



**PROTOTYPE  
SIMPLE  
RETIREMENT  
PLAN**

**Savings Incentive Match Plan for Employees  
In IRA Form under Section 408(p) of the Internal Revenue Code**

**TO ESTABLISH A SOUTHWEST SECURITIES INDIVIDUAL  
RETIREMENT ACCOUNT (Simple IRA)**

- Complete and sign all portions of the Simple IRA Adoption Agreement and account application. When completing the beneficiary information please make sure to include social security numbers.
- Submit the completed Simple IRA Adoption Agreement to your Account Executive.
- Enclose a check made payable to Southwest Securities for the initial Simple IRA contribution, if applicable. Make sure all checks include the tax year information for the contribution and the account number.
- If you are transferring an existing Simple IRA to Southwest Securities, complete and sign an Account Transfer Form. When submitting the form to your Account Executive, include a copy of the most recent account statement.
- If you are rolling funds from another Simple, complete and sign a Rollover Certification Form.
- Contact your Account Executive for any other forms that may be required to establish your Simple IRA or with any other questions or concerns that you may have.

**THIS CUSTODIAL FEE INFORMATION MAY ONLY BE USED  
WITH SOUTHWEST SECURITIES IRA ACCOUNTS**

**CUSTODIAL FEES FOR INDIVIDUAL RETIREMENT ACCOUNTS**

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

\*Southwest Securities, Inc. reserves the right to change fees upon notification to the accountholder.

# 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 section 219(g)(5) of the Code as: a plan described in section 401(a) that includes a trust exempt from tax under section 501(a); an annuity plan described in section 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 section 457(b)); a tax-sheltered annuity plan described in section 403(b); a simplified employee pension (SEP) plan described in section 408(k); and another SIMPLE IRA Plan described in section 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:**

- (a) 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 section 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.)
- (b) 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.

## 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 the Compensation limit described in section 401(a)(17) of the Code, 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 the dollar amount specified in section 4.01(c) of this Plan.
  - (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 the dollar amount specified in section 4.01(c) of this Plan.
    - (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 \$7,000 for 2002, \$8,000 for 2003, \$9,000 for 2004, and \$10,000 for 2005 and later years. After 2005, the maximum amount will be adjusted by the Secretary of the Treasury for cost-of-living increases under section 408(p)(2)(E) of the Code. Such adjustments will be in multiples of \$500.
  - (d) An Eligible Employee who would attain age 50 or over by the end of the year can elect to have his or her Compensation reduced by an additional amount of \$500 for 2002, \$1,000 for 2003, \$1,500 for 2004, \$2,000 for 2005, and \$2,500 for 2006 and later years. After 2006, the maximum additional amount will be adjusted by the Secretary of the Treasury for cost-of-living increases under section 414(v)(2)(C) of the Code. Such adjustments will be in multiples of \$500.
  - (e) 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.
  - (f) 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 the dollar amount specified in section 4.01(c) of this Plan.
- 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 section 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), and compensation from the Employer deferred under a section 457 plan required to be reported by the Employer on Form W-2 (as described under section 6051(a)(8)). Compensation does not include any amounts deferred under a section 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 section 401(a)(17) of the Code as adjusted by the Secretary of the Treasury for increases in the cost of living in accordance with section 401(a)(17)(B). Such adjustments will be in multiples of \$5,000. (The Compensation limit for 2002 is \$200,000.)
- 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 section 1402(a) of the Code without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this plan on behalf of the individual.

**5.06 Election Period:**

- (a) 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.
- (b) An Eligible Employee must be permitted to terminate a salary reduction election at any time. The termination request must be in writing and become effective as soon as practical after receipt of the request by the Employer or, if later, the date specified by the Employee in the termination request.

**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 section 410(b)(6)(c)(i) of the Code.

**5.09 Employee:** An individual, including a Self-Employed (described in section 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 section 414(b) of the Code), a group of trades or businesses under common control (under section 414(c)), an affiliated service group (under section 414(m)) or is required to be aggregated with any other entity under section 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/Custodian:** 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) 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 section 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 section 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 section 408(d)(3)(G).
- (b) 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:

- A. Maintains any other retirement plan including a qualified plan, SEP, SARSEP or 403(b) plan.
- B. 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:

- A. You have completed all blanks on the Adoption Agreement and the Summary Description; and
- B. 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

- A. Compensation is the employee's total compensation from the employer and includes:
  1. Amounts received for personal services actually performed (see section 1.219-1(c) of the Income Tax Regulations); and
  2. Earned income defined under section 408(p)(6)(A)(ii) of the Code.

- B. 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 "the applicable annual dollar limitation" described below:

<u>Tax Year</u>	<u>Contribution Limit</u>
2001	\$6,500
2002	\$7,000
2003	\$8,000
2004	\$9,000
2005	\$10,000
2006	\$10,000
2007	\$10,500

The maximum amount will be adjusted for cost-of-living increases in multiples of \$500.

- C. Employees who attain age 50 or over by the end of a calendar year can elect to have his or her Compensation reduced by an additional amount listed below. The maximum additional age-50 catch-up amount will be adjusted for cost-of-living increases in multiples of \$500.

<u>Tax Year</u>	<u>Catch-Up Limit</u>
2002	\$500
2003	\$1,000
2004	\$1,500
2005	\$2,000
2006	\$2,500
2007	\$2,500

- D. 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 "the applicable annual dollar limitation". 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.
- E. 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 \$200,000 adjusted for the cost of living. For 2006, the compensation limit is \$220,000. For 2007, the compensation limit is \$225,000.
- F. 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.
- G. Failure to provide the required employee notices or the Summary Description will result in a \$50 per day penalty.
- H. All contributions made to an Employee's SIMPLE IRA are immediately 100% vested.
- I. You are responsible for delivering all contributions under this SIMPLE Plan directly to the trustee or custodian of your employee's SIMPLE IRA. Salary deferral contributions are required to be deposited into the employee's SIMPLE IRA on a date that is as soon as you can reasonably segregate them from your general assets, but absolutely no later than 30 calendar days following the month that the deferral contributions were withheld from your employee's pay. Failure to make these deposits on a timely basis could result in your entire SIMPLE Plan being disqualified, as well as civil or criminal penalties under ERISA. These rules also apply in the case of self-employed individuals. Thus, the latest day for the deposit of salary reduction contributions made on behalf of a self-employed individual for a calendar year is 30 days after the end of such year, which is January 30<sup>th</sup>.

## 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 deferral limit under the SIMPLE 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:

- A. SIMPLE Retirement Plans under section 408(p) of the Code;
- B. Elective SEPs under section 408(k)(6) of the Code;
- C. Cash or deferred arrangements under section 401(k) of the Code; and
- D. Salary reduction arrangements 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 section 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% of compensation 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 includible in the employee's gross income and may also be subject to a 25% additional income tax as described in section 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.

# Internal Revenue Service

Department of the Treasury

Prototype SIMPLE IRA Plan 001

FFN: 5092949AQ00-001 Case: 200201539 EIN: 75-1382137

Letter Serial No: K910768b

Washington, DC 20224

▷  
SWS SECURITIES INC  
1201 ELM STREET SUITE 3500  
DALLAS, TX 75270

Contact Person: Ms. Arrington 50-00197

Telephone Number: (202) 283-8811

In Reference to: OP:E:EP:T

Date: 10/24/2002

Dear Applicant:

In our opinion, the amendment to the form of your Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan) does not adversely affect its acceptability 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), each of 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 or 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 to employees certain information about the SIMPLE IRA Plan.

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

If you, the sponsoring organization, have any questions concerning the IRS processing of this case, please 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