

Simplified Employee Pension (“SEP”) Plan Employer Adoption Agreement For Use With the Traditional IRA Application

Employer’s Guide to the SEP Plan Simplified Employee Pension or SEP

A SEP is a retirement plan that is easy to establish and administer.

- SEP contributions under the Morgan Stanley Smith Barney LLC SEP Plan are made to Individual Retirement Accounts/Annuities (“IRAs”) established by or for eligible employees of the employer and each related employer. (See your tax advisor and Internal Revenue Code Section 414 to determine related employers.)
- SEP contributions generally are deductible when made, subject to the limits of the Internal Revenue Code, and the earnings on those contributions accumulate on a tax-deferred basis in the IRAs.
- A SEP is generally exempt from most reporting and disclosure requirements that apply to other retirement plans (such as Form 5500 filings), as further described below.

For more details, refer to the SEP Plan documents that are included in this booklet – Adoption Agreement, the Plan document and Information for Employees.

SEP Plan Contributions

The SEP Plan allows for discretionary employer contributions only.

Discretionary Employer Contributions

The employer determines what amount, if any, to contribute each year. Those contributions are allocated in a nondiscriminatory manner in accordance with the method selected by the employer in the SEP Plan Adoption Agreement. Examples of the two methods of allocating discretionary contributions – the Discretionary Contribution Formula and the Discretionary Integrated Contribution Formula – are included in the section of the booklet entitled Information for Employees.

Setting Up a SEP Plan

- Complete and sign the Morgan Stanley Smith Barney LLC SEP Plan Adoption Agreement. See “Completing the SEP Plan Adoption Agreement,” page 2.
- Give each eligible employee a copy of the Start-Up Materials described in “Providing Information to Employees,” page 2.
- Make sure each eligible employee has an IRA to accept SEP Plan contributions (referred to as a “SEP IRA”).

Included Documents

3 SEP Plan Adoption Agreement

7 SEP Plan Information for Employees

11 SEP Basic Plan Document

17 IRS Opinion Letter for the Morgan Stanley Smith Barney SEP Plan

Deadlines for Setting Up a SEP Plan

To take a deduction for a particular taxable year, the SEP Plan Adoption Agreement must be signed and the employer contributions made to eligible employees' SEP IRAs no later than the deadline (including extensions) for filing the employer's tax return for that taxable year.

SEP Contributions—Limits and Adjustments to Compensation

- **Employees.** In 2011, the total SEP contributions for an eligible employee are limited to the lesser of 25% of his/her taxable compensation or \$49,000. For tax years after 2011, this dollar limit may be increased to reflect cost-of-living adjustments, if any.
- **Self-Employed Individuals.** SEP contributions for a self-employed individual are based on his/her earned income, reduced by his/her employer contributions under the SEP and any other Tax-Qualified Retirement Plans, and one-half of his/her self-employment taxes. The following formula may be used to determine the SEP contribution for a self-employed individual under the Discretionary Contribution Method:

$$\frac{\text{Earned Income (As Adjusted)} \times \text{Contribution \%}}{1 + \text{Contribution \%}}$$

In 2011, the total SEP contributions for a self-employed individual are limited to the lesser of 20% of his/her net earnings or \$49,000. For tax years after 2011, this dollar limit may be increased to reflect cost-of-living adjustments, if any.

You should work closely with your tax advisor to ensure that SEP contributions are properly calculated. Failure to properly calculate SEP contributions could subject the employer to a 10% excise tax on nondeductible contributions to a SEP.

Providing Information to Employees

- **Start-Up Materials.** Provide a copy of the SEP Plan Adoption Agreement, SEP Plan document and Information for Employees to each employee when he/she becomes eligible under the SEP Plan.
- **Annual Statements and Notices.** Provide each eligible employee with a statement showing the SEP Plan contribution made to his or her SEP IRA no later than January 31 following the year for which the contribution is made or, if later, 30 days after the contribution is made.
- **Other Information.** Provide each eligible employee with a copy and explanation of any SEP Plan amendment within 30 days of the amendment's effective date.

Government Reporting—Form 5500

In general, an employer utilizing the Morgan Stanley Smith Barney SEP Plan need not file Form 5500, provided that (1) it provides the Start-Up Materials, as well as the Annual Statements and Notices and Other Information, to Employees as noted above, and (2) it (i) does not select, recommend or influence its employees to choose a particular SEP IRA or type of SEP IRA into which employer SEP Plan contributions will be made or (ii) **does** select, recommend or influence its employees to choose a particular SEP IRA or type

of SEP IRA, but it also provides the additional disclosure below and the IRAs are not subject to any provision that prohibits the withdrawal of funds by participants.

If the employer **does** select, recommend or substantially influence its employees to choose the IRAs into which employer contributions under the SEP Plan will be made, in order to avoid increased reporting and disclosure requirements the employer must also provide, at the time an employee becomes eligible to participate in the SEP Plan and in addition to the other disclosures noted above, a clear written explanation of the terms of those IRAs, such as the rates of return and any restrictions on a participant's ability to "roll over," transfer, or withdraw funds from the IRAs (including restrictions that allow rollovers or withdrawals but reduce earnings of the IRAs or impose other penalties).

Completing the SEP Plan Adoption Agreement

- Employer Information.** Provide the requested information on your business. Your tax identification number is the number that you use to report federal income tax withholding on Form 941, 944 or 945. If you do not have a number for your business, you must obtain one by filing Form SS-4. Notify your Morgan Stanley Smith Barney Financial Advisor, branch or other Morgan Stanley Smith Barney servicing area as soon as you obtain this number.
- Plan Information.** Provide the requested information on the Plan. If you are establishing a new SEP, the Effective Date of the Adoption Agreement should be the first day for which any discretionary contributions will be based. If the Effective Date is not the first day of a Plan Year, the first Plan Year will be a short Plan Year (less than 12 months).
- Eligibility Requirements.** Age, compensation and length of service are key factors in deciding who will be eligible for your SEP Plan. The SEP Plan allows you to count service with a former employer. For example, a former sole proprietor that is now an incorporated employer may wish to count service during the period the employer was a sole proprietor. Enter the name of the former employer and the date from which service will be credited.
- Discretionary Employer Contributions.** Indicate the method to be used to allocate discretionary employer contributions.
- Compensation.** Indicate the compensation definition to be used for SEP Plan purposes (i.e., the definition to be used unless another definition is required to be used for a particular purpose under the plan or applicable law), including for purposes of allocating discretionary employer contributions.
- Top-Heavy Minimum Contribution/Coordination with Other Plans.** Complete Section F.1 only if the employer (or a related employer) maintains another plan, or the top-heavy minimum contribution will be made to another plan.
- Execution of Adoption Agreement.** The Adoption Agreement must be signed and dated by persons authorized to adopt the SEP Plan on behalf of the employer. Your Morgan Stanley Smith Barney Financial Advisor, branch or other Morgan Stanley Smith Barney servicing area should complete the Morgan Stanley Smith Barney contact information.

For Internal Use Only

Branch No.

Account No.

Financial Advisor No.

SEP Plan Adoption Agreement

A. Employer Information

EMPLOYER'S NAME

ADDRESS

CITY

STATE

ZIP CODE

EMPLOYER'S FEDERAL TAX ID NUMBER

EMPLOYER'S TELEPHONE NUMBER

Employer's Tax Year

Calendar Year Year Ending _____
Month and Date

B. Plan Information

1. Adoption of SEP Plan.

- The Employer hereby adopts and establishes a Simplified Employee Pension.
- The Employer amends its existing Simplified Employee Pension originally effective on _____

2. Effective Date of this Adoption Agreement _____
Month, Day and Year

3. Plan Year Calendar Year Employer's Tax Year

4. The individual designated by the Employer to provide additional information concerning the SEP Plan is:

NAME AND TITLE

ADDRESS

CITY

STATE

ZIP CODE

TELEPHONE

C. Eligibility Requirements for Participation in the Sep Plan

An Employee will be an Eligible Employee for any Plan Year if he or she (a) meets all of the eligibility requirements selected in 1, 2 and 3 below, and (b) is not excluded under 4 below.

1. Age Requirement

- No minimum Age requirement Has reached at least Age: _____ (not to exceed 21)
- (If neither option is selected, you will be deemed to have elected "No minimum Age requirement.")*



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2. Service Requirement

- No minimum Service requirement
- Has performed Service for the Employer in at least 1, 2 or 3 of the immediately preceding 5 Plan Years.

(If neither option is selected, you will be deemed to have elected "No minimum Service requirement.")

Service with former employer(s) will be treated as Service for the Employer in accordance with the following *(Name of former employer and date from which Service will be recognized under the SEP Plan (or enter N/A))*:

NAME DATE

3. Compensation Requirement

- No minimum Compensation requirement
- Has received Compensation for Plan Year of at least: \$_____ (enter an amount not more than the 408(k)(2)(C) SEP Compensation requirement amount, as adjusted—(\$550 for 2011.) *(If this option is selected and no amount is entered, you will be deemed to have entered the maximum SEP Compensation requirement amount.)*

(If neither option is selected, you will be deemed to have elected "No minimum Compensation requirement.")

4. Exclusions

For purposes of determining which Employees are eligible to participate, the following Employees are excluded from consideration:

- Employees who for the entire Plan Year are covered by a collective bargaining agreement ("CBA") between employee representatives and the Employer, if retirement benefits were the subject of good faith bargaining and the CBA does not expressly provide for participation in the Plan. Participation by Employees covered by a CBA is governed by the terms of the CBA.
- Employees who for the entire Plan Year are nonresident aliens with no U.S. source income from the Employer.

D. Discretionary Employer Contributions

The Employer may make contributions to the SEP Plan, and if they are made for any given Plan Year, they will be made in accordance with the following formula (see Plan Section 4.02 for a description of each type of contribution formula)(select one formula):

- Discretionary Contribution Formula (Section 4.02(a)) **OR**
- Discretionary Integrated Contribution Formula (Section 4.02(b))
 - The Integration Rate will be: the Maximum Disparity Rate _____% (not to exceed the Maximum Disparity Rate)
 - The Integration Level will be: the Social Security taxable wage base _____% of the Social Security taxable wage base
(not to exceed 100%)

E. Compensation

For purposes of this Plan, Compensation shall mean (If no election is made, the choice marked "Default" will apply):

- Form W-2 Wages [Default]
- Section 3401(a) Wages
- Section 415 Safe-Harbor Compensation

Please indicate if Compensation shall include the following types of post-severance compensation:

- No post-severance compensation shall be included, except as required by law [Default]
- Unused accrued leave that the Employee could have used if employment continued
- Taxable payments from a nonqualified unfunded deferred compensation plan

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F. Top-Heavy Minimum Contribution/Coordination With Other Plans (Optional)

1. The minimum top-heavy contribution described in Section 5.01 will be made to the following plan(s):

2. Any adjustments to contributions in accordance with Section 5.01 (i.e., pursuant to Code Section 415) will be made to the plans sponsored by the Employer in the following order:

Profit Sharing Plan, Money Purchase Pension Plan, Target Benefit Plan, 401(k) Plan, Simplified Employee Pension Plan

Other: _____

G. Execution of Adoption Agreement

The Employer hereby adopts the Morgan Stanley Smith Barney LLC SEP Plan, subject to the selections made in this Adoption Agreement, and subject further to receipt of an executed copy of this Adoption Agreement by your Morgan Stanley Smith Barney Financial Advisor, branch or other Morgan Stanley Smith Barney servicing area

on this _____ day of _____, 20_____.

EMPLOYER (NAME OF EMPLOYER)

BY: (SIGNATURE OF AUTHORIZED OFFICER, MEMBER, PARTNER OR SOLE PROPRIETOR) AND TITLE

Morgan Stanley Smith Barney LLC

(800) 844-6119

NAME OF PROTOTYPE SPONSOR

PHONE

2000 Westchester Avenue

ADDRESS

Purchase

NY

10577

CITY

STATE

ZIP

NOTE: If the Employer adopts this prototype SEP Plan in accordance with the form approved by the Internal Revenue Service and observes the provisions thereof, the affected taxpayers may rely on Morgan Stanley Smith Barney LLC's opinion letter, provided that (a) SEP Plan contributions are made to an Internal Revenue Service-approved prototype or model traditional IRA, and (2) contributions under the SEP Plan do not (in combination with another SEP or defined contribution plan of the Employer) fail to satisfy the requirements of Code Section 415.

If the Employer maintains any combination of defined contribution plans, the Employer should apply to the appropriate district office of the Internal Revenue Service for a determination as to whether that plan, or those plans, in combination with this SEP Plan, satisfy the requirements of Code Section 415.

For more information regarding the SEP Plan, contact your Morgan Stanley Smith Barney Financial Advisor, branch or other Morgan Stanley Smith Barney servicing area.

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SEP Plan Information for Employees

This information explains what the SEP Plan is, how contributions are made to the SEP Plan, and how to treat your Employer's contributions for tax purposes. Please read this information carefully.

For more specific information, also see the SEP Plan Adoption Agreement and SEP Plan document that are provided to you by your Employer. In the event of any conflict between this information and the terms of those SEP Plan documents, the terms of those documents will control.

Introduction

The Simplified Employee Pension Plan ("SEP Plan") is a plan designed to give your Employer a simplified way to provide contributions toward your retirement income. Under this SEP Plan, your Employer makes contributions directly to a Morgan Stanley Smith Barney or other Individual Retirement Account/Annuity ("IRA") set up by or for you. There is no need for you to file any additional forms with the IRS because you participate in the SEP Plan.

The IRA to which your Employer contributes is referred to as a "SEP IRA." You own and control your SEP IRA, and you, not your Employer, are responsible for all investment decisions regarding your SEP IRA. In general, SEP Plan contributions become your property as soon as they are deposited in your SEP IRA (but special rules may apply to contributions in excess of IRS limits).

Participation in the SEP Plan

Each Employee who satisfies each of the following requirements before the end of the plan year is eligible to participate in the SEP Plan and to receive a share of any Employer contributions made under the SEP Plan for that year even if he or she terminates employment before year-end:

- the Employee is at least 21 years old,
- the Employee has worked for the Employer (or a predecessor (as specified in the SEP Plan's Adoption Agreement) or related employer) for any period of time in at least three of the preceding five plan years, and
- the Employee has earned at least \$550 (in tax year 2011) of compensation from the Employer during the plan year. This dollar limit may be adjusted annually for cost-of-living increases.

Certain nonresident aliens may not be eligible to participate in the SEP Plan. Further, participation by Employees covered by a collective bargaining agreement (and the extent of that participation) will be determined by collective bargaining.

Your Employer's SEP Plan may have less restrictive eligibility requirements than those described above. Your copy of the Adoption Agreement signed by your Employer will indicate whether your Employer's SEP Plan has less restrictive eligibility requirements.

Note that an Employer may elect to make the SEP Plan "plan year" the same as the calendar year or the Employer's taxable year. The determination of who participates (and other SEP Plan determinations) will be made on the basis of the plan year.

For example, suppose the SEP Plan's plan year is the calendar year. Suppose an Employee worked for the Employer in 2005, 2006, 2007 and 2008 but not in 2009. Also, suppose the Employee reached

age 21 in 2009 and then began working again for the Employer in 2011. If the Employee earns more than \$550 in 2011, the Employee must participate in the SEP Plan in 2011 since the age, service and compensation requirements above will have been met.

All Eligible Employees must participate in the SEP Plan, and your Employer may require that you become a participant in the SEP Plan as a condition of employment. Therefore, an Employer adopting the SEP Plan must require that all Eligible Employees open a SEP IRA to accept SEP Plan contributions. If an Eligible Employee refuses to do so, the Employer is required to open a SEP IRA with Morgan Stanley Smith Barney or another financial institution for the Employee in order to preserve the tax advantages of the SEP Plan for all Eligible Employees.

Discretionary Employer Contributions

Your copy of the Adoption Agreement signed by your Employer will indicate under what conditions your Employer will make discretionary Employer contributions under the SEP Plan, and your Employer will determine whether or not to make a contribution to the SEP Plan for any given plan year. If a contribution is made under the SEP Plan, it must be allocated to all Eligible Employees according to the SEP Plan document. Contributions to a SEP may not discriminate in favor of officers, shareholders/owners, or highly compensated employees. Your allocation is fully vested and may not be forfeited for any reason (but special rules may apply to contributions in excess of IRS limits).

Your Employer will determine the amount of contributions to be made to your SEP IRA each plan year based on your compensation not in excess of the limit provided in the Internal Revenue Code. (The compensation limit is \$245,000 for 2011.) However, the contribution for any plan year is limited to the lesser of \$49,000 for 2011 or 25% of your taxable compensation (20% of your net earnings for self-employed individuals). These dollar limits may be adjusted annually for cost-of-living increases.

The SEP Plan does not require an Employer to maintain a particular level of contribution. It is possible that for a given year no Employer contributions will be made on any Employee's behalf.

The amount your Employer contributes within the limitations described above will not be included in your gross income. Your Employer will have until its tax filing due date (including extensions) to make deductible SEP Plan contributions.

How Discretionary Employer Contributions Are Allocated

Your Employer selects one of two different formulas of allocation in the Adoption Agreement — the Discretionary Contribution Formula or the Discretionary Integrated Contribution Formula.

The Discretionary Contribution Formula

Under this formula, the discretionary Employer contribution will be allocated to the SEP IRAs of all Eligible Employees so that each Eligible Employee receives a uniform percentage of total compensation not in excess of the limit provided in the Internal Revenue Code. See Section 4.02(a) of the SEP Plan document for a detailed description of this formula.

Example: Assume that an incorporated Employer elects to make a discretionary Employer contribution for a plan year equal to 10% of that year's taxable compensation earned by all Eligible Employees. The contribution would be allocated as follows:

Eligible Employee	Compensation	Percent Contribution	SEP Plan Contribution
A	\$25,000	10%	\$2,500
B	\$50,000	10%	\$5,000
C	\$100,000	10%	\$10,000
D	\$200,000	10%	\$20,000
Total SEP Plan Employer Contribution = \$37,500			

The Discretionary Integrated Contribution Formula

This formula takes into account the fact that certain amounts have already been paid by your Employer as Social Security taxes on your behalf. As a result, those Eligible Employees whose earnings exceed the Social Security taxable wage base for the year (\$106,800 for 2011) will generally receive a larger allocation of discretionary Employer contributions than those Eligible Employees earning less than the taxable wage base. Although Employer contributions under the SEP Plan must bear a uniform relationship to Employees' compensation, your Employer is entitled to offset or reduce its contribution by certain amounts already paid by your Employer on your behalf as Social Security taxes. This reduction may eliminate or substantially reduce the allocation you would otherwise receive. This is called "integration" with Social Security, and is permissible only if statutory requirements are satisfied.

Under the Integrated Contribution Formula, the discretionary Employer contributions are allocated to the SEP IRAs of Eligible Employees under a multiple-step formula. See Section 4.02(b) of the SEP Plan document for a detailed description of this formula.

Example: Assume that an incorporated Employer elects to make a discretionary Employer contribution equaling \$37,500 (10% of all Eligible Employees' taxable compensation) for the 2011 plan year and to allocate the contribution using the Integrated Contribution Formula. Using the 2011 Social Security taxable wage base of \$106,800, the contributions would be allocated as follows:

SEP Plan Contribution						
Eligible Employee	Compensation	Step 1	Step 2	Step 3	Step 4	Total
A	\$25,000	\$750 +	\$0 +	\$675 +	\$721 =	\$2,146
B	\$50,000	\$1,500 +	\$0 +	\$1,350 +	\$1,442 =	\$4,292
C	\$100,000	\$3,000 +	\$0 +	\$2,700 +	\$2,883 =	\$8,583
D	\$200,000	\$6,000 +	\$2,796 +	\$7,916 +	\$5,767 =	\$22,479
	\$375,000	\$11,250	\$2,796	\$12,641	\$10,813 =	\$37,500

Note that the Social Security taxable wage base generally increases each year and any such increase will affect your allocation.

Limits

The total contributions to your SEP IRA attributable to discretionary Employer contributions may not exceed the lesser of \$49,000 in 2011 (as adjusted for future years) or 25% of your taxable compensation (20% of your net earnings for self-employed individuals) (the "Contribution Limit"). The maximum amount of taxable compensation that can be considered for plan purposes may be adjusted for inflation in certain years. For 2011, this figure is \$245,000. Any contributions in excess of the Contribution Limit should be treated by you on your individual tax returns as your individual contributions to a traditional IRA. Please remember that all individual contributions, to all IRAs that you maintain, must be considered when assessing whether you have complied with the limits on such contributions. Any excess contributions (including the earnings) by you or by your Employer beyond the Contribution Limit (or your regular, traditional IRA limit) may be withdrawn, without penalty, on or prior to the due date (plus extensions) for filing your tax return. Excess contributions left in your SEP IRA after that time may have adverse tax consequences (including the application of a 6% penalty tax for each year the excess contribution remains in your account) and withdrawals of those contributions may be taxed as premature withdrawals.

Coverage Under Other Plans

If you are covered under the SEP Plan and one or more qualified retirement plans maintained by your Employer (or by an unrelated employer), special rules under Code Section 415 may limit the amount which may be contributed on your behalf for that year.

If you are employed by more than one unrelated employer during the year, you may be covered under more than one SEP, but contributions in excess of the Contribution Limit described above (which is applied separately with respect to each unrelated employer) are includible in your gross income, and treated as excess contributions (see above for adverse tax consequences for excess contributions).

Individual IRA Contributions

You may make a regular individual IRA (non-Roth) contribution to your SEP IRA — generally up to \$5,000 or 100% of your compensation, if less. If discretionary Employer contributions are made to your SEP IRA or another qualified retirement plan, you will be considered an "active participant" in a retirement plan. As such, the amount of your IRA contribution that can be deducted will be limited if your income exceeds a specified level. You should refer to the terms of your SEP IRA agreement and the SEP IRA disclosure material for additional information. Individuals age 50 or older may contribute additional "catch-up contributions" (up to \$1,000 in 2011).

Withdrawals and Rollovers

You may withdraw your discretionary Employer contributions from your SEP IRA at any time. Any amount withdrawn is includible in your income (unless it is properly rolled over as described below). Furthermore, you may be subject to an additional 10% penalty tax on the amounts withdrawn, if such withdrawals are made before you reach age 59½ and are not made on account of one of the

following exceptions: (a) distributions made to the beneficiary on or after the account holder's death, (b) distributions due to the individual's being disabled, (c) distributions that are part of a series of substantially equal periodic payments that are made at least annually for the life of the individual or the joint lives of the individual and his or her beneficiary, (d) distributions used to pay for medical expenses which exceed 7.5% of your adjusted gross income (AGI), (e) distributions used to pay for health insurance if you have collected unemployment compensation benefits for at least 12 weeks, (f) distributions used for the purchase of your first home, not to exceed \$10,000 in your lifetime, (g) distributions used to pay college tuition and expenses for you or a family member, (h) distributions used to satisfy an IRS levy of the SEP Plan, or (i) distributions taken as qualified reservist distributions.

It is possible for you to withdraw funds from your SEP IRA tax-free if you reinvest them within 60 days in your SEP IRA or another eligible IRA. This is called a "rollover" and may not be done more frequently than once per IRA in any 12-month period without penalty. If you do not satisfy these rollover rules, the withdrawal will be a taxable distribution from your SEP IRA.

However, there is no 12-month waiting period if you arrange to have funds directly transferred between IRA custodians or trustees, so that you never take possession of the withdrawal. Because there is no distribution to you, the transfer is generally tax-free.

SEP Plan contributions may be deposited in any SEP IRA which will accept them; however, this SEP Plan and the SEP IRA into which your SEP Plan contributions are deposited must be preapproved as to form (e.g., use of model IRS document or submitted for IRS approval), must satisfy all statutory and regulatory requirements and must also be operated and maintained in accordance with their respective terms and current statutes and regulations.

Your SEP Plan contributions will initially be deposited in a Morgan Stanley Smith Barney Traditional IRA or another IRA selected by you. The Morgan Stanley Smith Barney Traditional IRA has been approved by the IRS as a prototype IRA. If you select another IRA or exercise your right to transfer to another IRA, that IRA should be either an IRS-approved model or a prototype IRA with an official opinion letter from the IRS. Note that you cannot use a SIMPLE IRA or a Roth IRA under a SEP. You should also make sure that the terms of the other IRA authorize SEP Plan contributions up to the Contribution Limit described above.

Income Tax Treatment of Your SEP Plan Contributions

Employer contributions to your SEP IRA are excluded from your income, unless there are contributions in excess of the applicable contribution limits (as discussed above). Employer contributions within these limits will not be included on your W-2.

Although there is no direct prohibition against making the SEP Plan contributions to your spouse's IRA, it may result in adverse tax consequences. Please remember that a transaction of this sort could result in complex tax consequences requiring professional advice.

Income Tax Treatment of Your SEP IRA Distributions

SEP IRA distributions are includible in income (unless rolled over) and are not eligible for capital gains treatment. As mentioned above,

certain withdrawals and distributions made prior to age 59½ are subject to an additional 10% penalty tax.

IRA Disclosure

Morgan Stanley Smith Barney or any other institution where you establish your SEP IRA must also provide you with an IRA disclosure statement containing the following items of information in plain, non-technical language:

1. the statutory requirements which relate to your IRA;
2. **the tax consequences which follow the exercise of various options** and what those options are;
3. **participation eligibility rules, and rules on the deductibility and non-deductibility of retirement savings;**
4. the circumstances and procedures under which you may revoke your IRA, including the name, address and telephone number of the person designated to receive notice of revocation (this explanation must be prominently displayed at the beginning of the disclosure statement);
5. explanations of when penalties may be assessed against you because of specified prohibited or penalized activities concerning your IRA; and
6. financial disclosure information which (a) projects the value of your IRA under various contribution and retirement schedules as well as growth rates or describes the method of computing and allocating annual earnings and charges which may be assessed; (b) describes whether, and for what period, the growth projections for the IRA are guaranteed, or a statement of the earnings rate and terms on which the projections are based; and (c) states the sales commission, if any, to be charged in each year expressed as a percentage of \$1,000.

In addition to this disclosure statement, you must be provided with a financial statement each year. It may be necessary to retain and refer to statements for more than one year in order to evaluate the investment performance of the IRA.

See Publication 590, Individual Retirement Arrangements, available at any IRS office or online at www.irs.gov for more information on IRAs.

Additional Information from Your Employer

In addition to this Information for Employees notice, your Employer must also provide you with a copy of the signed SEP Plan Adoption Agreement and the SEP Plan document. Your copy of the Adoption Agreement indicates the name and title of the individual(s) designated by your Employer to provide additional information to Employees concerning the SEP Plan.

Each year your Employer will give you a statement showing any contributions it made to your SEP IRA. This statement must be given to you by the later of (a) January 31 of the year following the year for which a contribution is made or (b) 30 days after the contribution has been made.

Your Employer is also required to give you a copy of any amendment made to the SEP Plan Adoption Agreement or SEP Plan document and a clear written explanation of its effect. These materials must be furnished to you within 30 days of the effective date of the amendment.

Also, please note that:

- IRAs other than the IRA(s) into which Employer contributions will be made under the SEP Plan may provide different rates of return and may have different terms concerning, among other things, transfers and withdrawals of funds from the IRAs.
- **In the event you are entitled to make a contribution or rollover to an IRA, such contribution or rollover can be made to an IRA**

other than the one into which Employer contributions under the SEP Plan are to be made.

- **Depending on the terms of the IRA into which Employer contributions are made, you may be able to make rollovers or transfers of funds from that IRA to another IRA.**

Morgan Stanley Smith Barney LLC SEP Plan

Article I

PURPOSE. This SEP Plan, the SEP Plan Adoption Agreement and the Individual Retirement Accounts/Annuities established for Eligible Employees are intended to be a “simplified employee pension” as defined in Code Section 408(k).

Article II

DEFINITIONS. The capitalized terms in this SEP Plan document and in the SEP Plan Adoption Agreement will have the meanings assigned to those terms in this Article II.

2.01 Adoption Agreement means the SEP Plan Adoption Agreement which is a part of this SEP Plan.

2.02 Age means the age attained on the employee’s birthday in the current Plan Year.

2.03 Beneficiary means a person designated in writing by an Eligible Employee to receive payment under the Plan in the event of such Eligible Employee’s death.

2.04 Code means the Internal Revenue Code of 1986, as amended.

2.05 Compensation means the amount defined below as selected by the Employer in the Adoption Agreement

- (a) **Form W-2 Wages.** Compensation is defined as wages within the meaning of Code Section 3401(a) and all other payments of compensation to an Employee by an Employer (in the course of the Employer’s trade or business) for which the Employer is required to furnish the Employee with a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. Compensation must be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).
- (b) **Section 3401(a) Wages.** Compensation is defined as wages within the meaning of Code Section 3401(a) for the purposes of income tax withholding at the source, but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Code Section 3401(a)(2)).
- (c) **Section 415 Safe-Harbor 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 SEP Plan to the extent that the amounts are includable in gross income (including, but not limited to, commissions paid to salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, bonuses, fringe benefits, and reimbursements and other expense allowances under a nonaccountable plan (as

described in Regulations Section 1.61-2(c)), and excluding the following:

1. Employer contributions to a plan of deferred compensation which are not includable in the Employee’s gross income for the taxable year in which contributed, or Employer contributions under a SEP, or any distributions from a plan of deferred compensation;
2. Amounts realized from the exercise of a nonstatutory stock option, or when restricted stock (or property) held by the Employee either becomes freely transferable or is no longer subject to a substantial risk of forfeiture;
3. Amounts realized from the sale, exchange or other disposition of stock acquired under a statutory stock option;
4. Other amounts which received special tax benefits, such as premiums for group-term life insurance (but only to the extent the premiums are not includable in the gross income of the Employee); and
5. Other items of remuneration that are similar to any of the items listed in (1) through (4) above.

For any self-employed individual covered under this SEP Plan, Compensation will mean earned income.

Compensation shall include only that Compensation which is actually paid or made available to the Eligible Employee during the year.

Compensation shall comply with Code Section 415(c)(3) and Treasury Regulation Section 1.415(c)-2(d), as selected in the Adoption Agreement, as modified by the non-elective provisions of Treasury Regulation Sections 1.415(c)-2(e) and (g), as described below. Compensation shall include (1) regular compensation for services that, absent a severance from service, would have been paid to the Eligible Employee if the Employee continued in employment with the Employer, in accordance with Treasury Regulation Section 1.415(c)-2(e)(3)(ii), provided that such compensation is paid by the later of 2½ months after severance from employment or the end of the limitation year in which the severance from employment occurred, and (2) payments of back pay within the meaning of Treasury Regulation Section 1.415(c)-2(g)(8). Compensation shall also include “differential wage payments” within the meaning of Code Section 3401(h)(2) to an individual who is performing qualified military service described in Code Section 414(u)(5). Notwithstanding the foregoing, if elected in the Adoption Agreement, the following post-severance compensation shall be included, provided that such compensation is paid by the later of 2½ months after severance from employment or the end of the limitation year in which the severance from employment occurred and such amounts would have been included in Compensation if they were paid prior to the Employee’s severance from employment: (i) the payment for unused accrued bona fide sick, vacation or other leave that the Employee would have been able to use if employment had continued, or (ii) the payment is received by the Employee pursuant to a nonqualified unfunded deferred compensation

plan and would have been paid at the same time if employment had continued, but only to the extent includable in gross income, in accordance with Treasury Regulation Section 1.415(c)-2(e)(3).

Except as expressly provided in the Plan, an Eligible Employee's Compensation shall include any elective deferral described in Code Section 402(g)(3) or any amount that is contributed by the Employer at the election of the Employee and that is not includable in the gross income of the Employee under Code Sections 125, 132(f)(4) or 457.

The annual Compensation of each Eligible Employee taken into account under the SEP Plan for any year shall not exceed \$200,000, as adjusted for increases in the cost-of-living in accordance with Code Section 401(a)(17)(b). If the SEP Plan determines Compensation for a period of time that contains fewer than 12 calendar months, then the annual Compensation limit is an amount equal to the annual Compensation limit for the calendar year in which the Compensation period begins multiplied by a fraction, the numerator of which is the number of full months in the Compensation period, and the denominator of which is 12.

- 2.06 Custodian** means the financial institution or other entity which serves as trustee or custodian of the Individual Retirement Account of any Eligible Employee hereunder.
- 2.07 Effective Date** means, with respect to the Plan, the effective date specified in Section B.2 of the Adoption Agreement.
- 2.08 Eligible Employee** means for each Plan Year any Employee who satisfies the eligibility requirements described in Section C of the Adoption Agreement.
- 2.09 Employee** means any person employed as a common law employee by the Employer, a Leased Employee, a Self-Employed Individual, or a common law employee of any related employer required to be aggregated with the Employer under Code Sections 414(b), (c), (m) or (o) and any successors to the Employer and the related employers.
- 2.10 Employer** means the sole proprietor, partnership, corporation or Subchapter S corporation named as the Employer in Section A of the Adoption Agreement, all related employers required to be aggregated under Code Sections 414(b), (c), (m) or (o) and any successors to the Employer and the related employers.
- 2.11 Individual Retirement Account/Annuity (SEP IRA)** means a traditional individual retirement account which meets the requirements of Code Section 408(a) or a traditional individual retirement annuity which meets the requirements of Code Section 408(b), and which provides for the receipt of contributions under a Simplified Employee Pension, and which shall be approved by the IRS or shall be the IRS Model Traditional Individual Retirement Account/Annuity.
- 2.12 IRS** means the Internal Revenue Service.
- 2.13 Leased Employee** means an individual who provides services to the Employer pursuant to an agreement between the Employer and another entity (the "leasing organization"), if those services are performed on a substantially full-time basis for a period of at least one year and such services are performed under the primary direction or control of the

Employer. However, an individual is not a Leased Employee if:

- (a) he is eligible to participate in a non-integrated money purchase pension plan maintained by the leasing organization which provides for contributions of at least 10% of compensation on his behalf, immediate participation, and full and immediate vesting; and
- (b) the total number of such individuals who would otherwise be treated as Leased Employees under this Section 2.13 does not constitute more than 20% of the non-highly compensated workforce of the Employer.

The determination of whether an individual is a Leased Employee will be made in accordance with Code Section 414(n).

- 2.14 Plan** means this Simplified Employee Pension Plan as adopted by the Employer.
- 2.15 Plan Administrator** means the Employer.
- 2.16 Plan Year** means the period selected in Section B.3 of the Adoption Agreement for maintaining the books and records of the Plan.
- 2.17 Self-Employed Individual** means an individual described in Code Section 401(c)(1).
- 2.18 Service** means all service as an Employee of the Employer, and, if provided in the Adoption Agreement, with the former employer in accordance with Section 3.02.
- 2.19 Simplified Employee Pension or SEP** means a plan described in Code Section 408(k).
- 2.20 Sponsor** means Morgan Stanley Smith Barney LLC or any successor thereto, if the Employer has delivered an executed copy of the Adoption Agreement to Morgan Stanley Smith Barney LLC. If the Employer has not delivered an executed copy of the Adoption Agreement to Morgan Stanley Smith Barney LLC, the Plan shall not be considered a Morgan Stanley Smith Barney LLC SEP Plan.

Article III

PARTICIPATION

3.01 Eligibility. The SEP Plan shall cover each Employee (including all employees of controlled groups as described in Code Section 414(b), groups under common control as described in Code Section 414(c), and affiliated service groups as described in Code Section 414(m), and all Leased Employees who are not Employees of the Employer but are required to be treated as Employees of the Employer under Code Section 414(n), and all Employees required to be aggregated under Code Section 414(o)) who meet the requirements for Age, Service, and Compensation elected by the Employer in Section C of the Adoption Agreement.

For purposes of determining which Employees are eligible to participate, the Employer may elect in Section C of the Adoption Agreement to exclude the following Employees from consideration:

- (a) Nonresident aliens who receive no earned income from the Employer which constitutes income from sources within the United States, and
- (b) Employees included in a unit of Employees covered by a collective bargaining agreement, if retirement benefits

were the subject of good faith bargaining and the collective bargaining agreement does not expressly provide for participation in the Plan. Participation by Employees covered by a collective bargaining agreement is governed by the terms of such collective bargaining agreement.

3.02 Service. For purposes of satisfying the Service requirement in Section C.2 of the Adoption Agreement, all service as an Employee will be taken into account. Any change in the Plan Year will not deprive an Employee of any Service credit which he would otherwise receive in the absence of such change. Service for a former employer will be treated as Service for the Employer if:

- (a) the Employer describes in Section C.2 of the Adoption Agreement the former employer Service that will be treated as Service under this SEP Plan; or
- (b) the Employer maintains a plan of that former employer.

3.03 Reemployment. Each Eligible Employee who terminates employment with the Employer and is subsequently reemployed will be eligible for coverage under this SEP Plan in any subsequent Plan Year in which he satisfies the eligibility requirements selected in Section C of the Adoption Agreement.

3.04 Requirement to Establish Individual Retirement Account/Annuity. This SEP Plan must be used with an IRS model traditional Individual Retirement Account/Annuity or an IRS-approved prototype traditional Individual Retirement Account/Annuity. If an Eligible Employee does not establish a traditional Individual Retirement Account/Annuity into which the Employer may deposit contributions made under the Plan because the Eligible Employee is unable or unwilling to execute the necessary documents or because the Employer is unable to locate the Eligible Employee, then the Employer shall establish a traditional Individual Retirement Account/Annuity on behalf of such Eligible Employee and the Employer may execute any necessary documents on behalf of such Eligible Employee.

Article IV

DISCRETIONARY EMPLOYER CONTRIBUTIONS

4.01 Contribution Amount. The Employer will determine in its sole discretion whether or not to make a contribution for any Plan Year and the amount, if any, of that contribution. Any Employer contribution will be paid in cash to the Individual Retirement Account/Annuity of each Employee who was an Eligible Employee at any time during the Plan Year, whether or not he is employed by the Employer on the last day of that Plan Year.

4.02 Contribution Formula. Each Employee who satisfies the eligibility requirements elected by the Employer in Section C of the Adoption Agreement will share in an allocation as determined in this Article IV and Section D of the Adoption Agreement.

- (a) **Discretionary Contribution Formula.** The Employer's contribution for each Plan Year shall be allocated to the Individual Retirement Account/Annuity of each Eligible Employee in the same ratio that the Eligible Employee's Compensation bears to all Eligible Employee's Compensation for that year. The amount allocated to each Eligible

Employee's Individual Retirement Account/Annuity will be limited to the lesser of 25% of the Eligible Employee's Compensation or \$40,000, as adjusted under Code Section 415(d). For purposes of the 25% limitation described in the preceding sentence, an Eligible Employee's Compensation does not include any elective deferral described in Code Section 402(g)(3) or any amount that is contributed by the Employer at the election of the Employee and that is not includable in the gross income of the Employee under Code Sections 125, 132(f)(4) or 457.

(b) **Discretionary Integrated Contribution Formula.** Employer contributions for the Plan Year will be allocated to Eligible Employee's Individual Retirement Accounts/Annuities as follows:

Step one: Contributions will be allocated to each Eligible Employee's Individual Retirement Account/Annuity in the ratio that the Eligible Employee's total Compensation bears to all Eligible Employee's total Compensation, but not in excess of 3% of the Eligible Employee's Compensation.

Step two: Any contributions remaining after the allocation in Step One will be allocated to each Eligible Employee's Individual Retirement Account/Annuity in the ratio that the Eligible Employee's Compensation for the Plan Year in excess of the integration level bears to the excess Compensation of all Eligible Employees, but not in excess of 3% of the Eligible Employee's Compensation. For purposes of this step two, in the case of any Eligible Employee who has exceeded the cumulative permitted disparity limit described below, such Eligible Employee's total Compensation for the Plan Year will be taken into account.

Step three: Any contributions remaining after the allocation in Step Two will be allocated to each Eligible Employee's Individual Retirement Account/Annuity in the ratio that the sum of the Eligible Employee's total Compensation and Compensation in excess of the integration level bears to the sum of all Eligible Employee's total Compensation and Compensation in excess of the integration level, but not in excess of the maximum disparity rate. For purposes of this Step Three, in the case of any Eligible Employee who has exceeded the cumulative permitted disparity limit described below, two times such Eligible Employee's total Compensation for the Plan Year will be taken into account.

Step four: Any remaining Employer contributions will be allocated to each Eligible Employee's Individual Retirement Account/Annuity in the ratio that each Eligible Employee's total Compensation for the Plan Year bears to all Eligible Employee's total Compensation for that year.

Overall Permitted Disparity Limits:

Annual overall permitted disparity limit: Notwithstanding the preceding paragraphs, for any Plan Year this SEP Plan benefits any Eligible Employee who benefits under another SEP or qualified plan described in Code Section 401(a) maintained

by the Employer that provides for permitted disparity (or imputes disparity), Employer contributions will be allocated to each Eligible Employee's Individual Retirement Account/Annuity in the ratio that the Eligible Employee's total Compensation for the Plan Year bears to all Eligible Employee's total Compensation for that year.

Cumulative permitted disparity limit: Effective for Plan Years beginning on or after January 1, 1995, the cumulative permitted disparity limit for an Eligible Employee is 35 total cumulative permitted disparity years. "Total cumulative permitted disparity years" means the number of years credited to the Eligible Employee for allocation or accrual purposes under this SEP Plan or any other SEP or any qualified plan described in Code Section 401(a) (whether or not terminated) ever maintained by the Employer. For purposes of determining the Eligible Employee's cumulative permitted disparity limit, all years ending in the same Plan Year are treated as the same year. If the Eligible Employee has not benefited under a defined benefit or target benefit plan for any year beginning on or after January 1, 1994, the Eligible Employee has no cumulative permitted disparity limit.

The integration level shall be equal to the taxable wage base or such lesser amount elected by the Employer in Section D of the Adoption Agreement. The taxable wage base ("TWB") is the contribution and benefit base in effect under Section 230 of the Social Security Act at the beginning of the year.

The maximum permitted disparity rate is equal to the lesser of:

- (I) 2.7%, OR
- (II) the applicable percentage determined in accordance with the table below.

If the integration level:		
is more than:	but not more than:	the applicable percentage is:
\$0	X*	2.7%
X*	80% of TWB	1.3%
80% of TWB	Y**	2.4%

X* = the greater of \$10,000 or 20% of the TWB

Y** = an amount more than 80% of the TWB but less than 100% of the TWB

If the integration level is equal to the taxable wage base, the applicable percentage is 2.7%.

In no event can the amount allocated to each Eligible Employee's Individual Retirement Account/Annuity exceed the lesser of 25% of the Eligible Employee's Compensation or \$40,000, as adjusted under Code Section 415(d). For purposes of the 25% limitation described in the preceding sentence, an Eligible Employee's Compensation does not include any elective deferral described in Code Section 402(g)(3) or any amount that is contributed by the Employer at the election of

the Employee and that is not includable in the gross income of the Employee under Code Sections 125, 132(f)(4) or 457.

4.03 Deductibility of Contributions. Contributions to the SEP Plan are deductible by the Employer for the taxable year with or within which the Plan Year of the SEP 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.

Article V

TOP-HEAVY AND CODE SECTION 415 REQUIREMENTS

5.01 Coordination With Other Plans. If the Employer currently maintains any other qualified defined contribution plan or simplified employee pension plan, any adjustments required to satisfy Code Section 415 will be made in the contributions under such plan or plans. The Employer may choose to specify an alternative order in Section F of the Adoption Agreement for the adjustment of contributions required to satisfy Code Section 415. If the Employer maintains or ever maintained such other plan or plans, the Employer should request a ruling from the IRS as to whether such other plan or plans (in combination with this SEP Plan) satisfy the requirements of Code Section 415.

5.02 Top-Heavy Requirements.

- (a) Unless another plan of the employer is designated in the Adoption Agreement to satisfy the top-heavy requirements of Code Section 416, each year this SEP Plan is "top-heavy" (as defined below) the Employer will make a minimum contribution to the SEP IRA of each non-key employee eligible to participate, which, in combination with other nonelective contributions, if any, is equal to the lesser of 3% of such Employee's Compensation or a percentage of Compensation equal to the percentage of Compensation at which contributions are made under the SEP Plan for the Plan Year for the key employee for whom such percentage is the largest.
- (b) For purposes of satisfying the minimum contribution requirement under Code Section 416, all contributions under the SEP Plan shall be taken into account.
- (c) Definitions. A "key employee" is any Employee or former Employee (and the beneficiaries of these Employees) who, at any time during the preceding Plan Year, was:
 - (I) An officer of the Employer with Compensation greater than \$130,000 (as adjusted under Code Section 416(i)(1)(a));
 - (II) A 5% owner of the Employer as defined in Code Section 416(i)(1)(B)(i); or
 - (III) A 1% owner of the Employer with Compensation greater than \$150,000.

This SEP Plan is "top-heavy" for a Plan Year if, as of the last day of the preceding Plan Year, the total of contributions made on behalf of key employees for all the years this SEP Plan has been in existence exceeds 60% of such contributions for all Employees. If the Employer maintains (or maintained within the preceding Plan Year) any other SEP or qualified plan

in which a key employee participates (or participated), the contributions, account balances or present value of accrued benefits, whichever is applicable, must be aggregated with contributions made under this SEP Plan. The contributions (and account balances and present value of accrued benefits, if applicable) of an Employee who ceases to be a key employee, or of an individual who has not performed services for the Employer in the preceding Plan Year, shall be disregarded. The identification of key employees and the top-heavy calculation shall be determined in accordance with Code Section 416 and any guidance issued thereunder.

Article VI

PLAN ADMINISTRATION

6.01 Administration. The Employer will have the exclusive responsibility and complete discretionary authority to control the operation, management and administration of the Employer's SEP Plan, with all powers necessary to enable it to properly carry out such responsibilities, including (but not limited to) the power to construe the SEP Plan and the related Adoption Agreement, to determine eligibility for benefits and to resolve all interpretative, equitable or other questions that arise under the Employer's SEP Plan. The decisions of the Employer on all matters within the scope of its authority will be final and binding. The Employer will process any applicant's claim for benefits under the SEP Plan in accordance with the requirements of ERISA to the extent applicable.

The Employer will be responsible for the operation and administration of the Employer's SEP Plan and, if the SEP Plan is subject to ERISA, will be the "named fiduciary" and "plan administrator." The Employer may designate in writing a person who is not a named fiduciary to carry out any of its responsibilities under the SEP Plan. The Employer is hereby designated as agent for service of legal process.

6.02 Expenses. Any administrative expenses in connection with the establishment or maintenance of the Employer's SEP Plan, including expenses attendant to amending this document to comply with the Code and related laws and regulations will be the responsibility of the Employer. However, any expenses or fees in connection with the establishment or maintenance of an Eligible Employee's Individual Retirement Account/Annuity will be paid in accordance with the terms of his Individual Retirement Account/Annuity.

6.03 Information and Reports. The Employer will supply reports to the Secretary of the Treasury and the Secretary of Labor as may be required from time to time. The Employer will comply with the requirements of federal rules and regulations applicable to the SEP Plan and will supply the Sponsor with information necessary for it to comply with its duties under applicable law and under its contracts.

Article VII

ADOPTION, AMENDMENT OR TERMINATION OF THE PLAN

7.01 Sponsor Amendment. The Sponsor hereby reserves the right to amend the terms of this SEP Plan and the Adoption Agreement from time to time, including any amendments to accommodate any changes in applicable federal or state laws, regulations or interpretations thereof. The Sponsor will notify the Employer of any such amendments.

7.02 Employer Amendment. The Employer may amend any provisions of the Employer's SEP Plan at any time. If an Employer chooses to amend the Employer's SEP Plan, other than by changing an election or designation provided in the Adoption Agreement or by adoption of any amendment made by the Sponsor, or if the Employer chooses not to adopt any amendment made by the Sponsor within the period of time permitted by law, then the Employer's SEP Plan will no longer be considered a prototype SEP Plan and thereafter will be considered an individually designed SEP.

7.03 Termination. The Employer may at any time terminate the Employer's SEP Plan by an instrument in writing. If the Employer's SEP Plan should terminate for any reason, any Individual Retirement Account/Annuity established under the SEP Plan for the benefit of an Eligible Employee will remain his separate Individual Retirement Account/Annuity, subject to the provisions of law generally applicable to an Individual Retirement Account/Annuity, without regard to the provisions of law relating to a SEP Plan.

7.04 Termination of Prototype Status. Nothing in the SEP Plan is intended to prohibit its adoption or maintenance as an individually designed plan. If this SEP Plan is adopted as or is considered to be an individually designed plan, the Employer may not rely on the opinion letter issued to the Sponsor, the Sponsor will have absolutely no responsibility for such individually designed plan, and the Employer's SEP will be subject to the rules and procedures of the IRS applicable to an individually designed SEP. The Sponsor hereby reserves the right to notify the Employer, in writing, that the Employer's SEP Plan will no longer be considered a prototype SEP Plan and thereafter will be considered an individually designed SEP (e.g., in the event the Sponsor determines that it will be unable to comply with the amendment notification requirement under Section 701 or the Employer no longer maintains the requisite Individual Retirement Account/Annuity with the Custodian).

7.05 Notification of Change in Prototype Status. The Sponsor shall promptly notify the Employer of any amendments to the SEP Plan. The Sponsor shall promptly notify the Employer if the Sponsor will no longer sponsor this SEP Plan.

Article VIII**MISCELLANEOUS**

- 8.01 Headings Not a Part Hereof.** The headings of Articles and Sections in this SEP Plan are included for convenience only and will not be considered a part of, or any aid to, its construction.
- 8.02 Nonalienation of Benefits.** The interest of benefits of any Eligible Employee or his Beneficiaries under this SEP Plan will be neither transferable nor subject to alienation, assignment or encumbrance by him or his Beneficiaries, except to the extent permitted by law.
- 8.03 Exclusive Benefit.** Contributions made under the SEP Plan will not be used for, or diverted to, any purpose other than the exclusive benefit of Eligible Employees and their Beneficiaries.
- 8.04 No Guaranty of Employment.** Nothing contained in the SEP Plan will give any Employee any right, legal or equitable, to continued employment with the Employer.
- 8.05 No Restrictions on Withdrawal.** Withdrawals from an Individual Retirement Account/Annuity may be made in accordance with and subject to the terms and conditions of the Individual Retirement Account/Annuity. The Employer may not preclude an Employee or former Employee from withdrawing any amount contributed to his Individual Retirement Account/Annuity or otherwise impose restrictions on such withdrawals.

In addition, an Employer may not condition any future contributions on the retention of any portion of those contributions in the Employee's Individual Retirement Account/Annuity.

- 8.06 Nonforfeitability of Contributions.** All contributions made under the SEP Plan will be nonforfeitable when made.
- 8.07 Nondiscrimination.** The SEP Plan will in no way be construed to permit Employer contributions which discriminate in favor of any highly compensated Employee.
- 8.08 New York Law Applies.** The Plan shall be construed, administered and enforced in accordance with the laws of the State of New York, to the extent permitted by law.
- 8.09 Gender.** For the purposes of the Plan, words in the masculine include the feminine and neuter genders, words in the neuter include the masculine and feminine genders, the singular includes the plural and vice versa, unless qualified by the context.
- 8.10 Sponsor.** The Sponsor will not be required to determine that any action by the Employer or an Employee, former Employee or Beneficiary is authorized by the SEP Plan or applicable law. The Sponsor assumes no responsibility for the administration or operation of the Employer's SEP Plan or the effect of the Employer's SEP Plan under federal, state or local law.



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Plan Description: Prototype SEP 023
FFN: 50416610000-023 Case: 201100119 EIN: 26-4310844
Letter Serial No: M493075a

MORGAN STANLEY SMITH BARNEY LLC
2000 WESTCHESTER AVENUE
PURCHASE, NY 10577

Contact Person:
Ms. Roslynn B. Perry
Telephone Number:
(202) 283-9624
In Reference To: SE:T:EP:RA
Date: 07/12/2011

Dear Applicant:

In our opinion, the form of your Simplified Employee Pension (SEP) arrangement is acceptable under section 408(k) of the Internal Revenue Code. This SEP arrangement is approved for use only in conjunction with an Individual Retirement Arrangement (IRA) which meets the requirements of Code section 408 and has received a favorable opinion letter, or a model IRA (Forms 5305 and 5305-A).

Employers who adopt this approved plan will be considered to have a retirement savings program that satisfies the requirements of Code section 408 provided that it is used in conjunction with an approved IRA. Please provide a copy of this letter to each adopting employer.

Code section 408(l) and related regulations require that employers who adopt this SEP arrangement furnish employees in writing certain information about this SEP arrangement and annual reports of savings program transactions.

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

If you have any questions concerning IRS processing of this case, call us at the above telephone number. Please refer to the Letter Serial Number and File Folder Number shown in the heading of this letter. Please provide those adopting this plan with your phone number, and advise them to contact your office if they have any questions about the operation of this plan.

You should keep this letter as a permanent record. Please notify us if you terminate the form of this plan.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Andrew E. Zuckerman".

Andrew E. Zuckerman
Director, Employee Plans Rulings and Agreements

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Tax laws are complex and subject to change. Morgan Stanley Smith Barney LLC, its affiliates, and Morgan Stanley Smith Barney Financial Advisors do not provide tax or legal advice and are not “fiduciaries” (under ERISA, the Internal Revenue Code or otherwise) with respect to the services or activities described herein except as otherwise agreed to in writing by Morgan Stanley Smith Barney. This material was not intended or written to be used for the purpose of avoiding tax penalties that may be imposed on the taxpayer. Individuals are urged to consult their tax or legal advisors before engaging in any transaction involving SEP IRAs, SIMPLE IRAs, SAR-SEP IRAs or other tax-advantaged investment vehicles.

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