficient cash in any Account to cover such annual fees, the Bank may obtain such fees from the Receiver if and when the Receiver makes cash distributions to any such account holder.

DONE AND ORDERED in Chambers at Miami, Florida this _____ day of ______, 2006.

____
PAUL C. HUCK
UNITED STATES DISTRICT JUDGE

Copies furnished to counsel of record in the attached service list:

SERVICE LIST

David M. Levine, Esq.
Counsel to 1st Source Bank
Tew Cardenas
1441 Brickell Avenue
15th Floor
Miami, Florida 33131

United States Securities and Exchange Commission
c/o Alise Johnson, Esq.
United States Securities and Exchange Commission
Southeast Regional Office
Suite 1800
801 Brickell Avenue
Miami, FL 33131

Michael I. Goldberg, Esq.
The Receiver
Akerman Senterfitt
Las Olas Centre II, Suite 1600
Fort Lauderdale, Florida 33301

Howard Berlin, Esq.
Francesca Di-Staulo, Esq.
Counsel to the Receiver
Kluger Peretz Kaplan & Berlin
The Miami Center
201 South Biscayne Boulevard
17th Floor
Miami, Florida 33131

Richard A. Serafini, Esq.
Counsel to Robert Yeager, Donna Yeager,
American Enterprises, Inc., and Entertainment Funds, Inc.
Greenberg Traurig, P.A.
401 East Las Olas Boulevard
Suite 2000
Fort Lauderdale, FL 33301

Telephone: (954) 765-0500
Facsimile: (954) 765-1477

Michael I. Goldberg, Receiver
c/o Howard Berlin, Esq.
Francesca Di-Staulo, Esq.
For Wordwide Entertainment, Inc., and
The Entertainment Group Fund, Inc.
Kluger Peretz Kaplan & Berlin
The Miami Center
201 South Biscayne Boulevard
17th Floor
Miami, Florida 33131

Richard Kraut, Esq.
Co-counsel to John Ustick
Dilworth Paxson LLP
1133 Connecticut Avenue N.W.
Suite 620
Washington, DC 20036
Phone 202-452-0900
Fax 202-452-0930

David Chase, Esq.
Co-counsel to John Utsick
David R. Chase, P.A.
Wachovia Center - Penthouse, 1909 Tyler Street
Hollywood, Florida 33020
Telephone: 954-920-7779
Facsimile: 954-923-5622

The Internal Revenue Service
Special Asst. U. S. Attorney
IRS District Counsel
Suite 1114
51 S. W. 1st Avenue
Miami, FL 33130

All account holders at the Bank at the addresses in the Bank's records.