

**Savings Incentive Match Plan for Small Employers
(SIMPLE) In IRA Form Adoption Agreement**

THIS DOCUMENT MAY ONLY BE USED WITH A SOUTHWEST SECURITIES ACCOUNT.

**HOW TO GET STARTED
EMPLOYERS ADOPTING A SAVINGS INCENTIVE MATCH FOR
SMALL EMPLOYERS IRA (SIMPLE IRA)**

- Discuss the selection of a **SIMPLE IRA** and the available options in the Prototype SIMPLE Retirement Plan Adoption Agreement with the employer's tax advisor.
- Complete and sign the **SIMPLE IRA Adoption Agreement**.¹
- Prepare a **Summary Description for Non-Designated Financial Institution**.¹
- Supply each eligible employee with the required Summary Description and SIMPLE Plan Deferral Form¹ 60 days prior to the effective date of the plan.
- Collect a complete **SIMPLE IRA Plan Deferral Form**¹ from each employee electing salary deferrals.
- **SIMPLE IRA Plans must be established by October 1st of the initial plan year.**

**EMPLOYEES OPENING A SAVINGS INCENTIVE MATCH FOR
SMALL EMPLOYERS IRA (SIMPLE IRA) Account**

- Participating employees choosing to establish a Southwest Securities SIMPLE IRA account should complete and sign the **SIMPLE IRA Application** including employer information. Participants choosing another Custodian should contact that financial institution.
- Forward the completed **SIMPLE IRA Application** and a copy of the **SIMPLE IRA Adoption Agreement** to your Account Executive.
- If you are transferring an **existing SIMPLE IRA** account to a Southwest Securities SIMPLE IRA complete and sign an **Account Transfer Form**. Submit this form along with a copy of the most recent account statement to your Account Executive.
- Contact your Account Executive for any other forms that may be required to establish your account.

¹ These forms are available as separate inserts to this booklet.

CUSTODIAL FEES FOR STANDARD ASSETS

• Initial Set Up or Acceptance Fee	No Charge
• Annual Maintenance Fee	\$35.00
• Spousal Annual Maintenance Fee	\$35.00
• Premature Distribution Fee	\$50.00
• Transfer or Termination Fee	\$50.00

The Custodial Fee Schedule for Standard Assets will apply to any Southwest Securities IRA Account which is invested in widely held or publicly traded securities, such as Stocks, Bonds, Mutual Funds and/or Fixed Income instruments.

Only publicly traded securities are eligible investments for a Southwest Securities SIMPLE IRA account.

PROTOTYPE SIMPLE RETIREMENT PLAN AGREEMENT

ARTICLE I - Adoption and Purpose of Plan

- 1.01 Adoption of Plan: By completing and signing the Adoption Agreement, the Employer adopts the Sponsoring Organization's Prototype SIMPLE Retirement Plan. This SIMPLE Plan Agreement must be used with an Internal Revenue Service Model IRA, Form 5305-S or 5305-SA, or a Service approved Prototype SIMPLE IRA.
- 1.02 Purpose:
- a.) The purpose of this plan is to provide benefits for the individuals who are eligible to participate hereunder. It is intended that this Plan be for the exclusive benefit of the Employer's Employees, and that the plan qualify under Section 408(p) of the Code.
 - b.) The Employer agrees to permit Elective Deferrals to be made in each Plan Year to the SIMPLE individual retirement account or SIMPLE individual retirement annuity (IRA) as described in section 408(a) or (b), respectively, of the Code, established by or on behalf of each of the Employer's Employees who are eligible to participate in the SIMPLE Retirement Plan. SIMPLE contributions must be contributed to a separate SIMPLE IRA plan.
- 1.03 Limitation:
- a.) The Employer cannot contribute to this SIMPLE IRA Plan for any calendar year if the Employer maintains another qualified plan with respect to which contributions are made, or benefits are accrued, for any Employee's service for any plan year beginning or ending in that calendar year.
For this purpose, a qualified plan is defined in §219(g)(5) of the Code as: a plan described in §401(a) that includes a trust exempt from tax under §501(a); an annuity plan described in §403(a); a plan established for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing (but not an eligible deferred compensation plan within the meaning of §457(b)); a tax-sheltered annuity plan described in §403(b); a simplified employee pension (SEP) plan described in §408(k); and another SIMPLE IRA Plan described in §408(p).
If the failure to meet the one-plan requirement is due to an acquisition or similar transaction, the Employer is treated as meeting the one-plan requirement through the end of the following calendar year (through the end of the following 2 calendar years, if permitted under section 408(p)) provided that, during this period, Employees who would be employed by another employer involved in the transaction had the transaction not occurred are not eligible to participate in this Plan.
The one-plan requirement is not violated if the Employer maintains another qualified plan that limits participation to Employees covered under a collective bargaining agreement described in section 410(b)(3)(A) of the Code and eligibility to participate in the SIMPLE IRA Plan is limited to other Employees.
 - b.) If the Employer amends this plan other than by making an election permitted in the Adoption Agreement, the Employer will no longer participate in the Sponsoring Organization's Prototype SIMPLE Plan, the Employer will be considered to have an individually designed SIMPLE Plan, and the Employer may no longer rely on the opinion letter received in connection with this Prototype SIMPLE Plan. Any amendment to this SIMPLE IRA Plan can become effective only at the beginning of a calendar year and must conform to the content of the plan notice for the calendar year.
 - c.) This Plan may only be adopted by an Eligible Employer.

ARTICLE II - Eligibility and Participation

- 2.01 Eligible Employees: All Employees of the Employer shall be eligible to participate in this Plan except for Excludible Employees as defined under Section 2.02 of this Plan.
- 2.02 Excludible Employees: If the Employer elects in the Adoption Agreement, the following Employees shall be excluded from eligibility:
- a.) Employees included in a unit of employees covered by a collective bargaining agreement between employee representatives and the Employer, provided that there is evidence that retirement benefits were the subject of good faith bargaining between such parties, unless such agreement provides that some or all of such covered employees are to be covered by this Plan. For purposes of this paragraph, the term "employee representatives" does not include any organization more than half of whose members are employees who are owners, officers, or executives of the Employer.
 - b.) Non-resident alien employees who receive no earned income from the Employer which constitutes income from sources within the United States.
 - c.) Employees who are not reasonably expected to earn \$5,000 of compensation from the Employer during the Plan Year for which the contribution is being made if so indicated in the Adoption Agreement.
- 2.03 Participation:
- a.) Each Eligible Employee will be eligible to become a Participant after satisfying the requirements specified in Item 9 of the Adoption Agreement.
 - b.) Each Eligible Employee shall establish an IRA in order to receive Employer contributions under this Agreement, and any Employer contributions shall be made directly to such IRA plan. Unless otherwise elected in the Adoption Agreement, such IRA shall be established with the Trustee of the Participant's choice.
 - c.) If a Participant fails to timely establish or to maintain an IRA into which SIMPLE contributions may be made on such Participant's behalf, the Employer may execute any necessary documents to establish an IRA with the Trustee into which such contributions shall be made on behalf of the Participant.

2.04 Plan Notice: The Employer shall notify each Eligible Employee immediately before each 60 -day election period of the Employee's opportunity to make an election. The notice shall include a copy of the summary description as described in §408(1)(2)(B) of the Code. (Section 6693(c)(1) provides that if an employer fails to provide one or more notices, such employer may be subject to a penalty of \$50 per day for each day that the failure to provide notice occurs.)

ARTICLE III - Written Allocation Formula

- 3.01 Amount of Contribution: The Employer agrees to contribute on behalf of each Eligible Employee for the Plan Year an amount determined under one of the written allocation formulas specified in the Adoption Agreement.
- 3.02 Uniform Relationship to Compensation: All Nonelective Employer contributions to this Plan shall bear a uniform relationship to the total Compensation of each Participant not to exceed \$150,000, as adjusted for the cost of living.
- 3.03 Limitation on Employer Contributions: The maximum employer contribution which may be made for any one Plan Year with respect to any Participant and allocated to each Participant's IRA is:
- a.) Elective Deferrals - Each Eligible Employee may elect to have salary deferral payments made under this SIMPLE Plan, not to exceed the lesser of the percentage of compensation stated in the Deferral Form or \$6,000.
 - b.) Employer Matching Contributions:
 - i.) Unless the Employer elects Section 3.03(c), the Employer is required to make a Matching Contribution equal to the elective deferral by such Employee, but not in excess of 3% of such Participant's Compensation, not to exceed \$6,000.
 - ii.) The Employer may elect a lesser percentage (not less than 1%) for any year if:
 - A.) the Employer notifies all Eligible Employees within a reasonable time before the Election Period; and
 - B.) Employer Matching Contributions are not less than 3% for more than 2 of the calendar years in the 5 year period ending with the current calendar year for which the reduction is effective.
 - iii.) Employers who have never maintained a SIMPLE plan or make nonelective contributions shall be treated as if the level of Employer Matching Contributions was at 3% of compensation for the prior plan year.
 - c.) Employer Nonelective Contributions - In lieu of Matching Contributions described in section 3.03(b), an employer may elect to make a 2% Nonelective Contribution for each Employee who is eligible to participate in the SIMPLE Plan. In order to elect such Nonelective Contribution, the Employer must notify Eligible Employees of such election within a reasonable time before the Election Period.
- 3.04 Deductibility of Employer Contributions: Contributions under this SIMPLE Retirement Plan are deductible by the Employer for the taxable year with or within which the Plan Year of the SIMPLE Retirement Plan ends. Contributions made for a particular taxable year and contributed by the due date of the Employer's income tax return, including extensions, are deemed made in that taxable year.
- 3.05 Vesting Requirements: An Employee's right to any contribution made to a SIMPLE-IRA shall be 100% immediately vested and non-forfeitable at all times.

ARTICLE IV - Elective Deferral Rules

- 4.01 Elective Deferrals:
- a.) Allocation of Elective Deferrals. The Employer shall contribute and allocate to each Employee's IRA an amount equal to the amount of the Employee's Elective Deferrals. Elective Deferrals will be paid by the Employer to the Employee's IRA trustee, custodian, or insurance company (in the case of an individual retirement annuity contract) or an IRA established on behalf of an Employee by the Employer.
 - b.) Salary Reduction Agreement Option. An Employee may elect to have Elective Deferrals made under this SIMPLE through either single-sum or continuing contributions, or both, pursuant to a salary reduction agreement.
 - c.) Amount of Elective Deferrals. An Eligible Employee may elect to have his or her Compensation reduced by a percentage or amount per pay period, or for a specified pay period or periods, as designated in writing to the Employer. An Eligible Employee may elect to have his or her Compensation reduced by a percentage or a fixed dollar amount. The salary reduction election shall be in writing and delivered to the Employer. The total amount of the reduction in the Eligible Employee's Compensation cannot exceed \$6,000 as adjusted by the Secretary of the Treasury for cost-of-living increases under §408(p)(2)(E) of the Code. Such adjustments will be in multiples of \$500.
 - d.) Timing of Elective Deferrals. No deferral election may be based on Compensation an Employee received, or had a right to receive, before execution of the deferral election. Notwithstanding the preceding sentence, an Employee may use Compensation received during a Plan Year prior to executing a deferral election as a basis for determining their Elective Deferral amount, but not as a source of their Elective Deferrals.
 - e.) Under no circumstances may an Employee's Elective Deferrals in any calendar year exceed the lesser of the percent specified in the Deferral Form of his or her Compensation, or \$6,000.
- 4.02 Timing of Elective Deferrals: The Employer must make a salary reduction contribution to the SIMPLE IRA established for each Eligible Employee under this SIMPLE IRA Plan as of the earliest date on which the contributions for an Eligible Employee can reasonably be segregated from the Employer's general assets, but in no event later than 30 days after the end of the month in which the contribution is withheld from the Employee's pay.

The Employer must make the matching or nonelective contribution to the SIMPLE IRA established for each Eligible Employee under this SIMPLE IRA Plan no later than the due date for filing the Employer's federal income tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contribution is made.

ARTICLE V - Glossary of Plan Terms

- 5.01 Adoption Agreement: The document executed by the Employer through which it adopts the Plan and agrees to be bound by all terms and conditions of the Plan.
- 5.02 Code: The Internal Revenue Code of 1986 and the regulations issued thereunder as heretofore or hereafter amended.
- 5.03 Compensation: Compensation is defined as wages, salaries, and fees for professional services and other amounts received (without regard to whether or not an amount is paid in cash) for personal services actually rendered in the course of employment with the employer maintaining the plan as defined under §6051(a)(3) and (8) of the Code. For any Self-Employed individual covered under the plan, Compensation will mean Earned Income. Compensation shall include only that compensation which is actually paid or made available to the Participant during the year. Compensation shall include any amount which is contributed by the Employer pursuant to a salary reduction agreement and which is not includible in the gross income of the Employee under sections 408(p), 401(k), 408(d)(6), 403(b), 457. Compensation does not include any amounts deferred under a §125 plan of the Code.
- The annual Compensation of each Participant taken into account under the Plan for purposes only of the Employer Nonelective Contributions for any year shall not exceed the Compensation limit described in §401(a)(17) of the Code as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with §401(a)(17)(B). Such adjustments will be in multiples of \$10,000. (The Compensation limit for 1997 is \$160,000.)
- 5.04 Elective Deferrals: Any Employer contribution made under this SIMPLE Plan to an Employee's IRA at the election of the Participant, in lieu of cash compensation, and shall include contributions made pursuant to a salary reduction agreement or other deferral mechanism.
- 5.05 Earned Income: Net earnings from self-employment determined under §1402(a) of the Code without regard to any contribution under this SIMPLE Retirement Plan.
- 5.06 Election Period: An Employee who is an Eligible Employee for a particular calendar year must be permitted to make or modify a salary reduction election during the 60-day period immediately preceding the calendar year, effective as soon as practical after receipt by the Employer (or, if later, the date specified by the Employee in the salary reduction agreement) but not earlier than the first pay period beginning in the calendar year. In the case of an Employee who becomes an Eligible Employee other than at the beginning of a calendar year because 1) this plan does not impose a prior-year-compensation requirement, 2) the employee satisfied this plan's prior-year-compensation requirement during a prior period of employment with the Employer, or 3) this plan is first effective after the beginning of a calendar year, the Eligible Employee must be permitted to make or modify a salary reduction election during the 60-day period that begins on the day plan notice is provided to the Employee and that includes the day the Employee becomes an Eligible Employee or the day before. In this case, the salary reduction election will become effective as soon as practical after receipt by the Employer (or, if later, the date specified by the Employee in the salary reduction agreement) but any election made by the Eligible Employee may be modified prospectively any time during the 60-day period.
- 5.07 Eligible Employee: An Employee who meets the eligibility requirements as outlined in Section 2.01 of the Plan and in Items 8 and 9 of the Adoption Agreement.
- 5.08 Eligible Employer: An Employer which had no more than 100 employees who received at least \$5,000 of compensation from the Employer for the preceding Plan Year (the "100 Employee limit"). An Eligible Employer who adopts a SIMPLE Retirement Plan for 1 or more years, and who subsequently fails to be an Eligible Employer, shall be treated as an Eligible Employer for the 2-year period following the last year the Employer was an Eligible Employer. If the failure to continue to satisfy the 100-Employee limit is due to an acquisition or similar transaction, the 2-year grace period applies only if the Employer satisfies the provisions of §410(b)(6)(c)(i) of the Code.
- 5.09 Employee: An individual, including a Self-Employed (described in §401(c)(1) of the code) and a common-law employee, employed by the Employer, who performs services with respect to the trade or business of the Employer. Also any employee of any other employer required to be aggregated under Section 414(b), (c) or (m) of the Code; any leased employee within the meaning of Section 414(n) of the Code shall be considered an Employee; and all Employees required to be aggregated under section 414(o) of the Code.
- 5.10 Employer: The sole proprietorship, partnership, corporation or other entity identified as such in the Adoption Agreement. If the Employer is a member of a controlled group of corporations (under §414(b) of the Code), a group of trades or businesses under common control (under §414(c)), an affiliated service group (under §414(m)) or is required to be aggregated with any other entity under §414(o), then for purposes of this SIMPLE IRA Plan, the term "Employer" shall include the other members of such groups or other entities required to be aggregated with the Employer.
- 5.11 Matching Contributions: The Employer contribution described in section 3.03(b) of the Plan.
- 5.12 Nonelective Contributions: The 2% of each Eligible Employee's Compensation described in section 3.03(c) of the Plan.

- 5.13 Participant: Any Employee who has met the eligibility requirements of this Plan and who is eligible to receive an Employer contribution.
- 5.14 Plan: The Sponsoring Organization's Prototype SIMPLE Retirement Plan consisting of this plan document and the Adoption Agreement as completed and signed by the Employer.
- 5.15 Plan Year: The calendar year.
- 5.16 SIMPLE: A Savings Incentive Match Plan for Employees, as defined in Section 408(p) of the Code under which Elective Deferrals may be made.
- 5.17 Self-Employed: An individual who has Earned Income for a Plan Year from the trade or business with respect to which the Plan is established. A Self-Employed also includes an individual who would have had Earned Income but for the fact that the trade or business had no net profits for the Plan Year.
- 5.18 Sponsoring Organization: The entity specified in the Adoption Agreement.
- 5.19 Trustee: The financial institution or other organization which qualifies under section 408(a) of the Code and is serving as Trustee or Custodian of the IRA plan to which an Employer contribution is made under this SIMPLE Retirement Plan. The term Trustee shall also include an issuer of an annuity contract or endowment contract of an individual retirement annuity as described under section 408(b) of the Code.
- 5.20 Designated Financial Institution (DFI):
- A Designated Financial Institution is a trustee, custodian, or insurance company (that issues annuity contracts) that receives all contributions made pursuant to this SIMPLE IRA Plan and deposits those contributions to the SIMPLE IRA of each Eligible Employee. If Item 14(b) of the Adoption Agreement is checked, the Employer will designate the financial institution at which SIMPLE IRAs will be established to receive contributions for Eligible Employees. Pursuant to the provisions of §408(p)(7) of the Code, the DFI will notify Eligible Employees in writing (either separately or as part of the Plan Notice described in §2.04 of the Plan) that their SIMPLE IRA balances may be transferred without cost or penalty to another SIMPLE IRA in accordance with the withdrawal and rollover provisions under §408(d)(3)(G).
 - If Item 14(a) of the Adoption Agreement is checked, the Employer must permit each Eligible Employee to select the financial institution for his or her SIMPLE IRA (Non-DFI).

EMPLOYER DISCLOSURE

The Savings Incentive Match Plan for Employees ("SIMPLE") is a plan that provides you with a simplified way to enhance your employees' retirement income. Under a SIMPLE, eligible employees may choose whether to make elective deferrals to the SIMPLE or to receive the amounts in cash. If elective deferrals are made, you contribute the amounts deferred by employees directly into a SIMPLE individual retirement arrangement (SIMPLE IRA) set up by or on behalf of the employee with a bank, insurance company, or other qualified financial institution. The SIMPLE IRA must be one for which the Internal Revenue Service has issued a favorable opinion letter or a model SIMPLE IRA published by the Service. The information provided below is intended to assist you in understanding and administering the elective deferral provisions of your SIMPLE Retirement Plan.

I. Employers Who May Not Use This SIMPLE Plan

This SIMPLE Plan may not be used if you are an employer who:

- Maintains any other retirement plan including a qualified plan, SEP, SARSEP or 403(b) plan.
- Had more than 100 employees, who received at least \$5,000, at any time during the prior plan year. (If you are a member of a controlled group of businesses, you may use this SIMPLE Plan, provided that in the prior plan year there were never more than 100 employees who received at least \$5,000 for the prior plan year, in total, of all the members of such groups, trades, or businesses. In addition, all eligible employees of all the members of such groups, trades, or businesses must be eligible to make elective deferrals to this SIMPLE Plan.)

II. Making the Agreement

This SIMPLE Plan agreement is considered made when:

- You have completed all blanks on the Adoption Agreement and the Summary Description; and
- You have given all eligible employees copies of this SIMPLE agreement and the completed Summary Description. Any individual who, in the future, becomes eligible to participate in this SIMPLE Plan must be given the Summary Description prior to becoming an eligible employee.

III. Effective Date

This SIMPLE Plan agreement is effective on the date indicated in the Adoption Agreement. No elective deferrals may be made by an employee on the basis of compensation that the employee received or had a right to receive before adoption of this agreement and execution by the employee of the deferral election. This means your employees may not use compensation received during a plan year prior to executing a deferral election as a source of their elective deferrals.

For example, you adopt your SIMPLE Plan on July 1st for a calendar plan year, and your employees execute the deferral elections during July of that year. An eligible employee elects to defer up to 10% of his annual compensation. The employee earns \$10,000 prior to executing the deferral election. The same employee earns \$10,000 after executing their deferral election. Your employee may defer up to \$20,000 X 10% or \$2,000 for the plan year. However, the \$2,000 would only be permitted to be deferred into the plan from the \$10,000 earned after signing the deferral election.

IV. Deductibility of Contributions

You may deduct, subject to the otherwise applicable limits, those contributions made to a SIMPLE Plan. Contributions to the SIMPLE Plan are deductible for your tax year with or within which the plan year of the SIMPLE Plan ends. Contributions made for a particular tax year and contributed by the due date of your income tax return, including extensions, are deemed made in that taxable year.

V. Elective Deferrals

You may permit your employees to make elective deferrals through salary reduction that, at the employee's option, may be contributed to the SIMPLE Plan or received by the employee in cash during the year. You are responsible for telling your employees how they may make, change, or terminate elective deferrals based on salary reduction. You must also provide a SIMPLE Deferral Form on which they may make their deferral election. Elective deferrals (although treated as employer contributions) are treated as wages for purposes of FICA and FUTA taxes. Nonelective and Matching contributions are not subject to FICA and FUTA taxes. You are required to report the amount of each employee's elective deferral on such employee's Form W-2. If an employee elects to stop deferring during a Plan Year, you may elect on the Adoption Agreement to restrict such employee from resuming deferrals until the 1st day of the next Plan Year.

VI. SIMPLE Plan Requirements

- Compensation is the employee's total compensation from the employer and includes:
 - Amounts received for personal services actually performed (see section 1.219-1(c) of the Income Tax Regulations); and
 - Earned income defined under section 408(p)(6)(A)(ii) of the Code.
- The maximum limit on the amount of compensation an employee may elect to defer under a SIMPLE for a year is the lesser of the percentage of compensation indicated in the Deferral Form or \$6,000.
- You are generally required to match each employee's elective deferrals on a dollar for dollar basis up to 3% of compensation, not to exceed \$6,000. However, you may elect to reduce the 3% of compensation match (but not less than 1%), as long as such election will not result in less than a 3% Match in more than 2 years of the 5 year period ending with the current year.
- In lieu of an Employer Matching Contribution, you may contribute a 2% of Compensation Nonelective Contribution on behalf of all Eligible Employees. This is the only contribution under the SIMPLE plan where each employee's compensation is limited to \$150,000 adjusted for the cost of living.
- Matching and Nonelective contributions cannot be made during the same plan year. You must indicate under which contribution formula you are making contributions and must communicate your election to your employees by providing a Notice within a reasonable period before the election period as specified in Article 5.06 of the Plan.
- Failure to provide the required employee notices or the Summary Description will result in a \$50 per day penalty.
- All contributions made to an Employee's SIMPLE IRA are immediately 100% vested.

VII. Excess Elective Deferrals

The law limits the maximum amount of compensation an employee may elect to defer under a SIMPLE (and certain other arrangements) during the calendar year. This limit under the SIMPLE is \$6,000, and is indexed according to the cost of living. In addition, the limit may be increased if the employee makes elective deferrals to a salary reduction arrangement under section 403(b) of the Code, or a 401(k) plan maintained by another employer. Amounts deferred for a year in excess of this limit are considered "excess elective deferrals" and are subject to the consequences described below.

The SIMPLE deferral limit applies to the total elective deferrals the employee makes for the calendar year, from all employers, under the following arrangements:

- SIMPLE Retirement Plans under section 408(p) of the Code;
- Elective SEPs under section 408(k)(6) of the Code;
- Cash or deferred arrangements under section 401(k) of the Code; and
- Salary reduction arrangement under section 403(b) of the Code.

Thus, an employee may have excess elective deferrals even if the amount deferred under this SIMPLE plan alone does not exceed the deferral limit. If an employee who elects to defer compensation under this SIMPLE Plan has made excess elective deferrals for a calendar year, he or she must include such excess elective deferrals in income in the year to which the deferrals relate and must also withdraw those excess elective deferrals by April 15 following the calendar year to which the deferrals relate.

VIII. Nondeductible Employer Contributions – Tax Consequences

If you contribute more than you can deduct, you are liable for an excise tax of 10% on the amount of the Nondeductible Employer Contribution under §4972 of the Code. Nondeductible Employer Contributions may occur when you contribute too much (more than a 3% of compensation match, or more than a 2% nonelective contribution).

IX. Restrictions on Withdrawals

Your employees may roll over or transfer only to another trustee or custodian of a SIMPLE IRA any SIMPLE contributions (or income on these contributions) made during a particular plan year within the 2 year period the employee first participated in the SIMPLE Plan. After such 2 year period, the employee may roll over or transfer amounts in the SIMPLE IRA into any other IRA. If the Adoption Agreement indicates that all initial SIMPLE contributions will be made to a single designated Trustee, an Employee must be permitted to move that SIMPLE IRA without cost or penalty to another SIMPLE IRA or, if after the 2 year period, to any other IRA. If your employees withdraw amounts from their SIMPLE IRA during the 2 year period beginning on the date such employee first participated in the SIMPLE Plan, the distribution will be includable in the employee's gross income and may also be subject to a 25% additional income tax as described in §72(t)(6) of the Code.

X. For More Information

To obtain more information concerning the rules governing this SIMPLE Retirement Plan, please contact the Sponsoring Organization, whose name, address and phone number appear in the Prototype SIMPLE Retirement Plan Adoption Agreement.

Article I

- 1.01 The Custodian will accept cash contributions made on behalf of the participant by the participant's employer under the terms of a SIMPLE plan described in section 408(p). In addition, the Custodian will accept transfers or rollovers from other SIMPLE IRAs of the participant. No other contributions will be accepted by the Custodian.

Article II

- 2.01 The participant's interest in the balance in the custodial account is nonforfeitable.

Article III

- 3.01 No part of the custodial account 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)).
- 3.02 No part of the custodial account 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 and silver coins and coins issued under the laws of any state.

Article IV

- 4.01 Notwithstanding any provision of this agreement to the contrary, the distribution of the participant's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and Proposed Regulations section 1.408-8, including the incidental death benefit provisions of Proposed Regulations section 1.401(a)(9)-2, the provisions of which are herein incorporated by reference.
- 4.02 Unless otherwise elected by the time distributions are required to begin to the participant under paragraph 3, or to the surviving spouse under paragraph 4, other than in the case of a life annuity, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the participant and the surviving spouse and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated.
- 4.03 The participant's entire interest in the custodial account must be, or begin to be, distributed by the participant's required beginning date (April 1 following the calendar year end in which the participant reaches age 70 1/2). By that date, the participant may elect, in a manner acceptable to the Custodian, to have the balance in the custodial account distributed in:
- A single sum payment.
 - An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the life of the participant.
 - An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the joint and last survivor lives of the participant and his or her designated beneficiary.
 - Equal or substantially equal annual payments over a specified period that may not be longer than the participant's life expectancy.
 - Equal or substantially equal annual payments over a specified period that may not be longer than the joint life and last survivor expectancy of the participant and his or her designated beneficiary.
- 4.04 If the participant dies before his or her entire interest is distributed to him or her, the entire remaining interest will be distributed as follows:
- If the participant dies on or after distribution of his or her interest has begun, distribution must continue to be made in accordance with paragraph 3.
 - If the participant dies before distribution of his or her interest has begun, the entire remaining interest will, at the election of the participant or, if the participant has not so elected, at the election of the beneficiary or beneficiaries, either
 - Be distributed by the December 31 of the year containing the fifth anniversary of the participant's death, or
 - Be distributed in equal or substantially equal payments over the life or life expectancy of the designated beneficiary or beneficiaries starting by December 31 of the year following the year of the participant's death. If, however, the beneficiary is the participant's surviving spouse, then this distribution is not required to begin before December 31 of the year in which the participant would have reached age 70 1/2.
 - Except where distribution in the form of an annuity meeting the requirements of section 408(b)(3) and its related regulations has irrevocably commenced, distributions are treated as having begun on the participant's required beginning date, even though payments may actually have been made before that date.
 - If the participant dies before his or her entire interest has been distributed and if the beneficiary is other than the surviving spouse, no additional cash contributions or rollover contributions may be accepted in the account.
- 4.05 In the case of a distribution over life expectancy in equal or substantially equal annual payments, to determine the minimum annual payment for each year, divide the participant's entire interest in the custodial account as of the close of business on December 31 of the preceding year by the life expectancy of the participant (or the joint life and last survivor expectancy of the participant and the participant's designated

beneficiary, or the life expectancy of the designated beneficiary, whichever applies). In the case of distributions under paragraph 3, determine the initial life expectancy (or joint life and last survivor expectancy) using the attained ages of the participant and designated beneficiary as of their birthdays in the year the participant reaches age 70 1/2. In the case of a distribution in accordance with paragraph 4(b)(ii), determine life expectancy using the attained age of the designated beneficiary as of the beneficiary's birthday in the year distributions are required to commence.

- 4.06 The owner of two or more individual retirement accounts may use the "alternative method" described in Notice 88-38, 1988-1 C.B. 524, to satisfy the minimum distribution requirements described above. This method permits an individual to satisfy these requirements by taking from one individual retirement account the amount required to satisfy the requirement for another.

Article V

- 5.01 The participant agrees to provide the Custodian with information necessary for the Custodian to prepare any reports required under sections 408(i) and 408(l)(2) and Regulations section 1.408-5 and 1.408-6.
- 5.02 The Custodian agrees to submit reports to the Internal Revenue Service and the participant as prescribed by the Internal Revenue Service.
- 5.03 The Custodian also agrees to provide the participant's employer the summary description described in section 408(l)(2) unless this SIMPLE IRA is a transfer SIMPLE IRA.

Article VI

- 6.01 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 that are not consistent with sections 408(a) and 408(p) and related regulations will be invalid.

Article VII

- 7.01 This agreement will be amended from time to time to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of the persons whose signatures appear below.

Article VIII

- 8.01 Applicable Law: This Custodial Agreement shall be governed by the laws of the state where the Trust resides.
- 8.02 Annual Accounting: The Custodian shall, at least annually, provide the Participant or Beneficiary (in the case of death) with an accounting of such Participant's account. Such accounting shall be deemed to be accepted by the Participant, if the Participant or Beneficiary does not object in writing within 60 days after the mailing of such accounting statement.
- 8.03 Amendment: The Participant irrevocably delegates to the Custodian the right and power to amend this Custodial Agreement. Except as hereafter provided, the Custodian will give the Participant 30 days prior written notice of any amendment. In case of a retroactive amendment required by law, the Custodian will provide written notice to the Participant of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the IRS. The Participant shall be deemed to have consented to any such amendment unless the Participant notifies the Custodian to the contrary within 30 days after notice to the Participant and requests a distribution or transfer of the balance in the account.
- 8.04 Resignation and Removal of Custodian:
- The Custodian may resign at any time by giving at least 30 days notice to the Participant. The Custodian may resign and appoint a successor trustee or custodian to serve under this agreement or under another governing instrument selected by the successor trustee or custodian by giving the Participant written notice at least 30 days prior to the effective date of such resignation and appointment, which notice shall also include a copy of such other governing instrument, if applicable, and the related disclosure statement. The Participant shall then have 30 days from the date of such notice to either request a complete distribution of the account balance or designate a different successor trustee or custodian. If the Participant does not request distribution of the account or designate a different successor within such 30 days, the Participant shall be deemed to have consented to the appointment of the successor trustee or custodian and the terms of any new governing instrument, and neither the Participant nor the successor shall be required to execute any written document to complete the transfer of the account to the successor trustee or custodian. The successor trustee or custodian may rely on any information, including beneficiary designations, previously provided by the Participant.
 - The Participant may at any time remove the Custodian and replace the Custodian with a successor trustee or custodian of the Participant's choice by giving 30 days written notice to the Custodian. In such event, the Custodian shall then deliver the assets of the account as directed by the Participant. However, the Custodian may retain a portion of the assets of the SIMPLE IRA as a reserve for payment of any anticipated remaining fees and expenses, and shall pay over any remainder of this reserve to the successor trustee or custodian upon satisfaction of such fees and expenses.
- 8.05 Custodian's Fees and Expenses:
- This Section 8.05 of the Custodial Agreement shall be governed by the requirements of Section 408(p)(7) and IRS Notice 97-6, Section J, and is further explained in the accompanying SIMPLE IRA Disclosure Statement.

- b.) The Participant agrees to pay the Custodian any and all fees specified in the Custodian's current published fee schedule for establishing and maintaining this SIMPLE IRA, including any fees for distributions from, transfers from, and terminations of this SIMPLE IRA. The Custodian may change its fee schedule at any time by giving the Participant 30 days prior written notice.
 - c.) The Participant agrees to pay any expenses incurred by the Custodian in the performance of its duties in connection with the account. Such expenses include, but are not limited to, administrative expenses, such as legal and accounting fees, and any taxes of any kind whatsoever that may be levied or assessed with respect to such account.
 - d.) All such fees, taxes, and other administrative expenses charged to the account shall be collected either from the assets in the account or from any contributions to or distributions from such account if not paid by the Participant, but the Participant shall be responsible for any deficiency.
 - e.) In the event that for any reason the Custodian is not certain as to who is entitled to receive all or part of the custodial account, the Custodian reserves the right to withhold any payment from the custodial account, to request a court ruling to determine the disposition of the custodial assets, and to charge the custodial account for any expenses incurred in obtaining such legal determination.
- 8.06 Withdrawal Requests: All requests for withdrawal shall be in writing on the form provided by the Custodian. Such written notice must also contain the reason for the withdrawal and the method of distribution being requested.
- 8.07 Age 70 1/2 Default Provisions:
- a.) Unless the Custodian (or the Participant, if the Custodian permits) elects otherwise, life expectancies for purposes of calculating the required minimum distribution shall not be recalculated.
 - b.) If the Participant does not choose any of the distribution methods under Section 4.03 of this Custodial Agreement by April 1st following the calendar year in which he/she reaches age 70 1/2, distribution shall be made to the Participant based on such Participant's single life expectancy.
- 8.08 Death Benefit Default Provisions: Unless the Custodian (or the Beneficiary, if the Custodian permits) elects otherwise, life expectancies for purposes of calculating the required minimum death distribution shall not be recalculated. If the Participant dies before his or her required beginning date and the beneficiary does not select a method of distribution described in section 4.04(b)(i) or (ii) by December 31st following the year of death, then distributions will be made pursuant to proposed regulation 1.401(a)(9)-1.
- 8.09 Investment Provisions: Pursuant to IRS Notice 97-6, Q&A J-4, if the Custodian is the Designated Financial Institution (DFI) and the Participant timely elects that his or her balance be transferred without cost or penalty to another SIMPLE IRA in accordance with the provisions described in the accompanying SIMPLE IRA Disclosure Statement, the Custodian reserves the right to restrict the participant's choice of investment alternatives as determined by the Custodian.
- 8.10 Responsibilities: Participant agrees that all information and instructions given to the Custodian by the Participant is complete and accurate and that the Custodian shall not be responsible for any incomplete or inaccurate information provided by the Participant or Participant's beneficiary(ies). Participant agrees to be responsible for all tax consequences arising from contributions to and distributions from this Custodial Account and acknowledges that no tax advice has been provided by the Custodian.
- 8.11 Designation of Beneficiary: Except as may be otherwise required by State law, in the event of the Participant's death, the balance in the account shall be paid to the beneficiary or beneficiaries designated by the Participant on a beneficiary designation acceptable to and filed with the Custodian. The Participant may change the Participant's beneficiary or beneficiaries at any time by filing a new beneficiary designation with the Custodian. If no beneficiary designation is in effect, if none of the named beneficiaries survive the Participant, or if the Custodian cannot locate any of the named beneficiaries after reasonable search, any balance in the account will be payable to the Participant's estate.

**ARTICLE IX
SELF-DIRECTED SIMPLE IRA PROVISIONS**

- 9.01 Investment of Contributions: At the direction of the Participant, the Custodian shall invest all contributions to the account and earnings thereon in investments acceptable to the Custodian, which may include marketable securities traded on a recognized exchange or "over the counter" (excluding any securities issued by the Custodian), covered call options, certificates of deposit, and other investments to which the Custodian consents, in such amounts as are specifically selected and specified by Participant in orders to the Custodian in such form as may be acceptable to the Custodian, without any duty to diversify and without regard to whether such property is authorized by the laws of any jurisdiction as a trust investment. The Custodian shall be responsible for the execution of such orders and for maintaining adequate records thereof. However, if any such orders are not received as required, or, if received, are unclear in the opinion of the Custodian, all or a portion of the contribution may be held uninvested without liability for loss of income or appreciation, and without liability for interest pending receipt of such orders or clarification, or the contribution may be returned. The Custodian may, but need not, establish programs under which cash deposits in excess of a minimum set by it will be periodically and automatically invested in interest-bearing investment funds. The Custodian shall have no duty other than to follow the written investment directions of the Participant, and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Participant.
- 9.02 Registration: All assets of the account shall be registered in the name of the Custodian or of a suitable nominee. The same nominee may be used with respect to assets of other investors whether or not held under agreements similar to this one or in any capacity whatsoever. However, each Participant's account

shall be separate and distinct; a separate account therefor shall be maintained by the Custodian, and the assets thereof shall be held by the Custodian in individual or bulk segregation either in the Custodian's vaults or in depositories approved by the Securities and Exchange Commission under the Securities Exchange Act of 1934.

- 9.03 Investment Advisor: The Participant may appoint an Investment Advisor, qualified under Section 3(38) of the Employee Retirement Income Security Act of 1974, to direct the investment of his SIMPLE IRA. The Participant shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment, an acknowledgement by the Investment Advisor that it is a fiduciary of the account, and a certificate evidencing the Investment Advisor's current registration under the Investment Advisor's Act of 1940. The Custodian shall comply with any investment directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Participant that the Investment Advisor's appointment has been terminated. The Custodian shall have no duty other than to follow the written investment directions of such Investment Advisor and shall be under no duty to question said instructions, and the Custodian shall not be liable for any investment losses sustained by the Participant.
- 9.04 No Investment Advice: The Custodian does not assume any responsibility for rendering advice with respect to the investment and reinvestment of Participant's account and shall not be liable for any loss which results from Participant's exercise of control over his account. The Custodian and Participant may specifically agree in writing that the Custodian shall render such advice, but the Participant shall still have and exercise exclusive responsibility for control over the investment of the assets of his account, and the Custodian shall not have any duty to question his investment directives.
- 9.05 Prohibited Transactions: Notwithstanding anything contained herein to the contrary, the Custodian shall not lend any part of the corpus or income of the account to; pay any compensation for personal services rendered to the account to; make any part of its services available on a preferential basis to; acquire for the account any property, other than cash, from; or sell any property to, any Participant, any member of a Participant's family, or a corporation controlled by any Participant through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of 50 percent or more of the total value of shares of all classes of stock of such corporation.
- 9.06 Unrelated Business Income Tax: If the Participant directs investment of the account in any investment which results in unrelated business taxable income, it shall be the responsibility of the Participant to so advise the Custodian and to provide the Custodian with all information necessary to prepare and file any required returns or reports for the account. As with the Custodian may deem necessary, and at the Participant's expense, the Custodian may request a taxpayer identification number for the account, file any returns, reports, and applications for extension, and pay any taxes or estimated taxes owed with respect to the account. The Custodian may retain suitable accountants, attorneys, or other agents to assist it in performing such responsibilities.
- 9.07 Disclosures and Voting: The Custodian shall deliver, or cause to be executed and delivered, to Participant all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to assets credited to the account. The Custodian shall not vote any shares of stock or take any other action, pursuant to such documents, with respect to such assets except upon receipt by the Custodian of adequate written instructions from Participant.
- 9.08 Miscellaneous Expenses: In addition to those expenses set out in section 8.05 of this plan, the Participant agrees to pay any and all expenses incurred by the Custodian in connection with the investment of the account, including expenses of preparation and filing any returns and reports with regard to unrelated business income, including taxes and estimated taxes, as well as any transfer taxes incurred in connection with the investment or reinvestment of the assets of the account.
- 9.09 Nonbank Trustee Provision: If the Custodian is a nonbank trustee, the Participant shall substitute another trustee or custodian in place of the Custodian upon receipt of notice from the Commissioner of the Internal Revenue Service or his delegate that such substitution is required because the Custodian has failed to comply with the requirements of Income Tax Regulations Section 1.408-2(e), or is not keeping such records, making such returns, or rendering such statements as are required by applicable law, regulations, or other rulings. The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, Custodian shall transfer and pay over to such successor the assets of the account (less amounts retained pursuant to section 8.04 of the Custodial Agreement) and all records (or copies thereof) of the Custodian pertaining thereto, provided that the successor trustee or custodian agrees (not to dispose of any such records without the Custodian's consent.

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

Purpose of Form - Form 5305-SA is a model custodial account agreement that meets the requirements of sections 408(a) and 408(p) and has been automatically approved by the IRS. A SIMPLE individual retirement account (SIMPLE IRA) is established after the form is fully executed by both the individual (participant) and the Custodian. This account must be created in the United States for the exclusive benefit of the participant or his or her beneficiaries. Individuals may rely on regulations for the Tax Reform Act of 1986 to the extent specified in those regulations. Do not file Form 5305-SA with the IRS. Instead, keep it for your records.

For more information on SIMPLE IRAs, including the required disclosures the Custodian must give the participant, get Pub. 590, Individual Retirement Arrangements (IRAs).

Definitions:

Participant - The participant is the person who establishes the custodial account.

Custodian - The Custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as Custodian.

Transfer SIMPLE IRA - This SIMPLE IRA is a "transfer SIMPLE IRA" if it is not the original recipient of contributions under any SIMPLE plan. The summary description requirements of section 408(l)(2) do not apply to transfer SIMPLE IRAs.

Specific Instructions:

Article IV - Distributions made under this article may be made in a single sum, periodic payment, or a combination of both. The distribution option should be reviewed in the year the participant reaches age 70 1/2 to ensure that the requirements of section 408(a)(6) have been met.

Article VIII - Article VIII and any that follow it may incorporate additional provisions that are agreed to by the participant and Custodian to complete the agreement. They may include, for example, definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, beginning date of distributions, accepting only cash, treatment of excess contributions, prohibited transactions with the participant, etc. Use additional pages if necessary and attach them to this form.

FINANCIAL DISCLOSURE

In General: IRS regulations require the Custodian to provide you with a financial projected growth of your SIMPLE IRA account based upon certain assumptions.

Growth in the Value of Your SIMPLE IRA: Growth in the value of your SIMPLE IRA is neither guaranteed nor projected. The value of your SIMPLE IRA will be computed by totaling the fair market value of the assets credited to your account. At least once a year the Custodian will send you a written report stating the current value of your SIMPLE IRA assets. The Custodian shall disclose separately a description of:

- a.) The type and amount of each charge;
- b.) the method of computing and allocating earnings, and
- c.) any portion of the contribution, if any, which may be used for the purchase of life insurance.

Custodian Fees: The Custodian may charge reasonable fees or compensation for its services and it may deduct all reasonable expenses incurred by it in the administration of your SIMPLE IRA, including any legal, accounting, distribution, transfer, termination or other designated fees. Any charges made by the Custodian will be separately disclosed on an attachment hereto. Such fees may be charged to you or directly to your custodial account. In addition, depending on your choice of investment vehicles, you may incur brokerage commissions attributable to the purchase or sale of assets.

SIMPLE IRA DISCLOSURE STATEMENT RIGHT TO REVOKE YOUR SIMPLE IRA ACCOUNT

You may revoke your SIMPLE IRA within 7 days after you sign the SIMPLE IRA Adoption Agreement by hand-delivering or mailing a written notice to the name and address indicated on the SIMPLE IRA Adoption Agreement. If you revoke your account by mailing a written notice, such notice must be postmarked by the 7th day after you sign the Adoption Agreement. If you revoke your SIMPLE IRA within the 7 day period you will receive a refund of the entire amount of your contributions to the SIMPLE IRA without any adjustment for earnings or any administrative expenses. If you exercise this revocation, we are still required to report certain information to the IRS.

GENERAL REQUIREMENTS OF A SIMPLE IRA

- 1.) All SIMPLE contributions must be made in cash, unless you are making a rollover contribution or transfer, and the Custodian accepts such non-cash assets.
- 2.) The only types of contributions permitted to be made to this SIMPLE IRA are salary reduction contributions and employer contributions under the employer's SIMPLE Retirement Plan.
- 3.) The Custodian of your SIMPLE IRA must be a bank, savings and loan association, credit union or a person who is approved to act in such a capacity by the Secretary of the Treasury.
- 4.) No portion of your SIMPLE IRA funds may be invested in life insurance contracts.
- 5.) Your interest in your SIMPLE IRA must be fully vested and is nonforfeitable at all times.
- 6.) The assets in your SIMPLE IRA may not be commingled with other property except in a common trust fund or common investment fund.
- 7.) You may not invest the assets of your SIMPLE IRA in collectibles (as described in Section 408(m) of the Internal Revenue Code.) A collectible is defined as any work of art, rug or antique, metal or gem, stamp or coin, alcoholic beverage, or any other tangible personal property specified by the IRS. However, if the custodian or trustee permits, specially minted US gold, silver and platinum coins and certain state-issued coins are permissible SIMPLE IRA investments. Beginning on 1/1/98 you may also invest in certain gold, silver, platinum or palladium bullion. Such bullion must be permitted by the custodian or trustee and held in the physical possession of the IRA custodian or trustee.
- 8.) Your interest in your SIMPLE IRA must begin to be distributed to you by the April 1st following the calendar year you attain the age of 70 1/2. The methods of distribution, election deadlines, and other limitations are described in detail below.
- 9.) For purposes of the SIMPLE Plan rules, in the case of an individual who is not a self-employed individual, compensation means the amount described in section 6051(a)(3) which includes wages, tips and other compensation from the employer subject to income tax withholding under section 3401(a), and amounts described in section 6051(a)(8), including elective contributions made under a SIMPLE plan, and

compensation deferred under a section 457 plan. In the case of a self-employed individual, compensation means net earnings from self-employment determined under section 1402(a), prior to subtracting any contributions made under the SIMPLE plan on behalf of the individual.

- 10.) Contributions to a SIMPLE IRA are excludible from federal income tax and not subject to federal income tax withholding when made to the SIMPLE IRA. Salary reduction contributions are subject to FICA, FUTA or RRTA tax when made and must be reported on the employee's Form W-2 wage statement. Matching and nonelective employer contributions made to a SIMPLE IRA are not subject to FICA, FUTA or RRTA and are not required to be reported on Form W-2.
- 11.) A SIMPLE IRA must be established by or on behalf of an employee prior to the first date by which a contribution is required to be deposited into the SIMPLE IRA.

ELIGIBLE EMPLOYEES

Under a SIMPLE Retirement Plan established by an Eligible Employer, all employees of the employer who received at least \$5,000 in compensation from the employer during any 2 preceding calendar years, whether or not consecutive, and who are reasonably expected to receive at least \$5,000 in compensation during the calendar year, must be eligible to participate in the SIMPLE Plan for the calendar year. An employer may impose less restrictive eligibility requirements, such as eliminating or reducing the prior year compensation requirements, the current year compensation requirement, or both, under its SIMPLE Plan.

An employer, at its option, may exclude from eligibility employees who are included in a unit of employees covered by an agreement that the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that retirement benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; in the case of a trust established or maintained pursuant to an agreement that the Secretary of Labor finds to be a collective bargaining agreement between air pilots represented in accordance with Title II of the Railway Labor Act and one or more employees, all employees not covered by that agreement; and employees who are nonresident aliens and who received no earned income from the employer that constitutes income from sources within the United States.

PARTICIPATION IN ANOTHER PLAN

An eligible employee may participate in an employer's SIMPLE Plan, even if he or she also participates in a plan of a different employer for the same year. However, the employee's salary reduction contributions are subject to the limitation of section 402(g), which provides an aggregate limit on the exclusion for elective deferrals for any individual. Also, an eligible employee who participates in an employer's SIMPLE plan and an eligible deferred compensation plan described in section 457(b) is subject to the limitation described in section 457(c). The employee is responsible for monitoring compliance with these limitations.

ELIGIBLE EMPLOYERS

SIMPLE plans may be established by employers (including tax-exempt employers and governmental entities) that had no more than 100 employees who earned \$5,000 or more in compensation during the preceding calendar year. For purposes of the 100-employee limitation, all employees employed at any time during the calendar year are taken into account, regardless of whether they are eligible to participate in the SIMPLE plan. This means that otherwise excludible employees (i.e. certain union employees, nonresident aliens with no U.S. source income, and those employees who have not met the plan's minimum eligibility requirements) must be taken into account.

SIMPLE PLAN CONTRIBUTIONS

Elective Deferrals (Salary Reduction Contributions) - A salary reduction contribution is a contribution made pursuant to an employee's election to have an amount contributed to his or her SIMPLE IRA, rather than have the amount paid directly to the employee in cash. An eligible employee must be permitted to elect to have salary reduction contributions made at the level specified by the employee, expressed as a percentage of compensation for the year or as a specific dollar amount. The maximum salary reduction contribution per calendar year may not exceed \$6,000, subject to cost of living adjustments. Salary reduction contributions may not begin until the eligible employee completes a form provided by the employer designed to permit the employee to elect the salary reduction percentage or specific dollar amount. An employer may not place any restrictions on the amount of an employee's salary reduction contributions (e.g. by limiting the contribution percentage), except to the extent needed to comply with the annual limit.

Employer Contributions - 2 Options

- 1.) **Matching Contributions:** Under a SIMPLE plan, an employer is generally required to make a contribution on behalf of each eligible employee in an amount equal to the employee's salary reduction contributions, up to a limit of 3% of the employee's compensation for the entire calendar year. The 3% limit on matching contributions is permitted to be reduced for a calendar year at the election of the employer, but only if: the limit is not reduced below 1%; the limit is not reduced for more than 2 years out of the 5-year period that ends with and includes the year for which the election is effective; and employees are notified of the reduced limit within a reasonable period of time before the 60-day election period during which employees can enter into salary reduction agreements as described below. In determining whether the limit was reduced below 3% for a year, any year before the first year in which an employer (or a predecessor employer) maintains a SIMPLE plan will be treated as a year for which the limit was 3%. If an employer chooses to make nonelective contributions for a year in lieu of matching contributions, that year also will be treated as a year for which the limit was 3%.
- 2.) **Nonelective Contributions:** Under a SIMPLE plan, an employer may make nonelective contributions in lieu of matching contributions. These nonelective contributions must be equal to 2% of each eligible employee's compensation for the entire calendar year, regardless of whether the employee elects to make salary reduction contributions for the calendar year. The employer may, but is not required to, limit nonelective

contributions to eligible employees who have at least \$5,000 (or some lower amount selected by the employer) of compensation for the year. For purposes of this 2% nonelective contribution only, the compensation taken into account must be limited to the amount of compensation under section 401(a)(17) for the year. For 1997, this limit is \$160,000 and will be adjusted in accordance with the cost of living. An employer may substitute the 2% nonelective contribution for the matching contribution for a year only if eligible employees are notified within a reasonable period of time before the 60-day election period during which employees can enter into salary reduction agreements that a 2% nonelective contribution will be made instead of a matching contribution.

EMPLOYEE ELECTIONS

During the 60-day period immediately preceding January 1st of a calendar (i.e. November 2 to December 31 of the preceding calendar year), an eligible employee must be given the right to enter into a salary reduction agreement for the calendar year, or to modify a prior agreement (including reducing the amount subject to this agreement to \$0). However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may enter into a salary reduction agreement or modify a prior agreement is a 60-day period that includes either the date the employee becomes eligible or the day before that date. For example, if an employer establishes a SIMPLE plan effective as of July 1, 1997, each eligible employee becomes eligible to make salary reduction contributions on that date and the 60-day period must begin no later than July 1 and cannot end before June 30, 1997.

During these 60-day periods, employees have the right to modify their salary reduction agreements without restrictions. In addition, for the year in which an employee becomes eligible to make salary reduction contributions, the employee must be able to commence these contributions as soon as the employee becomes eligible, regardless of whether the 60-day period has ended. An employer may, but is not required to, provide additional opportunities or longer periods for permitting eligible employees to enter into salary reduction agreements or to modify prior agreements.

An employee must be given the right to terminate a salary reduction agreement for a calendar year at any time during the year even if this is outside a SIMPLE plan's normal election period. The employer's SIMPLE plan may, however, provide that an employee who terminates a salary reduction agreement at any time other than the normal election period is not eligible to resume participation until the beginning of the next calendar year.

EMPLOYER ADMINISTRATIVE AND NOTIFICATION REQUIREMENTS

An employer must notify each employee, immediately before the employee's 60-day election period, of the employee's opportunity to enter into a salary reduction agreement or to modify a prior agreement. If applicable, this notification must disclose an employee's ability to select the financial institution that will serve as the trustee or custodian of the employee's SIMPLE IRA. Such notification must also include the Summary Description required under section 408(l)(2)(B). Such notification must also include whether the employer will be making either matching contributions (including the employer's election to reduce the matching contribution below 3%) or nonelective contributions as previously described.

If an eligible employee who is entitled to a contribution under the employer's SIMPLE plan is unwilling or unable to establish a SIMPLE IRA with any financial institution prior to the date on which the contribution is required to be made to the SIMPLE IRA of the employee, the employer may execute the necessary SIMPLE IRA documents on the employee's behalf with a financial institution selected by the employer.

The employer must deliver the salary reduction contributions to the financial institution maintaining the SIMPLE IRA as of the earliest date on which the contributions can reasonably be segregated from the employer's general assets, but no later than the close of the 30-day period following the last day of the month in which amounts would otherwise have been payable to the employee in cash.

Matching and nonelective employer contributions must be made to the financial institution maintaining the SIMPLE IRA no later than the due date for filing the employer's income tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contributions are made.

ROLLOVERS

Rollover Contributions from Another SIMPLE IRA - A rollover contribution to this SIMPLE IRA is only permitted from another SIMPLE IRA. A rollover contribution from another SIMPLE IRA is any amount the participant receives from one SIMPLE IRA and redeposits some or all of it into this SIMPLE IRA. The participant is not required to roll over the entire amount received from the first SIMPLE IRA. However, any amount you do not roll over will be taxed at ordinary income tax rates for federal income tax purposes and may also be subject to an additional tax if the distribution is a premature distribution described below.

Rollover Distributions from a SIMPLE IRA - A distribution from any SIMPLE IRA may be rolled over only to another SIMPLE IRA during the 2-year period the participant first participated in the employer's SIMPLE plan. Thus, a distribution from a SIMPLE IRA during that 2-year period qualifies as a rollover contribution (and is not includible in gross income of the participant) only if the distribution is paid into another SIMPLE IRA and satisfies the other requirements that apply to all IRA rollovers under section 408(d)(3). SIMPLE IRAs may never be rolled into an employer's plan, such as a qualified plan or section 403(b) plan. After this 2-year period, a distribution from a SIMPLE IRA may be rolled over to any IRA maintained by the individual. This 2-year period begins on the first day on which contributions made by the individual's employer are deposited in the individual's SIMPLE IRA.

Special Rules that Apply to Rollovers

- The rollover must be completed no later than the 60th day after the day the distribution was received by you.
- You may have only one IRA to IRA rollover during a 12 consecutive month period measured from the date you received a distribution of an IRA which was rolled over to another IRA. (See IRS Publication 590 for more information).

- The same property you receive in a distribution must be the same property you roll over into the second IRA. For example, if you receive a distribution from an IRA of property, such as stocks, that same stock must be rolled over into the second IRA.
- You are required to make an irrevocable election indicating that this transaction will be treated as a rollover contribution.
- You are not required to receive a complete distribution from your IRA in order to make a rollover contribution into another IRA, nor are you required to roll over the entire amount you received from the first IRA.
- If you inherit an IRA due to the death of the participant, you may not roll this IRA into your own IRA unless you are the spouse of the decedent.
- If you are age 70 1/2 or older and wish to roll over to another IRA, you must first satisfy the minimum distribution requirement for that year and then the rollover of the remaining amount may be made.
- Rollover contributions to a SIMPLE IRA may not be made from a qualified plan, 403(b) plan, or any other IRA that is not a SIMPLE IRA.

EXCESS DEFERRALS

Excess elective deferrals (amounts in excess of the \$6,000 SIMPLE elective deferral limit) are includible in your gross income in the calendar year of deferral. Income on the excess elective deferrals is includible in your income in the year of withdrawal from the SIMPLE IRA. You should withdraw excess elective deferrals and any allocable income, from your SIMPLE-IRA by April 15 following the year to which the deferrals relate. These amounts may not be transferred or rolled over tax-free to another SIMPLE-IRA. If you fail to withdraw excess elective deferrals, and any allocable income, by the following April 15th, the excess elective deferrals will be subject to the IRA contribution limitations of sections 219 and 408 of the Code and thus may be considered an excess contribution to your IRA. Such excess deferrals may be subject to a 6% excise tax for each year they remain in your SIMPLE-IRA. Income on excess elective deferrals is includible in your gross income in the year you withdraw it from your IRA and must be withdrawn by April 15 following the calendar year to which the deferrals relate. Income withdrawn from the IRA after that date may be subject to a 10% tax (or 25% if withdrawn within the first 2 years of participation) on early distributions. The rules for determining and allocating income attributable to excess elective deferrals and other excess SIMPLE contributions are the same as those governing regular IRA excess contributions. The trustee or custodian of your SIMPLE-IRA will inform you of the income allocable to such excess amounts.

DISTRIBUTIONS

In general, all distributions from a SIMPLE IRA are subject to federal income tax by the payee or distributee, whichever the case may be. When you start withdrawing from your SIMPLE IRA, you may take the distributions in regular payments, random withdrawals or in a single sum payment. Generally, all amounts distributed to you from your SIMPLE IRA are included in your gross income in the taxable year in which they are received. However, if you have made nondeductible contributions to any regular IRA as permitted under section 408(o) of the Code, the nontaxable portion of the distribution, if any, will be a percentage based upon the ratio of your unrecovered nondeductible contributions to the aggregate of all IRA balances, including SEP, SIMPLE and rollover contributions, as of the end of the year in which you take the distribution, plus distributions from the account during the year. All taxable distributions from your SIMPLE IRA are taxed at ordinary income tax rates for federal income tax purposes and are not eligible for either capital gains treatment or 5/10 year averaging. An employer may not require an employee to retain any portion of the contribution in the SIMPLE IRA or otherwise impose any withdrawal restrictions.

Premature Distributions - If you are under age 59 1/2 and receive a distribution from your SIMPLE IRA account, a 10% additional income tax will apply to the taxable portion of the distribution unless the distribution is received due to death; disability; a series of substantially equal periodic payments at least annually over your life expectancy or the joint life expectancy of you and your designated beneficiary; medical expenses in excess of 7 1/2% of your adjusted gross income; health insurance premiums paid by certain unemployed individuals; qualified acquisition costs of a first time homebuyer; qualified higher education expenses; a qualifying rollover distribution; or the timely withdrawal of an excess deferral plus income attributable. If you request a distribution in the form of a series of substantially equal payments, and you modify the payments before 5 years have elapsed and before attaining age 59 1/2, the 10% additional income tax will apply retroactively to the year payments began through the year of such modification. In addition, if you request a distribution from your SIMPLE-IRA within your first 2 years of participation in the SIMPLE plan and none of the exceptions listed above applies to the distribution, the normal 10% additional income tax referred to earlier is increased to 25%.

Age 70 1/2 Required Minimum Distributions - You are required to begin receiving minimum distributions from your SIMPLE IRA by your required beginning date (the April 1 of the year following the year you attain age 70 1/2). The year you attain age 70 1/2 is referred to as your "first distribution calendar year". Your minimum distribution is based upon the value of your account at the end of the prior year (less any required distributions you received between January 1 and April 1 of the year following your first distribution calendar year) by the joint life expectancy of you and your designated beneficiary. If you do not have a designated beneficiary then the minimum distribution will be based upon your single life expectancy.

As you can see, who you designate as beneficiary under your SIMPLE IRA will affect the period over which distributions may be made. If you have more than one primary beneficiary, generally the beneficiary with the shortest life expectancy will be the measuring life expectancy used for determining the period over which distributions will be made. If no beneficiary is named or you name a beneficiary which is not an individual (i.e., your estate), distributions will be based upon your single life expectancy.

By the April 1 following your first distribution calendar year, you must make certain elections on a form provided by the Custodian. If no election is made, you will be deemed to have elected to take your distributions over a

period not to exceed your single life expectancy. The required distributions for the second distribution calendar year and for each subsequent distribution calendar year must be made by December 31 of such year.

Unless otherwise elected by the Custodian (or by you, if the Custodian permits) in determining the amount to be distributed for the second distribution calendar year and subsequent distribution calendar years, your life expectancy (and your designated beneficiary's life expectancy) shall not be recalculated. If the Custodian elects (or you elect, if the Custodian permits) to recalculate your life expectancy or your spouse's life expectancy, you will generally have a longer period of time over which payments will be made and therefore the minimum distribution will be less.

CAUTION: If you or your spouse should die, the decedent's life expectancy that is being recalculated is reduced to zero which will reduce the period of distribution to the survivor's single life expectancy. If recalculation is not elected, the death of either person will not have an effect on the payment period.

In any distribution calendar year you may take more than the required minimum. However, if you take less than the required minimum with respect to any distribution calendar year, you are subject to a federal excise tax penalty of 50% of the difference between the amount required to be distributed and the amount actually distributed.

Minimum Distribution Incidental Benefit (MDIB) Rule - Basically, this rule specifies that benefits provided under a retirement plan must be for the primary benefit of a participant rather than for his/her beneficiaries. If your spouse is your sole beneficiary, these special MDIB rules do not apply. The amount required to be distributed under the MDIB rule may in some cases be more than the amount required under the normal age 70 1/2 required minimum distribution rules. If someone other than or in addition to your spouse is a named primary beneficiary, the minimum distribution required is the greater of the amount determined under the regular 70 1/2 rules and the amount determined under the MDIB rules. The minimum amount to be distributed under the MDIB rules is the amount determined by taking the balance in your SIMPLE IRA account and dividing it by a factor taken from an IRS table specified in IRS regulations. The table provides life expectancies for you and a beneficiary who is assumed to be 10 years younger.

Death Distributions - If you die after your required beginning date, the balance in your SIMPLE IRA will be distributed in a manner which is at least as rapid as the method of distribution being used on the date of your death. If you die before your required beginning date, the balance in your SIMPLE IRA must generally be distributed within 5 years from the date of your death. However your beneficiary(ies) may elect to receive the balance in your account over the single life expectancy of your designated beneficiary if distributions begin no later than the end of the year containing the one year anniversary of your death. In addition, if your only beneficiary is your surviving spouse, distributions need not commence until December 31st of the year you would have attained age 70 1/2.

Prohibited Transactions - If you or your beneficiary engage in a prohibited transaction (as defined under Section 4975 of the Internal Revenue Code) with your SIMPLE IRA, it will lose its tax exemption and you must include the value of your account in your gross income for that taxable year. If you pledge any portion of your SIMPLE IRA as collateral for a loan, the amount so pledged will be treated as a distribution and will be included in your gross income for that year.

Income Tax Withholding - All withdrawals from your SIMPLE IRA (except a direct transfer) are subject to federal income tax withholding. You may, however, elect not to have withholding apply to your SIMPLE IRA distribution in most cases. If withholding does apply to your distribution, it is at the rate of 10% of the amount of the distribution.

DESIGNATED FINANCIAL INSTITUTION "DFI"

In general, under section 408(p), an employer must permit an employee to select the financial institution for the SIMPLE IRA to which the employer will make all contributions on behalf of the employee. In this case, the financial institution is referred to as a "Non-DFI". Alternatively, under section 408(p)(7), an employer may require that all SIMPLE contributions initially be made to a single designated financial institution selected by the employer. In this case, the financial institution is referred to as a "DFI". Refer to your employer's SIMPLE Retirement Plan document to determine if the financial institution is a DFI or a Non-DFI.

Use of a Designated Financial Institution "DFI" - If an employer requires that all SIMPLE contributions initially be made to a DFI, the following requirements must be met:

- 1.) The employer and the financial institution must agree that the financial institution will be a DFI for the employer's SIMPLE plan;
- 2.) The DFI must agree that, if a participant elects before the expiration of the employee's 60-day election period, the participant's balance will be transferred without cost or penalty to another SIMPLE IRA (or after the 2-year period no longer applies, to any IRA) to a financial institution selected by the participant; and
- 3.) Each participant is given written notification describing the procedures under which, if a participant so elects, the participant's balance will be transferred without cost or penalty to another SIMPLE IRA (or after the 2-year period no longer applies, to any IRA) to a financial institution selected by the participant.

If the participant elects before the expiration of the 60-day election period to have the balance transferred without cost or penalty as described above, such election is valid only with respect to the balance attributable to SIMPLE contributions for the calendar year following that 60-day election period (or, for the year in which an employee becomes eligible to make salary reduction contributions for the remainder of that year) and subsequent calendar years if such election so provides.

If the participant timely elects the transfer of the balance without cost or penalty as described above, the participant's balance must be transferred on a reasonably frequent basis, such as on a monthly basis. If a participant timely elects this transfer without cost or penalty, the Custodian reserves the right to restrict the investment to a specified investment option until transferred, even though a variety of investment options are available with respect to contributions that the participant has not elected to transfer.

A transfer is deemed to be made without cost or penalty if no liquidation, transaction, redemption or termination fee, or any commission, load (whether front-end or back-end) or surrender charge or similar fee or charge is imposed with respect to the balance being transferred that the participant has filed a timely election with the DFI. However, the DFI can charge a reasonable annual administrative fee to a SIMPLE IRA from which balances must be transferred in accordance with the participant's timely transfer election.

In order to timely elect a transfer without cost or penalty, the participant must indicate such election on the SIMPLE IRA Adoption Agreement attached hereto and must be received by the DFI no later than the expiration of the 60-day election period applicable to the employee. If the participant fails to timely elect such transfers without cost or penalty, the DFI reserves the right to charge any or all fees and expenses described in Section 8.05 of this SIMPLE IRA plan agreement.

Use of a Non Designated Financial Institution "Non-DFI" - If the employer's SIMPLE plan permits the participants to select their own financial institution to serve as trustee or custodian of the SIMPLE IRA, the rules explained above do not apply and the Custodian may charge any and all fees described in Section 8.05 of the SIMPLE IRA plan agreement.

Transfers Defined - A direct transfer is a payment from this SIMPLE IRA directly to another trustee or custodian of a SIMPLE IRA (or, after the 2-year period no longer applies, to the trustee or custodian of any IRA). Transfers do not constitute a distribution since you are never in receipt of the funds. The monies are transferred directly to the new trustee or custodian. If you should transfer all or a portion of your SIMPLE IRA to your former spouse's IRA under a divorce decree (or under a written instrument incident to divorce) or separation instrument, you will not be deemed to have made a taxable distribution, but merely a transfer. The portion so transferred will be treated at the time of the transfer as the IRA of your spouse or former spouse. If your spouse is the beneficiary of your SIMPLE IRA, in the event of your death, your spouse may "assume" your SIMPLE IRA. The assumed IRA is then treated as your surviving spouse's IRA.

SUMMARY DESCRIPTION REQUIREMENTS

In general, the Custodian of any SIMPLE IRA must annually provide to the employer maintaining the SIMPLE plan a Summary Description early enough to allow the employer to meet its notification obligations. If the Custodian of this SIMPLE IRA is a DFI, the Summary Description will be provided directly to the employer by the Custodian in the underlying SIMPLE plan agreement. If the Custodian of this SIMPLE IRA is a Non-DFI, the Summary Description will be provided directly to the employee by the Custodian. The employee agrees to have the employer complete certain information contained on the Summary Description with respect to the employer's SIMPLE plan provisions. A sample Summary Description for a Non-DFI is located on the following page. The Custodian of a "transfer SIMPLE IRA" is not required to provide this Summary Description. A SIMPLE IRA is a "transfer SIMPLE IRA" if it is not a SIMPLE IRA to which the employer has made contributions under the SIMPLE plan.

PROCEDURES FOR WITHDRAWALS

All distributions from this SIMPLE IRA must be requested in writing on a form provided to the participant by the Custodian. After the withdrawal form has been completed and executed by the recipient, the form must be either hand-delivered to the Custodian during normal business hours or mailed to the Custodian by first class mail, certified or registered mail prepaid through the U.S. Postal Service, or through any means of an expedited delivery service. After receipt of a properly executed withdrawal form, the Custodian will process the distribution as soon as administratively feasible.

FEDERAL ESTATE AND GIFT TAXES

Generally, there is no specific exclusion for SIMPLE IRAs under the estate tax rules. Therefore, in the event of your death, your SIMPLE IRA balance will be includible in your gross estate for federal estate tax purposes. However, if your surviving spouse is the beneficiary of your SIMPLE IRA, the amount in your SIMPLE IRA may qualify for the marital deduction available under Section 2056 of the Internal Revenue Code. A transfer of property for federal gift tax purposes does not include an amount which a beneficiary receives from a SIMPLE IRA plan.

PENALTIES

If you are under age 59 1/2 and receive a premature distribution from your SIMPLE IRA, an additional 10% (or 25% for certain SIMPLE IRA distributions) income tax will apply on the taxable amount of the distribution. If you make an excess deferral to your SIMPLE IRA and it is not corrected on a timely basis, an excise tax of 6% is imposed on the excess amount. This tax will apply each year to any part or all of the excess which remains in your account. If you are age 70 1/2 or over or if you should die, and the appropriate required minimum distributions are not made from your SIMPLE IRA, an additional tax of 50% is imposed upon the difference between what should have been distributed and what was actually distributed.

For tax years ending before 1/1/97, you will be taxed an additional 15% on any amount you receive and include in income during a calendar year from qualified plans, TSAs and IRAs which exceeds the greater of \$150,000 (unindexed) or \$112,500 (indexed for cost of living). This 15% excess distribution tax is repealed for distributions occurring after 12/31/96. In the event of a SIMPLE IRA participant's death before 1/1/97, the participant's estate may be subject to a 15% tax on the "excess accumulation" in all of the individual's qualified plans, TSAs and IRAs. This 15% excess accumulation tax is repealed for decedents dying after 12/31/96.

IRS APPROVAL AS TO FORM

This SIMPLE IRA Custodial Agreement has been approved by the Internal Revenue Service as to form. This is not an endorsement of the plan in operation or of the investments offered.

ADDITIONAL INFORMATION

You may obtain further information on IRAs and SIMPLE IRAs from your District Office of the Internal Revenue Service. In particular you may wish to obtain IRS Publication 590 (Individual Retirement Arrangements).

Internal Revenue Service

SWS Securities, Inc.
Suite 4300, Renaissance Tower
1201 Elm Street
Dallas, TX 75270

EIN Number: 75-1382137

Ladies and Gentlemen:

In a letter dated July 9, 1992, and subsequent letters, you requested a written notice of approval that SWS Securities, Inc., may serve as a custodian of plans qualified under section 401 of the Internal Revenue Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for individual retirement arrangements (IRAs) established under section 408.

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 408(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.

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

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

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

The Income Tax Regulations at section 1.401-12(n) provide the criteria for determining the ability of such other person, for purposes of sections 401(f), 403(b)(7), 408(a)(2), and 408(h) of the Code, to act as a trustee or custodian. Section 1.401-12 (n) of the regulations 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 trustee or custodian.

Based on all the information submitted to this office and all the representations made in the application we have concluded that SWS Securities, Inc., meets the requirements of section 1.401-12(n) of the regulations and, therefore, is approved to serve as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408.

This letter authorizes SWS Securities, Inc., to serve only as a nonbank trustee or 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, it may not serve as trustee or custodian if under the written agreement it has discretion to direct investments of the trust or custodial funds.

This letter while authorizing SWS Securities, Inc., to act as a passive trustee or custodian does not authorize it to pool accounts in a common investment fund (other than a mutual fund) within the meaning of section 1.401-12(n)(6)(viii)(C) of the regulations. SWS Securities, Inc., may not act as a passive trustee or custodian unless it

**Department of the Treasury
Washington, DC 20224**

Person to Contact:
B. Gamerman
Telephone Number:
(202) 622-8400
Refer Reply to:
E:EP:R:7
Date:
December 9, 1992

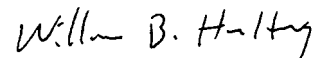
undertakes to act only under trust instruments or custodial agreements that contain a provision to the effect that the owner is to substitute another trustee or custodian upon notification by the Commissioner that such substitution is required because the applicant has failed to comply with the requirements 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.

SWS Securities, Inc., 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 custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408, is contingent upon the continued satisfaction of the criteria set forth in section 1.401-12(n) of the regulations.

This approval letter is not transferable to any other entity. An entity that is a member of a controlled group of corporations, within the meaning of section 1563(a) of the Code, may not rely on an approval letter issued to another member of the same controlled group. Furthermore, any entity that goes through 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 SWS Securities, Inc., may act as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408, and does not bear upon its capacity to act as a trustee or custodian under any other applicable law.

Sincerely yours,



William B. Hulteng
Chief, Employee Plans
Rulings Branch

Internal Revenue Service

SIMPLE IRA Plan 001
FFN: 5092949AQ00-001 Case: 9880027 EIN: 75-1382137
Letter Serial No: D910768a

SWS Securities, Inc.
1201 Elm Street, Suite 4300
Dallas, TX 75270

**Department of the Treasury
Washington, DC 20224**

Person to Contact: Ms. Arrington
Telephone Number: (202) 622-8173
Refer Reply to: CP:E:EP:T5
Date: 03/18/98

Dear Applicant:

In our opinion, the form of your Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan) is acceptable under section 408(p) of the Internal Revenue Code. This SIMPLE IRA Plan is approved for use only in conjunction with one or more SIMPLE Individual Retirement Arrangements (SIMPLE IRAs), which meets the requirements of Code section 408(p) and has received a favorable opinion letter, or is a model SIMPLE IRA (Form 5305-S and 5305-SA).

An employer that adopts this approved prototype will be considered to have a SIMPLE IRA Plan that satisfies the requirements of Code section 408(p) provided that the terms of the plan are followed and that it is used in conjunction with one or more approved SIMPLE IRAs. Please provide a copy of this letter to each adopting employer.

Code section 408(1)(2) requires an employer that adopts a SIMPLE IRA Plan to provide employees certain information about the SIMPLE Plan.

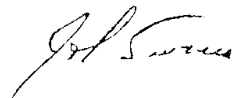
Your prototype may have to be amended to include or revise provisions in order to comply with future changes in the law or regulations.

If you, the sponsoring organization, have any questions concerning IRS processing of this case, call the above telephone number. This number is only for use of the sponsoring organization. Individual participants and/or adopting employers with questions concerning the plan should contact the sponsoring organization. The sponsoring organization must provide its address and telephone number for inquiries by individual participants and adopting employers.

If you write to the IRS regarding this plan, please provide your telephone number and the most convenient time for us to call in case we need more information. Whether you call or write, please refer to the File Folder Number (FFN) shown in the heading of this letter.

You should keep this letter as a permanent record. Please notify us in writing if you modify or discontinue sponsorship of this prototype plan.

Sincerely yours,



Chief, Employee Plans Technical Branch

Retirement Plans are offered through:
Southwest Securities, Inc.
Member NASD, NYSE, SIPC
1201 Elm Street
Suite 3500
Dallas, TX 75270