

MFS® SARSEP Plan



MFS® SARSEP PLAN

Employer forms Kit

Please note:
As of December 31, 1996,
no new SARSEP plans may be established.

EMPLOYER INSTRUCTIONS



For completion of MFS SARSEP forms. Documents are numbered for your convenience.

1. Read all documents, especially Information about the Plan (Document #1) and the Plan Document (Document #2). Keep them for your files.
2. Complete the SARSEP Adoption Agreement (Form #1).
3. Complete the SARSEP Plan Employee Summary (Form #2).
4. Distribute to each employee:
 - SARSEP Plan Employee Summary (Form #2)
 - SARSEP Employee Kit, containing
 - SARSEP Questions & Answers
 - SARSEP Salary Deferral Form
 - IRA Forms Kit (Each participant should complete the MFS IRA Application and, if transferring assets to MFS, the MFS IRA Transfer Form.)
5. Send a copy of the SARSEP Adoption Agreement and SARSEP Contribution Sheet, the original MFS IRA Application and Transfer Form (if applicable) for each participant, and your investment check to:

Regular mail

MFS Service Center, Inc.
P.O. Box 55824
Boston, MA 02205-5824

Overnight mail

MFS Service Center, Inc
c/o Boston Financial Data Services
30 Dan Road
Canton, MA 02021-2809

Any original SARSEP Adoption Agreements will be returned to you, and IRAs cannot be established without signed IRA Applications. Make checks payable to MFS® Heritage Trust Company.

SARSEP NOTICES AND WORKSHEETS

SARSEP Top Heavy Worksheet (Form #3) — This worksheet is kept by the Employer or the Plan Administrator. It is used to determine if the plan is top heavy. Section 6.6 of the enclosed Plan Document describes the corrective action which must be taken if the top heavy percentage exceeds 60%.

SARSEP Deferral Percentage Limit Worksheet (Form #4) — This worksheet is kept by the Employer or Plan Administrator. It is used by the employer to ensure that the plan does not provide benefits to highly compensated employees at a rate higher than that allowed by the IRS. This calculation is based on the percentage of compensation deferred by both highly compensated employees (“HCEs”) and non-highly compensated employees (“NHCEs”). If it is determined that any HCEs are making excess deferral contributions, the employee must receive the Notice of Excess Deferral Contribution, and withdraw the contribution. This test should be done during the plan year in order to notify the employee before the withdrawal period has ended.

SARSEP Notice of Excess Deferral Contributions (Form #5) — This Notice is given to the Employee by the Employer. If an employee has made excess salary deferral contributions, he or she must remove the excess amount from his or her IRA by April 15 of the year following the plan year in which the excess deferral was made. The excess amount is reported to the employee on this Notice, which should be given to the employee before the end of the plan year.

SARSEP Notice of Disallowed Deferrals (Form #6) — This Notice is given to the Employee by the Employer. Salary reduction contributions are not allowed under the SARSEP unless at least 50% of eligible employees elect to make salary deferral contributions. If the plan fails this test, all amounts deferred become taxable and must be removed from the employees’ IRAs. This Notice informs the employee of this requirement and the amount that must be removed.

MFS[®] SARSEP ADOPTION AGREEMENT



For Amendment and Restatement of SARSEP Plans established on or before December 31, 1996

This Adoption Agreement is part of the MFS[®] Prototype Simplified Employee Pension Plan. You must complete this Adoption Agreement properly to amend and restate a SARSEP Plan.

1. Employer Information

ADOPTING EMPLOYER

ADDRESS

CITY

STATE

ZIP CODE

DAYTIME PHONE NUMBER

FEDERAL TAX ID NUMBER

TAXABLE YEAR-END:

MONTH

DAY

2. General Plan Provisions

A. Plan year. Indicate the plan year of your SARSEP:

- (i) calendar year
- (ii) the employer's taxable year beginning _____ and ending _____

B. Effective date. Complete (i) and (ii).

- (i) the original effective date of the plan is ____/____/19____.
- (ii) the effective date of this amendment and restatement is ____/____/20____.

The Employer may elect that the effective date in (ii) above be the first day of the plan year in which this Adoption Agreement is signed or any later date.

3. Employee Eligibility

The Employer may (but need not) exclude any one or more of the following categories of employees from participation in the Plan. Check each kind of employee you wish to exclude. Items (iv) and (v) must also be completed if checked.

The Employer elects to **exclude** from participation in the Plan:

- (i) Employees who have not received at least \$550 of compensation from the Employer during the plan year
- (ii) Employees who are covered by a collective bargaining agreement, if retirement benefits were the subject of good faith bargaining
- (iii) Employees who are nonresident aliens and who receive no earned income from the Employer that constitutes earned income from sources within the United States
- (iv) Employees who have not attained age _____ (not more than 21)
- (v) Employees who have not performed services for the Employer during at least _____ (not more than 3) of the immediately preceding 5 plan years

These exclusions are described in greater detail in Section 3.1 of the Plan.

4. Contributions

A. Compensation.

- Check here only if the Employer does NOT wish to include in the definition of compensation amounts the Employer contributes on behalf of employees, pursuant to a salary deferral form not includible in the employees' income under Code Sections 125, 402(a)(8), 402(h), or 403(b).

B. Allocation of Employer Discretionary Contributions. You must choose one of the following methods for allocating to the SARSEP IRA of each participating employee the discretionary employer contribution (if any) you make for each plan year. If you choose method (iii), you must also complete the "integration level" information. Each of these allocation formulas is described in greater detail in the Plan document.

The Employer elects to allocate discretionary employer contributions according to the

- (i) **Flat Dollar Formula:** Described in Plan Section 5.2(a), under this formula the same dollar amount will be allocated to each participant's IRA.
- (ii) **Pro-Rata Discretionary Formula:** Described in Plan Section 5.2(b), under this formula Employer contributions will be allocated to each participant's IRA as the same percentage of each participant's compensation.
- (iii) **Integrated Discretionary Formula:** Described in Plan Section 5.2(c), under this formula participants whose compensation exceeds the "integration level" will be allocated a higher percentage of the Employer's contribution than participants whose compensation is below the "integration level."

The integration level will be (choose one and complete if you choose (b)):

- (a) The taxable wage base
- (b) _____% of the taxable wage base

C. Elective Deferral Contributions.

1. Source of Contributions. The employer elects to permit elective deferrals to be made from (*choose one*):

- (i) Compensation each payroll period only
- (ii) Bonuses only
- (iii) Both compensation each payroll period and bonuses

2. Top-Paid Group Election.

The Employer:

- does
- does not

elect that, in determining who is a "highly compensated employee," only those employees who both had Compensation in excess of \$90,000 (as indexed) and were in the Top-Paid Group for the preceding year (all as provided in Section 6.3 (b) (ii) of the Plan) shall be included.

5. Top Heavy Rules

Complete this section only if you maintain one or more other retirement plans in addition to this Plan and you wish to use a plan other than this Plan to satisfy the top heavy requirements (to the extent applicable).

The Employer designates the following plan to satisfy the top heavy requirements of Code Section 416:

6. Employer Information

EMPLOYER

SIGNATURE OF AUTHORIZED PERSON

DATE

MFS[®] SARSEP PLAN EMPLOYEE SUMMARY



For MFS[®] Prototype Salary Reduction Simplified Employee Pension Plan

This is a brief summary describing provisions of your Employer's SARSEP Plan. This summary only relates to provisions that are specific to your Employer's Plan. You should read your SARSEP Questions and Answers booklet for more extensive information about the Plan.

1. Plan Year

The taxable year of the Plan ("plan year") is:

- The calendar year
- Your Employer's taxable year (if other than a calendar year)

2. Eligibility To Participate

Your Employer has elected NOT to allow the following employees to participate in the Plan:

- Employees who have not received at least \$550 of compensation during the plan year
- Employees who are covered by a collective bargaining agreement
- Employees who are nonresident aliens
- Employees who have not attained age _____ (not more than 21)
- Employees who have not performed services for the Employer during at least _____ (not more than 3) of the immediately preceding 5 plan years

3. Contributions Permitted

Discretionary Employer and Elective Deferral Contributions: Your Employer may (but is not required to) make discretionary employer contributions to your SARSEP IRA. In addition, eligible employees may make elective deferrals (pretax deferrals of amounts that would otherwise be includible in your taxable income). Your Employer will contribute the amount of your elective deferrals to your SARSEP IRA.

Elective deferrals can be made from:

- Your compensation each payroll period
- Bonuses
- Both compensation each payroll period and bonuses

4. Allocation Of Employer Discretionary Contributions

Your Employer has chosen to allocate the discretionary employer contributions (if any) it makes for any plan year according to the following formula:

- Flat Dollar Formula:** The same dollar amount will be allocated to each participant's IRA.
- Pro-Rata Discretionary Formula:** Employer contributions will be allocated to each participant's IRA as the same percentage of each participant's compensation.
- Integrated Discretionary Formula:** Participants whose compensation exceeds the "integration level" will be allocated a higher percentage of the Employer's contributions than participants whose compensation is below the "integration level."

The integration level will be

- (a) The taxable wage base
- (b) _____% of the taxable wage base

The integrated discretionary allocation formula is described in detail in Part 2 of the SARSEP Questions and Answers booklet.

5. For More Information

If you would like more information or have any questions about your Employer's SARSEP Plan, contact

SARSEP TOP HEAVY WORKSHEET

For MFS® Prototype Salary Reduction Simplified Employee Pension Plan



If the employer maintains another SARSEP plan or qualified retirement plan, this worksheet is not appropriate.

The employer must test the SARSEP plan annually at the end of the plan year to determine whether the plan is top heavy for the plan to comply with Code Section 408(k)(1). If the plan is top heavy for any plan year, the employer may be required to make a minimum contribution on behalf of each employee who is not a key employee (a “non-key employee”). Article 6.6 of the SARSEP Plan document contains an explanation of the top heavy rules.

If your plan is top heavy and you need further guidance, you should consult your own advisor.

Instructions

Indicate if the SARSEP plan was found to be top heavy as of the determination date (the last day of the plan year)

immediately preceding the date of adoption of the MFS Prototype SARSEP Plan. _____ Yes _____ No

STEP 1: Identify each of your employees who is a key employee. To determine who is a key employee, see Article 6 of the SARSEP Plan, Code Section 416(i) and applicable regulations.

The Worksheet

Column A	Column B	Column C	Column D	
Key Employees	Key Employees' Account Balances	Non-key Employees	Non-key Employees' Account Balances	
	TOTAL B		TOTAL D	
		ALL TOTAL		

ITEM E: $\frac{\text{TOTAL B}}{\text{ALL TOTAL}} = \text{Top Heavy Percentage} \%$

- STEP 2:** List each employee or former employee who is a key employee in column A. An individual who was not a key employee or was not employed by the employer at any time during the plan year preceding the plan year for which the test is being conducted should not be included as a key employee.
- STEP 3:** In column B, list the total contributions made by the employer to the key employee's SARSEP IRA from the key employee's initial participation in the plan through the last day of the previous plan year.
- STEP 4:** List each employee or former employee who is not a key employee in column C. An individual who has not been employed by the employer at any time during the plan year preceding the plan year for which the test is being conducted should not be included as a non-key employee.
- STEP 5:** In column D, list the total contributions made by the employer to the non-key employee's SARSEP IRA from the non-key employee's initial participation in the plan through the last day of the previous plan year.
- STEP 6:** Add all of the contribution amounts listed in column B for key employees, and enter the total in the TOTAL B box at the bottom of column B.
- STEP 7:** Add all of the contribution amounts listed in column D for non-key employees, and enter the total in the TOTAL D box at the bottom of column D.
- STEP 8:** Add the amount in the TOTAL B box plus the amount in the TOTAL D box and enter the sum in the ALL TOTAL box.
- STEP 9:** In Item E, determine the percentage that the total contributions of all key employees is of the total contributions of all employees (TOTAL B divided by ALL TOTAL). Enter the percentage in Item E. This is the top heavy percentage.
- STEP 10:** If the top heavy percentage is less than or equal to 60%, the plan is not top heavy. If the top heavy percentage is greater than 60%, the plan is top heavy; see Article 6 of the SARSEP Plan.



SARSEP DEFERRAL PERCENTAGE LIMIT WORKSHEET

For MFS® Prototype Salary Reduction Simplified Employee Pension Plan

Elective deferral contributions under your SARSEP Plan must satisfy the deferral percentage limit under Code Section 408(k) (6) and Section 6.3 of your Plan Document. MFS is providing this worksheet to you to help you apply this limit. An employer may choose to perform this deferral percentage limit test one or more times during each plan year so that the employer may limit the deferral percentages of highly compensated employees in order to avoid having violated the limit at the end of the plan year. However, it is the **employer's** obligation to perform this test and to ensure that the test has been performed in accordance with the law. Although MFS will attempt to inform you of any applicable changes in the law as soon as possible, it does not assume responsibility for modifying this worksheet to reflect all such changes.

Instructions

STEP 1: Identify each of your highly compensated employees (HCEs). To determine who is a highly compensated employee, see Section 6.3(b)(ii) of the SARSEP Plan, Code Section 414(q) and applicable regulations.

Table 1

Column A	Column B	Column C	Column D
Non-HCEs	Compensation	Elective Deferrals	Deferral Percentage
TOTAL A		TOTAL D	

ITEM E: $\frac{\text{Total of elective deferral percentages}}{\text{Total number of non-HCEs}} = \text{Average Deferral Percentage} \%$

ITEM F: $\frac{\text{Average Deferral Percentage (from Item E)}}{1.25} = \text{Deferral Percentage Limit for HCEs} \%$

- STEP 2:** In Table 1, column A, list each employee who is eligible to make elective deferrals under the SARSEP who is not a highly compensated employee (“HCE”). If the employee chose not to make any elective deferrals, the employee’s elective deferral percentage will be zero.
- STEP 3:** Count the total number of employees listed in column A and enter that number in the TOTAL box at the bottom of column A.
- STEP 4:** In column B, list the compensation of each employee listed in column A for the plan year — compensation the employee actually received plus the amount of the employee’s elective deferrals, if any.
- STEP 5:** In column C, list the amount of elective deferrals of each employee listed in column A for the plan year, but do not include the amount of the employee’s “catch-up” elective deferrals for the plan year, if any.
- STEP 6:** In column D, enter for each employee the percentage that the employee’s amount in column C is of the employee’s amount in column B (C divided by B).
- STEP 7:** Add all the deferral percentages listed in column D and enter the total in the TOTAL box at the bottom of column D.
- STEP 8:** In Item E, divide the number in the column D TOTAL box by the number in the column A TOTAL box. This is the average deferral percentage (“ADP”) of employees who are not HCEs.
- STEP 9:** In Item F, multiply the ADP from Item E by 1.25. This is the deferral percentage limit for HCEs.

Table 2

Column G	Column H	Column I	Column J	Column K	Column L
HCEs	Compensation	Elective Deferrals	Deferral Percentage	Permitted Deferral Amount	Excess Contributions

- STEP 10:** In Table 2, column G, list each HCE who is eligible to make elective deferrals under the SARSEP. If the HCE chose not to make any elective deferrals, the HCE’s elective deferral percentage will be zero.
- STEP 11:** In column H, list the compensation of each HCE listed in column G for the plan year (that is, compensation the HCE actually received plus the amount of the HCE’s elective deferrals, if any).
- STEP 12:** In column I, list the amount of elective deferrals of each HCE listed in column G for the plan year, but do not include the amount of the employee’s “catch-up” elective deferrals for the plan year, if any.
- STEP 13:** In column J, enter for each HCE the percentage that the HCE’s amount in column I is of the HCE’s amount in column H (I divided by H). This is the HCE’s deferral percentage.
- STEP 14:** Compare each HCE’s deferral percentage in column J with the deferral percentage limit in Item F. Each HCE whose deferral percentage limit is less than or equal to the deferral percentage limit satisfies the deferral percentage limit test.
 The employer needs to complete columns K and L only if:
 - (1) any HCE does not satisfy the deferral percentage limit, and
 - (2) this is the final test for the plan year.
- STEP 15:** Multiply the deferral percentage limit in Item F times the compensation in column H of each HCE who has not satisfied the deferral percentage limit, and enter the amount in column K.
- STEP 16:** Subtract the amount in column K for each HCE who has not satisfied the deferral percentage limit from the amount of that HCE’s elective deferrals in column I, and enter the difference in column L. This is the HCE’s excess contribution.

SARSEP NOTICE OF EXCESS DEFERRAL CONTRIBUTIONS



For MFS® Prototype Salary Reduction Simplified Employee Pension Plan

To: _____
NAME OF EMPLOYEE

Our calculations indicate that the elective deferral contributions made to your SEP IRA for the Plan plan year ending _____ exceeded the deferral percentage limit. The amount of your SEP IRA elective deferral contributions for that year that exceeds the deferral percentage limit is \$_____. These excess elective deferral contributions are includible in your gross income for federal income tax purposes in the calendar year you would have received the earliest of the elective deferrals for that plan year in cash if you had not elected to defer them. Income allocable to these excess SARSEP elective deferral contributions is includible in your gross income for federal income tax purposes in the calendar year in which you withdraw it from your IRA.

You must withdraw these excess SARSEP elective deferral contributions, and income allocable to them, from your SEP IRA by the April 15 next following the end of the calendar year in which you receive this notice. Any of these excess elective deferral contributions that you fail to withdraw by that date will be subject to the limits on regular IRA contributions under Code Sections 219 and 408 for the preceding calendar year. To the extent they exceed these IRA contribution limits for any year, they would be subject to the 6% tax on excess contributions to IRAs under Code Section 4973. If you fail to withdraw any of the income allocable to these excess SARSEP elective deferral contributions by the April 15 next following the end of the calendar year in which you receive this notice, that income might be subject to the 10% tax on early distributions under Code Section 72(t) when you withdraw it.

NAME OF EMPLOYER

SIGNATURE OF AUTHORIZED PERSON

DATE

SARSEP NOTICE OF DISALLOWED DEFERRALS



For MFS® Prototype Salary Reduction Simplified Employee Pension Plan

To: _____
NAME OF EMPLOYEE

Under applicable law, elective deferral contributions are not permitted under an employer's SARSEP plan for a year if less than 50% of the employer's eligible employees make elective deferrals for that plan year (the "50% test"). This notice is to inform you that our SARSEP Plan failed the 50% test for the plan year ending _____. Therefore, all of the elective deferral contributions made to your SARSEP IRA for that plan year are disallowed. The amount of your disallowed elective deferral contributions is \$ _____. This amount is includible in your gross income for federal income tax purposes in the calendar year you would have received the earliest of the elective salary deferrals in cash if you had not elected to defer them. Income allocable to your disallowed elective salary deferral contributions is includible in your gross income for federal income tax purposes in the calendar year in which you withdraw it from your IRA.

You must withdraw these disallowed elective salary deferral contributions, and income allocable to them, from your SARSEP IRA by the April 15 next following the end of the calendar year in which you receive this notice. Any of these disallowed elective deferrals that you fail to withdraw by that date will be subject to the limits on regular IRA contributions under Code Sections 219 and 408 for the preceding calendar year. To the extent they exceed these IRA contribution limits for any year, they would be subject to the 6% tax on excess contributions to IRAs under Code Section 4973. If you fail to withdraw any of the income allocable to these disallowed elective salary deferral contributions by the April 15 next following the end of the calendar year in which you receive this notice, that income might be subject to the 10% tax on early distributions under Code Section 72(t) when you withdraw it.

NAME OF EMPLOYER

SIGNATURE OF AUTHORIZED PERSON

DATE

INFORMATION ABOUT THE PLAN

For MFS® Prototype SARSEP Plans



1. What It Is

A SARSEP Plan is a retirement plan. Under the plan, the employer may (but is not required to) make employer contributions that will be paid into each employee's SEP IRA. Under a SARSEP Plan, an eligible employee may elect to defer part of his or her compensation and have it contributed, pretax, to the employee's SEP IRA.

2. Who May Adopt A Prototype SARSEP

Under the Small Business Job Protection Act of 1996, no new SARSEP plans may be established after December 31, 1996. A SARSEP that was properly established on or before that date may continue to operate. An existing SARSEP may be amended and restated by adoption of a prototype SARSEP plan.

However, an employer is not eligible to adopt this prototype SARSEP plan if:

- (a) it had more than 25 employees eligible to participate in the plan at any time during the last plan year;
- (b) it is a state or local government, political subdivision, or governmental agency or instrumentality, or a tax-exempt entity;
- (c) it maintains, or has ever maintained, a defined benefit pension plan; or
- (d) it has any "leased employees," as defined in Code Section 414(n).

If an employer is not eligible to adopt a prototype elective deferral SEP plan because of items (c) and/or (d), it could still adopt an elective deferral SEP plan, but the plan would be the employer's own individually designed plan and not a prototype plan, and the employer could not rely on the IRS opinion letter issued with respect to this prototype plan. If the employer has any "leased employees," the plan also must cover those leased employees, to the extent required by law.

3. Who Is The Employer

If your business is conducted through a partnership or proprietorship, the partnership or proprietorship is the employer. Self-employed persons are employees of that employer for purposes of the plan, so they may receive contributions. If the business entity that maintains the plan is a member of a controlled group of businesses, as defined in Section 414(b) or (c) of the Internal Revenue Code ("Code"), is a member of an affiliated service group, as defined in Code Section 414(m), or is otherwise required to be aggregated with other entities under Code Section 414(o), then the plan must cover all employees of all entities in the group.

4. Amount Of Contributions

Except in the case of a Participant who is eligible to make catch-up elective deferral contributions as described below, the amount of all contributions under the Plan allocated to a Participant's SARSEP IRA for any Plan Year shall not exceed the lesser of 25% of the Participant's Compensation for such Plan Year or \$49,000 (for 2009, as adjusted for cost-of-living increases). Compensation for this purpose is limited to \$245,000 (for 2009, as adjusted for cost-of-living increases). This limit applies to the total amount of contributions, whether the contributions are employer contributions, elective deferral contributions, or a combination of the two.

Except in the case of a Participant who is eligible to make catch-up elective deferral contributions, the calendar year limit on the elective deferral contributions that an employee may make under this plan and any other plan in which he or she participates is the lesser of 100% of compensation or \$16,500 for 2009. In future years, the limit will be adjusted for inflation in increments of \$500.

Catch-up Elective Deferral Contributions: Eligible employees who will be age 50 or older by the end of the calendar year may make additional elective deferral contributions above the limits that would otherwise apply. The limit on catch-up contributions is \$5,500 in 2009.

5. Basic Plan Features

- (a) IRS FILINGS. Generally, with a SARSEP you need not make the following filings on the plan with the IRS.
 - (i) IRS Opinion Letter: This MFS SARSEP plan has received a favorable IRS Opinion Letter. MFS's IRS Opinion Letter may be relied upon by the Employer, and you need not file for an IRS ruling on your plan.
 - (ii) Form 5500: As long as the employer provides its employees with the employee materials contained in this MFS SARSEP package, it need not file an annual return with the IRS on Form 5500.
- (b) EMPLOYER TAX DEDUCTION. All contributions pursuant to the SARSEP Plan are deductible by the employer for federal income tax purposes, up to the statutory limit on the amount of SARSEP contributions.
- (c) EMPLOYEE ELIGIBILITY. There are certain kinds of employees the employer is permitted by law to exclude from participation in the plan. The employer will choose which of those kinds of employees it actually will exclude on the adoption agreement.
- (d) ALLOCATION OF EMPLOYER CONTRIBUTIONS. The law restricts the way an employer can allocate contributions among employees' IRAs to prevent unfair discrimination. Under the MFS SARSEP Plan, employer contributions may be allocated to employees' SEP IRAs in one of three ways:
 - (i) Each employee could receive the same dollar amount;
 - (ii) Each employee could receive the same percentage of his or her compensation (for example, each employee could receive an amount equal to 5% of his or her compensation); or
 - (iii) The amount each employee receives could vary because the allocation formula takes into account the Social Security taxes the employer pays; this results in employees with higher compensation receiving a contribution that is a greater percentage of their compensation than employees with lower compensation.

The employer will choose which method of allocating employer contributions it will actually use on the adoption agreement.

6. Special Rules For SARSEP Plans

- (a) DEFERRAL PERCENTAGE TEST. Very briefly, the percentage of compensation any highly compensated employee elects to defer under the plan cannot exceed the average percentage of compensation all other employees elect to defer by more than 1.25 percent. The term "highly compensated employee" is defined by law; the definition is also stated in Section 6.3 of the plan. The employer must calculate these percentages to determine whether this test is satisfied. If it is not, the employer must notify affected highly compensated employees of their excess deferrals and that the excess deferrals must be withdrawn.
- (b) TOP HEAVY TEST. If the plan is "top heavy," the employer may be required to make a minimum employer contribution for each employee who is not a "key employee." The term "key employee" is defined by law; the definition is also stated in Section 6.6 of the Plan. Very briefly, a plan is top heavy for a year if the value of the accounts of key employees attributable to employer and elective deferral contributions is more than 60% of the value of the accounts of all employees attributable to employer and elective deferral contributions. The employer must determine each year whether the plan is top heavy for that year.

This SARSEP Plan package contains worksheets to assist the employer in performing the deferral percentage test and the top heavy test.

- (c) 50% PARTICIPATION TEST. Even if an employer otherwise properly maintains a SARSEP arrangement, elective deferrals will not be permitted under law in any year if fewer than 50% of the employer's employees eligible to make elective deferrals actually make them. If this 50% test is not satisfied for any year, the employer must notify employees that this test has not been satisfied and that elective deferral contributions must be withdrawn.

This SARSEP Plan package contains sample employee notices to notify employees if they must withdraw elective deferral contributions because they have excess deferrals under the deferral percentage test or because the 50% test was not satisfied.

- (d) ELECTIVE DEFERRAL ELECTION FORM. Each employee who wishes to make elective deferrals must complete an election form authorizing the employer to reduce his or her compensation.

This SARSEP Plan package contains a sample elective deferral election form.

SARSEP PLAN DOCUMENT

For MFS® Prototype SARSEP Plans



Article 1 — Adopting The Plan

1.1 Qualification of Plan. Under the Small Business Job Protection Act of 1996, no new Salary Reduction Simplified Employee Pension (“SARSEP”) plans may be established after December 31, 1996. However, an eligible employer who has previously established a SARSEP plan may amend and restate such plan by adopting this prototype SARSEP plan. This Plan is a Massachusetts Financial Services Company (“MFS”) prototype SARSEP plan within the meaning of Code Section 408(k) that was approved as to form by the Internal Revenue Service (“IRS”) in Opinion Letter Serial Number G400111d dated 3/5/01. This revised prototype SARSEP plan is being submitted to the IRS for a new opinion letter, a copy of which will be provided to the Employer once it has been received.

The Employer intends to operate this Plan in accordance with its terms and with applicable provisions of the Code and ERISA. The Employer also intends to operate the Plan for the exclusive benefit of its Employees and their beneficiaries.

1.2 **Eligible Employers.** An Employer may not offer Elective Deferrals in a Plan Year if:

- (i) it had more than 25 employees who were eligible (or would have been eligible, had the Plan been maintained) to participate in the Plan at any time during the prior Plan Year; or
- (ii) it is a state or local government, a political subdivision thereof, an agency or instrumentality thereof, or an organization exempt from tax under the Code.

Further, an Employer is not eligible to adopt this prototype SARSEP plan and rely on the IRS Opinion Letter issued with respect to it if:

- (i) it has any “leased employees” within the meaning of Code Section 414(n);
- (ii) it maintains, or has ever maintained, a defined benefit plan (even if now terminated); or
- (iii) it has any eligible Employees whose taxable year is not the calendar year.

However, an Employer that has leased employees or maintains a defined benefit plan might be able to maintain a SARSEP plan as an individually designed plan.

1.3 IRA Necessary. Each Employee who participates in this prototype SARSEP plan must establish and maintain an IRA (as defined in Section 2.10). Since this SARSEP plan must be used with an IRA, if any Participant fails to establish an IRA, the Employer may establish an IRA on the Participant’s behalf for the purpose of paying contributions allocable to the Participant under this Plan.

1.4 Employers in Controlled Group. Each individual who is an Employee of any employer that is included in the same controlled group of employers with the Employer under Code Section 414(b), (c), (m), or (o) and who is eligible to participate in the Plan under Article 3 must be a Participant in order for the Plan to qualify as a SARSEP plan within the meaning of Code Section 408(k).

Article 2 — Definitions

2.1 Adoption Agreement means the written agreement signed by the Employer by which the Employer adopts this SARSEP plan, which agreement is incorporated herein and made a part hereof.

2.2 Code means the Internal Revenue Code of 1986, as amended, and regulations thereunder.

2.3 Compensation means the amount of an Employee’s compensation, as determined below, that is actually paid or made available to the Employee during the Plan Year:

- (a) \$450 LIMIT (indexed annually). For purposes of determining whether an Employee has received at least \$450 (for the 2002 calendar year, as indexed thereafter) of compensation within the meaning of Code Section 408(k)(2)(C), Compensation shall mean the Employee’s compensation, as defined in Code Section 414(q)(4), from the Employer.

- (b) OTHER PURPOSES. Subject to subsections 2.3(c) through 2.3(e), for all other purposes, a Participant's Compensation shall mean the Participant's wages, as defined in Code Section 3401(a) for purposes of income tax withholding at the source, from the Employer 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) SELF-EMPLOYED PERSONS. For any self-employed individual who is a Participant, Compensation shall mean the Participant's Earned Income.
- (d) SALARY REDUCTION AMOUNTS. Unless the Employer otherwise elects in the Adoption Agreement, Compensation shall also include any amount the Employer contributes on behalf of a Participant pursuant to a salary reduction agreement that is not includible in the Participant's gross income under Code Sections 125, 402(e)(3), 402(h), or 403(b).
- (e) \$200,000 LIMIT. In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, the annual compensation of each employee taken into account under the Plan shall not exceed the OBRA '93 annual compensation limit. The OBRA '93 annual compensation limit is \$200,000 for 2002, as adjusted by the Commissioner for increases in the cost of living in accordance with section 401(a)(17)(B) of the Code. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA '93 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

Any reference in the Plan to the limitation under section 401(a)(17) of the Code shall mean the OBRA '93 annual compensation limit set forth in this provision.

- 2.4 Earned Income of a Participant means the net earnings of a self-employed Participant from the Employer's trade or business in which the personal services of the Participant are a material income-producing factor within the meaning of Code Section 401(c)(2). Such net earnings (1) shall be determined without regard to items that are not included in gross income and the deductions properly allocable to such items, (2) shall be reduced by the amount the Employer contributes on the Participant's behalf to a qualified plan or SEP, to the extent deductible under Code Section 404, and (3) effective for taxable years beginning after 1989, shall be reduced by the amount the Participant may deduct under Code Section 164(f), relating to the tax on self-employment income.
- 2.5 Effective Date means the date this Plan became effective, as stated in the Adoption Agreement.
- 2.6 Elective Deferral means a Participant's deferral of an amount of Compensation pursuant to a salary reduction election, which amount the Employer will contribute under the Plan, all as provided in Article 6.
- 2.7 Employee means:
 - (i) an individual who performs services in the business of the Employer as an employee,
 - (ii) a self-employed person who performs services for the Employer and who has (or would have, if the Employer had net profits) Earned Income from the Employer,
 - (iii) an individual who is a leased employee required to be treated as employed by the Employer under Code Section 414(n), and
 - (iv) any other individual who is an Employee as defined in (i) through (iii) above of a business entity required to be aggregated with the Employer under Code Section 414(b), (c), (m), or (o).
- 2.8 Employer means any corporation, partnership, proprietorship or other business entity identified as an adopting Employer in the Adoption Agreement; "Employer" also means any successor to the Employer by merger or consolidation and any business entity that acquires the Employer's business and adopts this Plan.
- 2.9 ERISA means the Employee Retirement Income Security Act of 1974, as amended, and regulations thereunder.

- 2.10 IRA means a traditional individual retirement account or annuity that satisfies the requirements of Code Section 408, which may be established by adopting an IRS model individual retirement account or a master or prototype individual retirement account or annuity as to which the IRS has issued a favorable opinion letter, including the MFS Prototype IRA; the term IRA as defined herein does not include a Roth IRA within the meaning of Code Section 408A.
- 2.11 Participant means any Employee who has satisfied the eligibility requirements of Article 3 and who is eligible to receive either Employer Contributions or Elective Deferral contributions.
- 2.12 Plan means this SARSEP plan and the Adoption Agreement by which the Employer adopts this SARSEP plan.
- 2.13 Plan Year means the calendar year or the Employer's taxable year as indicated in the Adoption Agreement.
- 2.14 Sponsor means Massachusetts Financial Services Company.
- 2.15 Taxable Wage Base means the contribution and benefit base in effect under Section 230 of the Social Security Act at the beginning of the Plan Year.

Article 3 — Eligibility

- 3.1 Excludible Employees. To the extent the Employer has so indicated in the Adoption Agreement, the following Employees shall not be eligible to participate in this Plan:
 - (i) employees who have not received at least \$450 (as adjusted to reflect increases in the cost of living) of Compensation during the Plan Year;
 - (ii) employees who are included during the entire Plan Year in a unit of employees covered by a collective bargaining agreement, if retirement benefits were the subject of good faith bargaining;
 - (iii) employees who are during the entire Plan Year nonresident aliens and who receive no earned income from the Employer that constitutes earned income from sources within the United States;
 - (iv) employees who have not attained an age specified in the Adoption Agreement (not to exceed age 21) by the last day of the Plan Year; and
 - (v) employees who have not performed any services for the Employer during a number of Plan Years specified in the Adoption Agreement (not to exceed three) out of the immediately preceding five Plan Years.
- 3.2 Participation. Employees shall become Participants in the Plan as follows:
 - (a) CONTINUING PARTICIPANTS. Each Employee who was a Participant under the prior SARSEP plan document immediately prior to the Employer's adoption of this Plan shall become a Participant in this Plan.
 - (b) IN GENERAL. Except as provided in Section 3.2(c) below with respect to Elective Deferrals, each Employee who is not excluded from participation in the Plan for any Plan Year under Section 3.1 shall become a Participant in the Plan effective as of the first day of that Plan Year. No Employee who becomes a Participant in accordance with this Section shall be permitted to refuse, waive, or withdraw from participation in allocations of Employer contributions under Article 5 of this Plan.
 - (c) ELECTIVE DEFERRALS. The Employer may either (1) allow each Participant to make an Elective Deferral election pursuant to the means specified in Section 7.3 and begin to participate in Elective Deferrals at any time, or (2) establish specific enrollment dates on which Employees who have become Participants in accordance with Section 3.2(b) may begin to participate in the Elective Deferral portion of the Plan. If the Employer chooses to establish enrollment dates, the enrollment dates shall be the first day of the Plan Year, the first day of the seventh month of the Plan Year, and any additional date(s) the Employer selects, at its discretion, in a uniform and nondiscriminatory manner.

Each Eligible Participant may elect whether, and the extent to which, the Participant will make Elective Deferrals in accordance with Section 6.2.
- 3.3 Obligations. The Employer shall be responsible for determining each Employee who has become a Participant. When an Employee becomes a Participant in this Plan, the Employer shall notify each Participant by a method permitted pursuant to Section 7.3 that he or she has become a Participant and must establish an IRA, and an IRA shall be established for each Participant, as provided in Section 1.3. The Employer's establishment, maintenance and operation of this Plan shall not confer on any Employee any right to continue employment with the Employer, and

the Employer expressly reserves the right to discharge any Employee whenever it determines that such discharge is in its best interests.

- 3.4 Termination of Participation. Any Employee who becomes a Participant in this Plan shall continue to be a Participant until he ceases to be an Employee or until he fails to satisfy one or more of the eligibility requirements under Section 3.1 for any subsequent Plan Year.

Article 4 — General Contribution Rules

- 4.1 (a) LIMITATIONS ON ALLOCATIONS. Except in the case of a Participant who is eligible to make catch-up elective deferral contributions as described below, the amount of all contributions under the Plan allocated to a Participant's SARSEP IRA for any Plan Year shall not exceed the lesser of 25% of the Participant's Compensation for such Plan Year or \$40,000. If the Employer maintains any other SEP, SARSEP, or qualified retirement plan, then contributions and/or benefits allocated to any Participant under this Plan and all such other plans, in the aggregate, may not exceed the limits under Code Section 415 and generally also may not exceed 100% of a Participant's Compensation. If contributions on behalf of a Participant would exceed these limits in any Plan Year, contributions on behalf of the Participant shall be reduced to the extent necessary to prevent exceeding these limits; if the Participant has elected Elective Deferrals for that Plan Year, the excess shall be reduced first by reducing the Participant's Elective Deferrals. Additional limitations apply to Elective Deferral contributions under Article 6.
- (b) CATCH-UP ELECTIVE DEFERRAL CONTRIBUTIONS. An eligible employee who would attain age 50 or over by the end of the calendar year can choose to have an additional amount of elective deferrals made by the employer, up to the catch-up elective deferral contribution limit for the year, over any dollar or percentage limit applicable to eligible employees in the absence of any catch-up elective deferral contributions. The catch-up elective deferral contribution limit is \$1,000 for 2002, \$2,000 for 2003, \$3,000 for 2004, \$4,000 for 2005, and \$5,000 for 2006 and later years. After 2006, the limit will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code §414(v)(2)(C). Such adjustments will be in multiples of \$500. Catch-up elective deferral contributions will be determined in accordance with Code §414(v) and any guidance issued thereunder.
- 4.2 Nonforfeitability. All contributions to a Participant's IRA under this Plan shall be 100% nonforfeitable at all times.
- 4.3 Withdrawals. Each Participant shall be entitled to withdraw contributions made to that Participant's IRA under this Plan without restriction, subject to Section 6.5 with respect to Elective Deferrals. Any such withdrawals shall be made in accordance with the terms of the Participant's IRA.
- 4.4 Deductions. The Employer shall be entitled to deduct contributions made to this Plan, including Elective Deferral contributions, in accordance with Code Section 404(h). In general, contributions paid no later than the due date, including extensions, for filing the Employer's federal income tax return for the Employer's taxable year with which, or within which, the Plan Year ends will be deemed to have been made within that taxable year and will be deductible for that taxable year.
- 4.5 Reports. The Employer shall transmit, pursuant to Section 7.3, to each Participant such reports as are required from time to time under Code Section 408(l). As described more fully in the SARSEP Questions and Answers Booklet accompanying this Plan, each Participant must be notified, pursuant to Section 7.3, of the contributions allocated to the Participant's IRA under the Plan and of any amendments to the Plan.
- 4.6 After Age 70½. Contributions made under this Plan for a Plan Year may be allocated to an eligible Employee even if the Employee has attained age 70½, as long as the individual is an eligible Employee during that Plan Year.

Article 5 — Employer Contributions

- 5.1 Employer Contributions. The Employer shall make such discretionary contributions, if any, under the Plan for each Plan Year as the Employer, in its sole discretion, shall determine.
- 5.2 Allocation of Employer Contributions. Subject to the general limitations on allocations described in Section 4.1, the Employer shall allocate the discretionary Employer contributions, if any, for each Plan Year to the IRA of each Participant in the Plan during the Plan Year in accordance with the allocation formula below that the Employer has selected in the Adoption Agreement. If the Employer had selected a fixed allocation formula in the SARSEP plan prior to its restatement under this prototype SARSEP plan, then the allocation formula the Employer selects in the Adoption Agreement shall first be effective for the first Plan Year ending after the date the Employer executes the Adoption Agreement.

- (a) **FLAT DOLLAR FORMULA.** The Employer shall allocate to the IRA of each Participant a proportion of its Employer contributions for a Plan Year equal to the proportion that 1 (one) bears to the total number of Participants for such Plan Year, so that the Employer contributions allocated to each Participant shall be the same dollar amount.
- (b) **PRO-RATA DISCRETIONARY FORMULA.** The Employer shall allocate to the IRA of each Participant a proportion of its Employer contributions for a Plan Year equal to the proportion that the Participant's Compensation (not in excess of the \$200,000 limit described in Section 2.3(e) for the Plan Year bears to the aggregate Compensation of all Participants for such Plan Year.
- (c) **INTEGRATED DISCRETIONARY FORMULA.** The Employer shall allocate Employer contributions for a Plan Year to the IRA of each Participant, based on the Participant's Compensation (not in excess of the \$200,000 limit described in Section 2.3(e)) as follows:

Step 1: Employer contributions will be allocated to each Participant's IRA in the ratio that each Participant's Compensation bears to the aggregate Compensation of all Participants, but not in excess of 3% of each Participant's Compensation.

Step 2: Any Employer contributions remaining after the allocation in Step 1 will be allocated to each Participant's IRA in the ratio that each Participant's Compensation for the Plan Year in excess of the integration level bears to the aggregate Compensation of all Participants in excess of the integration level, but not in excess of 3%.

Step 3: Any Employer contributions remaining after the allocation in Step 2 will be allocated to each Participant's IRA in the ratio that the sum of each Participant's total Compensation and Compensation in excess of the integration level bears to the sum of all Participants total Compensation and Compensation in excess of the integration level, but not in excess of the maximum disparity rate described below.

Step 4: Any Employer contributions remaining after the allocation in Step 3 will be allocated to each Participant's IRA in the ratio that each Participant's total Compensation for the Plan Year bears to the aggregate Compensation of all Participants for the Plan Year.

The integration level shall be equal to the Taxable Wage Base or such percentage of the Taxable Wage Base as the Employer elects in the Adoption Agreement (the integration level may not be stated as a dollar amount).

The maximum disparity rate for purposes of Step 3 shall be equal to:

- (i) 2.7%, if the integration level equals the Taxable Wage Base ("TWB");
 - (ii) 2.4%, if the integration level is less than the TWB but greater than 80% of the TWB;
 - (iii) 1.3%, if the integration level is greater than 20% of the TWB (or \$10,000, if greater) but not more than 80% of the TWB; and
 - (iv) 2.7%, if the integration level is greater than \$0 but not greater than 20% of the TWB (or \$10,000, if greater).
- 5.3 **Timing.** All Employer contributions, if any, made for a Plan Year shall be allocated as of the last day of the Plan Year and shall be paid to each Participant's IRA no later than the due date, including extensions, for filing the Employer's federal income tax return for the Employer's taxable year with which, or within which, the Plan Year ends, in accordance with Code Section 404(h). The Employer shall pay contributions directly to the trustee, custodian, or insurance company responsible for receiving contributions under each Participant's IRA, together with applicable information and instructions.

Article 6 — Elective Deferral Contributions

6.1 **Qualification.** The following requirements must be satisfied for a Plan Year in order to permit elective deferral contributions for that Plan Year:

- (a) **ELIGIBLE EMPLOYEES.** Each individual who is a Participant for a Plan Year shall be eligible to make Elective Deferral contributions under this Plan for that Plan Year by transmitting an election to the Employer, pursuant to a method permitted under Section 7.3, by the appropriate enrollment date, if the Employer has established enrollment dates in accordance with Section 3.2(c).
- (b) **50% TEST.** Elective Deferrals shall not be permitted for a Plan Year if less than 50% of the Participants in the Plan who are eligible to make Elective Deferrals have made, or have in effect, an election to make Elective Deferral contributions for that Plan Year (the "50% test").
- (c) **FAILURE OF 50% TEST.** If as of the last day of a Plan Year, the 50% test described in Section 6.1(b) has not been satisfied, then the Elective Deferrals of each Participant for that Plan Year (if any) shall be disallowed as Elective Deferrals and shall be treated as contributions to each Participant's IRA that are not SARSEP plan contributions. Disallowed deferrals will be includible in each affected Participant's gross income as of the earliest date that any of the Participant's Elective Deferrals during the Plan Year would have been received by the Participant had the

Participant originally elected to receive the amount in cash. Income allocable to the disallowed deferrals will be includible in each affected Participant's gross income in the year it is withdrawn from the Participant's IRA. The Employer accepts sole responsibility for determining and informing Participants of the amount of income allocable to Participants' disallowed Elective Deferrals. The Employer shall notify each affected Participant, pursuant to Section 7.3, within 21/2 months following the end of the Plan Year to which the disallowed Elective Deferrals relate, that the Participant's deferrals will not be considered SARSEP plan contributions. Such notice shall specify:

- (i) the amount of the Participant's disallowed Elective Deferrals;
- (ii) the calendar year in which the disallowed deferrals are includible in the Participant's gross income;
- (iii) that the Participant must withdraw the disallowed deferrals, and income allocable thereto, from his IRA by the April 15 following the calendar year of notification by the Employer; and
- (iv) that disallowed deferrals not withdrawn by such April 15 will be subject to the limits on IRA contributions under Code Sections 219 and 408 for the preceding calendar year and, thus, may be considered an excess contribution to the Participant's IRA, which would be subject to the 6% tax on excess contributions to an IRA under Code Section 4973; further, if income allocable to the disallowed deferrals is not withdrawn from the Participant's IRA by such April 15, that income may be subject to the 10% tax on early distributions under Code Section 72(t) when withdrawn.

The Employer should report disallowed deferrals in the same manner as it reports excess Deferral Percentage contributions.

6.2 Elective Deferrals. Each Participant shall be permitted to elect to make Elective Deferral contributions as follows:

- (a) EFFECTIVENESS. No Participant may make Elective Deferrals with respect to Compensation the Participant received or had a right to receive before the date the Participant has transmitted an Elective Deferral election in accordance with a method permitted under Section 7.3.
- (b) ELECTIVE DEFERRAL AGREEMENT. Each Participant who wishes to make Elective Deferral contributions shall enter into an Elective Deferral agreement with the Employer by transmitting an Elective Deferral election in accordance with a method permitted under Section 7.3. The Employer may establish uniform and nondiscriminatory procedures relating to the timing and frequency with which a Participant may make, change, or terminate Elective Deferral elections, subject to Section 3.2(c). Each Participant may make an election, pursuant to Section 7.3, to have his Compensation reduced each payroll period by either a specified percentage or a specified dollar amount. In addition, if the Employer so elects in the Adoption Agreement, each Participant may also elect, pursuant to Section 7.3, either in lieu of or in addition to reductions in Compensation each payroll period, to have the Participant's cash bonuses reduced by a specified percentage or a specified dollar amount. The Employer shall allocate and contribute to each Participant's IRA an amount equal to the amount of each Participant's Elective Deferrals. Notwithstanding the above, the Employer may prospectively limit the amount of any Highly Compensated Employee's Elective Deferrals to the extent necessary to avoid excess Deferral Percentage contributions.

6.3 Limitations on Elective Deferrals. In addition to the general limitations on allocations described in Section 4.1, and the \$200,000 limit on Compensation described in Section 2.3(e), the following additional limitations apply with respect to Elective Deferrals.

- (a) \$11,000 LIMIT. The maximum amount of Elective Deferrals any Participant may elect in any calendar year is the lesser of (1) 25% of the Participant's Compensation, or (2) the \$11,000 (as adjusted to reflect increases in the cost of living) or other limit in effect under Code Section 402(g) (the "\$11,000 limit"), unless the employee would attain age 50 or over by the end of the calendar year. For such employee, the limits in this paragraph are increased by the catch-up elective deferral contribution limit for the year as described in Section 4.1(b). The limitation under Code 402(g)(1) (without regard to catch-up elective deferrals provided in Code 402(g)(1)(C)) is \$11,000 for 2002, \$12,000 for 2003, \$13,000 for 2004, \$14,000 for 2005, and \$15,000 for 2006 and later years. After 2006, the limitation will be adjusted by the Secretary of the Treasury for cost-of-living increases under Code 402(g)(4). Such adjustments will be in multiples of \$500. This limit applies to all of a Participant's Elective Deferrals under this Plan and any other SARSEP plan, any cash or deferred arrangement under Code Section 401(k), and any salary reduction arrangement under Code Section 403(b), whether offered by the Employer or another employer. Thus, a Participant may have Elective Deferrals that exceed the \$11,000 limit even if the Participant's Elective Deferrals under this Plan do not exceed the \$11,000 limit. If the aggregate amount of any Participant's Elective Deferrals under all plans for any calendar year exceeds the \$11,000 limit, that Participant's Elective Deferrals in excess of this limit ("excess Elective Deferrals") will be required to be withdrawn, as described in Section 6.4(a) below.

- (b) DEFERRAL PERCENTAGE LIMIT. Elective Deferrals (other than catch-up elective deferral contributions determined before the application of the deferral percentage limitation) by a highly compensated employee must satisfy the deferral percentage limitation under Code Section 408(k)(6) and any guidance issued thereunder. The following definitions apply for purposes of the deferral percentage limitation:
- (i) "Deferral Percentage" means the ratio (expressed as a percentage) of a Participant's Elective Deferrals for a Plan Year to the Participant's Compensation for that Plan Year (the Deferral Percentage of a Participant who is eligible to make Elective Deferrals but who makes none is zero).
 - (ii) "Highly Compensated Employee" means a "highly compensated employee" within the meaning of Code Section 414(q). Effective for plan years beginning after December 31, 1996, a "highly compensated employee" within the meaning of Code Section 414(q) is an Employee who (1) during the current or preceding year was a 5% owner of the Employer as defined in Code Section 416(i)(1)(B)(i); or (2) for the preceding year received Compensation in excess of \$80,000 (as adjusted pursuant to Code Section 414(q)(l) and, if the Employer so elects in the Adoption Agreement, was one of the top 20% of Employees ranked on the basis of Compensation.

Under the Deferral Percentage limit, the Deferral Percentage of each Participant eligible to make Elective Deferrals who is a Highly Compensated Employee shall not exceed the average of the Deferral Percentages for each Participant eligible to make Elective Deferrals who is a non-Highly Compensated Employee multiplied by 1.25.

If the Elective Deferrals (other than catch-up elective deferral contributions determined before application of the deferral percentage limitation) of any Highly Compensated Employee exceed the Elective Deferral Percentage in any Plan Year, that Highly Compensated Employee's Elective Deferrals in excess of the Elective Deferral Percentage will be deemed excess Deferral Percentage contributions ("excess Deferral Percentage contributions") made on behalf of that particular Highly Compensated Employee and will be required to be withdrawn, as described in Section 6.4(b).

6.4 Excess Contributions. This section describes the consequences if the \$11,000 limit or the Deferral Percentage limitation is exceeded in any year.

- (a) EXCESS ELECTIVE DEFERRALS. If a Participant's Elective Deferrals for any calendar year exceed the \$11,000 limit, as described in Section 6.3(a), the Participant must withdraw the excess Elective Deferrals, and income thereon, by the April 15 following the calendar year to which the excess Elective Deferrals relate. If the Participant fails to withdraw excess Elective Deferrals by such April 15, those excess Elective Deferrals will be subject to the limits on IRA contributions under Code Sections 219 and 408 and, thus, may be considered excess contributions to the Participant's IRA, which would be subject to the 6% tax on excess contributions to an IRA under Code Section 4973. Further, if the Participant fails to withdraw income on excess Elective Deferrals by such April 15, that income may be subject to the 10% tax on early distributions under Code Section 72(t) when withdrawn. The Employer accepts sole responsibility for determining and informing Participants of the amount of income allocable to Participants' excess Elective Deferrals. Notwithstanding the foregoing, excess elective deferrals of an eligible employee who would attain age 50 or over by the end of the calendar year are not includible in income and do not have to be withdrawn to the extent such employee has not reached the catch-up elective deferral contribution limit for the plan year to which the excess elective deferrals relate.
- (b) EXCESS DEFERRAL PERCENTAGE CONTRIBUTIONS. The Employer shall notify each Participant by a method permitted under Section 7.3, no later than 2½ months following the close of the Plan Year of the amount, if any, of the Participant's excess Deferral Percentage contributions to that Participant's IRA for such Plan Year. If the Employer does not so notify each affected Participant by such date, the Employer will be subject to a tax equal to 10% of the excess Deferral Percentage contributions for the Plan Year under Code Section 4979. If the Employer fails to notify each affected Participant by the end of the Plan Year following the Plan Year of the excess Deferral Percentage contributions, this Plan will no longer be considered to satisfy the requirements of Code Section 408(k)(6), which means that any contribution to a Participant's IRA will be subject to the limitations on IRA contributions under Code Sections 219 and 408 and, thus, may be considered an excess contribution to the Participant's IRA.

The Employer's notification to each affected Participant of the excess Deferral Percentage contributions, if any, to the Participant's IRA must specifically include:

- (i) the amount of the Participant's excess Deferral Percentage contributions;
- (ii) the calendar year in which the excess Deferral Percentage contributions are includible in the Participant's gross income;
- (iii) that the Participant must withdraw the excess Deferral Percentage contributions, and income allocable thereto, from the Participant's IRA by the April 15 following the calendar year of notification by the Employer; and
- (iv) that excess Deferral Percentage contributions not withdrawn by such April 15 will be subject to the limits on IRA contributions under Code Sections 219 and 408 for the preceding calendar year and, thus, may be considered an excess contribution to the Participant's IRA, which would be subject to the 6% tax on excess contributions to an IRA under Code Section 4973; further, if income allocable to the excess Deferral Percentage contribution is not withdrawn by such April 15, that income may be subject to the 10% tax on early distributions under Code Section 72(t) when withdrawn.

Generally, excess Deferral Percentage contributions are includible in a Participant's gross income as of the earliest date that the Participant would have received any of the Participant's Elective Deferrals during the Plan Year if the Participant had originally elected to receive the amount in cash. However, if the excess Deferral Percentage contributions (not including allocable income) of a Participant totaled less than \$100, then the excess Deferral Percentage contributions are included in the Participant's gross income in the calendar year of the Employer's notification. Income allocable to a Participant's excess Deferral Percentage contributions is included in the Participant's gross income in the year it is withdrawn from the Participant's IRA. The Employer accepts sole responsibility for determining and informing Participants of the amount of income allocable to Participants' excess Deferral Percentage contributions.

- 6.5 Restrictions on Withdrawal. If a Participant withdraws or transfers any Elective Deferral contributions under this Plan made to the Participant's IRA for a Plan Year, or income thereon, prior to the earlier of (1) two months after the end of that Plan Year, or (2) the date the Employer notifies the Participant that the Deferral Percentage limitation test has been completed for that Plan Year, any such withdrawal or transfer generally will be includible in the Participant's gross income and under Code Section 408(d)(1) may also be subject to a 10% penalty tax under Code Section 72(t). This restriction does not apply, however, to a Participant's excess Elective Deferrals.
- 6.6 Top Heavy Rules. The Employer is required to make a minimum allocation of Employer contributions to the IRA of each non-key Employee for each Plan Year when this Plan is a Top Heavy Plan. For purposes of this minimum Top Heavy allocation, the following definitions apply:
- (a) "KEY EMPLOYEE" means an individual who is a "key employee" within the meaning of Code Section 416(i). In summary, a "key employee" within the meaning of Code Section 416(i) is any Employee or former Employee, or beneficiary of either, 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.
 - (b) "TOP HEAVY PLAN" means this Plan in a Plan Year if, as of the last day of the previous Plan Year, the total Employer contributions made on behalf of all Key Employees for all of the years this Plan has been in existence exceeds 60% of the Employer contributions for all Employees. If the Employer maintains or maintained in the prior Plan Year any other SEP or qualified plan in which a Key Employee participates or participated, the account balances or present value of accrued benefits, whichever is applicable, of each Key Employee under such plan(s) must be aggregated with the contributions made under this 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 was not in the employ of the Employer for the preceding Plan Year shall be disregarded. The identification of Key Employees and Top Heavy calculation shall be determined in accordance with Code Section 416 and the regulations and rulings thereunder.

Unless the Employer has designated another Employer plan in the Adoption Agreement to satisfy the Top Heavy requirements of Code Section 416, the Employer is required to make a minimum Employer contribution in each Plan Year in which this Plan is a Top Heavy Plan. This minimum Employer contribution shall be in an amount sufficient to allocate to the IRA of each Participant who is not a Key Employee an Employer contribution (including any

other Employer contributions under this Plan for that Plan Year) equal to the lesser of: (1) 3% of such Participant's Compensation, or (2) the percentage of a Participant's Compensation equal to the percentage of Compensation at which discretionary Employer contributions plus Elective Deferral contributions (not including catch-up elective deferral contributions) are made under the Plan for the Plan Year for the Key Employee for whom such percentage is the highest. Elective Deferrals of non-Key Employees shall not be used to satisfy this minimum allocation requirement; only Employer contributions may be so used.

- 6.7 Additional Information. If the Employer has any questions regarding this Article 6, the Employer may direct inquiries to the Sponsor: MFS, 111 Huntington Avenue, Boston, Massachusetts, 02119, telephone number 1-877-MFS-4IRA, e-mail address askIRA@mfs.com.

Article 7 — Administration

- 7.1 Plan Administrator. The Employer is the named fiduciary and Plan administrator for purposes of ERISA. The Employer may allocate all or any of the duties of Plan administrator by a designation transmitted pursuant to Section 7.3 and acceptance of the party so designated.
- 7.2 Powers. The Plan administrator shall have the power and duty to:
- (i) construe and interpret the provisions of the Plan;
 - (ii) decide all questions of eligibility for Plan participation;
 - (iii) provide appropriate parties with such returns, reports, descriptions, and statements as are required by law within the times prescribed by law, and to make them available for examination by Participants and their beneficiaries when required by law;
 - (iv) take such other action as may be reasonably required to administer the Plan in accordance with its terms or as may be provided for or required by law;
 - (v) provide any Participant, whose claim for benefits has been denied, a reasonable opportunity for a full and fair review; and
 - (vi) appoint and retain such persons as may be necessary to carry out the functions of the Plan administrator.
- 7.3 Communication Between Parties. All notices, elections, declarations, requests, applications, forms, designations, instructions and directions, as well as all other communication (collectively, "Communications") authorized by and provided pursuant to the Plan to or from the Employer, Participants, Sponsor, or beneficiaries (collectively the "Parties"), shall be made by such a method as the Parties may from time to time agree upon or permit, which methods include in writing, telephonically, or electronically, to the extent such method is in accordance with applicable law, as described further in Section 7.4 below. The Parties shall be entitled to rely on any such Communication filed with or otherwise received by it and believed by it to be genuine and properly given, and shall have no duty of inquiry with respect to any of the matters stated therein or the consequences to the Individual or Beneficiary thereof, and shall be fully protected in acting or omitting to take any action in reliance upon any such Communication.
- 7.4 Electronic Recordkeeping and Communications.
- (a) RECORDKEEPING. The Sponsor reserves the right to keep all records related to the Plan in electronic format and to destroy any paper records to the extent permissible by law (including with respect to ERISA Plans, section 2520.107-1 of the Department of Labor Regulations or such other applicable guidance as may be in effect from time to time). The electronic recordkeeping system will ensure the integrity, accuracy, authenticity, and reliability of the underlying records. Records will be maintained in reasonable order and in a safe and accessible place so that they can be inspected or examined if necessary. Electronic records will be readily convertible into legible and readable paper copy as necessary to satisfy any requirements of the law.
 - (b) COMMUNICATIONS. Notwithstanding anything in this Plan to the contrary, to the extent agreed to by the Sponsor, in each instance concerning forms, documents, notices, disclosure, or other communication (collectively, "Communications"), including those documents that require a signature by any party, between the Sponsor and the Employer maintaining the Plan or an Employee, in which this Plan provides that such Communications must be "written" or "in writing," such Communications will be permitted telephonically, electronically, or through any other similar method to the extent such method is in accordance with applicable law (including the Electronic Signatures in Global and National Commerce Act of 2000 ("E-Sign Act"), applicable Internal Revenue Service or Department of Treasury Regulations, and Department of Labor regulations to the extent they are applicable to ERISA Plans).

Article 8 — Amendment And Termination

8.1 Amendment. This Plan may be amended as follows:

- (a) EMPLOYER. The Employer reserves the right to amend any optional provision of this Plan contained in the Adoption Agreement from time to time by executing a new Adoption Agreement and delivering a copy thereof to the Sponsor. If the Employer amends any other provision of this Plan, the Plan will be deemed to be an individually designed plan.
- (b) SPONSOR. The Employer delegates to the Sponsor the power to amend this Plan, including retroactive amendments to the extent permitted by law, provided that the Sponsor or its designee gives at least thirty days' notice to the Employer of any such amendment by mailing a copy of such amendment and any IRS favorable opinion letter covering the amendment to the Employer and the Employer does not object thereto within such thirty day period.
- (c) LIMITS. No amendment by either the Employer or the Sponsor shall reduce or otherwise adversely affect any benefits of any Participant or beneficiary acquired prior to such amendment unless such retroactive application is required or permitted under applicable law.

8.2 Termination. Although the Employer expects to continue this Plan indefinitely, the Employer reserves the right to terminate this Plan at any time by appropriate action of its governing body. The Sponsor may discontinue its sponsorship of this Plan at any time upon 30 days' advance notice to the Employer transmitted pursuant to Section 7.3.

8.3 Notice. Any such Plan amendment or termination shall be communicated to all appropriate parties in accordance with Sections 4.5 and 7.3 and applicable law.



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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Prototype Salary Reduction SEP 001

FFN: 50438800000-001 Case: 200300592 EIN: 04-2747644

Letter Serial No: K400111e

MASSACHUSETTS FINANCIAL SERVICES CO
500 BOYLSTON STREET
BOSTON, MA 02116

Contact Person:
Ms. Arrington 50-00197
Telephone Number:
(202) 283-8811
In Reference To:
T:EP:RA:T3
Date: 04/16/2003

Dear Applicant:

In our opinion, the amendment to the form of your Simplified Employee Pension (SEP) arrangement does not adversely affect its acceptability under section 408(k) of the Internal Revenue Code, with respect to an employer's SEP that by its terms in effect on December 31, 1996, provided that an employee may make the salary reduction election described in Code section 408(k)(6)(A). 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).

An employer who adopts this approved prototype plan to amend a SEP that by its terms as in effect on December 31, 1996, provided that an employee may make the salary reduction election described in Code section 408(k)(6)(A) 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,

Director,
Employee Plans Rulings & Agreements



