

IRS Notice of Non-Bank Custodian Status for Plans

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Edward D. Jones & Co.
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E:EP:R:7
Date:

EIN Number: 43-0345811

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Gentlemen:

In a letter dated January 14, 1991, and subsequent letters, you requested a written notice of approval that Edward D. Jones & Co. may act as a nonbank custodian of plans qualified under section 401 of the Internal Revenue Code.

Prior to the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), section 401(d)(1) of the Code required that the trustee of a plan covering owner-employees be a bank or other person who demonstrates to the satisfaction of the Secretary that the manner in which he will administer the trust will be consistent with the requirements of section 401. TEFRA repealed that provision in section 401(d)(1) of the Code. Therefore, for years beginning after December 31, 1983, the requirement that a trustee of a qualified retirement plan benefiting owner-employees be a bank or an approved nonbank trustee no longer applies.

Section 401(f) of the Code provides that a custodial account shall be treated as a qualified trust under this section if such custodial account would, except for the fact it is not a trust, constitute a qualified trust under this section and the custodian is a bank (as defined in section 409(n)) or other person who demonstrates, to the satisfaction of the Secretary, that the manner in which such other person will hold the assets will be consistent with the requirements of section 401. Section 401(f) also provides that in the case of a custodial account treated as a qualified trust by reason of the preceding sentence, the person holding the assets of such account shall be treated as the trustee thereof.

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The Income Tax Regulations at section 1.401-12(n) are used to determine the ability of such other person, for purposes of sections 401(f) of the Code, to act as a nonbank custodian. Section 1.401-12(n) provides that such person must file a written application with the Commissioner demonstrating, as set forth in that section, its ability to act as a custodian.

Based on all of the information submitted to this office and the representations made in the application, we have concluded that Edward D. Jones & Co. meets the requirements of section 1.401-12(n) of the regulations and, therefore, is approved to act as a nonbank custodian of plans qualified under section 401 of the Code.

This letter authorizes Edward D. Jones & Co. to act only as a nonbank custodian in a fashion similar to a passive nonbank trustee, within the meaning of section 1.401-12(n)(7) of the regulations, that is, it is authorized only to acquire and hold particular investments specified by the owner of the account. It may not act as custodian if under the written agreement it has discretion to direct investments of the custodial funds.

This letter, while authorizing Edward D. Jones & Co. to act as a custodian, does not authorize it to pool accounts in a common investment fund (other than a mutual fund) within the meaning of section 1.401-12(n)(6)(viii)(C) of the regulations. Edward D. Jones & Co. may not act as a custodian unless it undertakes to act only under custodial agreements that contain a provision to the effect that the owner is to substitute another custodian upon notification by the Commissioner that such substitution is required because the applicant has failed to comply with the requirements of section 1.401-12(n) of the regulations or is not keeping such records, or making such returns or rendering such statements as are required by forms or regulations.

Edward D. Jones & Co. is required to notify the Commissioner of Internal Revenue, Attn: E:EP:R, Internal Revenue Service, Washington, D.C. 20224, in writing, of any change which affects the continuing accuracy of any representations made in its application. Further, the continued approval of its application to act as a nonbank custodian of plans qualified under section 401 of the Code is contingent upon the continued satisfaction of the criteria set forth in section 1.401-12(n) of the regulations.

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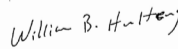
Edward D. Jones & Co.

This approval letter is not transferable to any other entity. An entity that is a member of a controlled group of corporations, within the meaning of section 1563(a) of the Code, may not rely on an approval letter issued to another member of the same controlled group. Furthermore, any entity that goes through a merger, consolidation or other type of reorganization may no longer rely on the approval letter issued to such entity prior to the merger, consolidation or other type of reorganization. Such entity will have to apply for a new determination letter in accordance with section 1.401-12(n) of the regulations.

This letter constitutes a determination that Edward D. Jones & Co. may act as a nonbank custodian of plans qualified under section 401 of the Code and does not bear upon its capacity to act as a custodian under any other applicable law.

Edward D. Jones & Co. may continue to rely on the approval letter issued by the Internal Revenue Service on May 30, 1985, relating to individual retirement accounts (IRAs) established under section 408 of the Code.

Sincerely yours,



William B. Hulteng
Acting Chief, Employee Plans
Rulings Branch