

Terms of business for non-FCA regulated firms (including overseas persons) or other non-authorized introducers

These terms of business are effective from
May 2018 and replace all previous.

These *Terms of business* set out the nature of the relationship between Sanlam Private Wealth (SPW) ('the company') and the introducer and the terms on which the company will accept business from the introducer. They will have effect immediately upon their receipt by the introducer or upon the commencement of any transaction effected by, or through, the introducer with the company.

Definitions are provided in the appendix

1. Introduction

1.1 This agreement sets out the terms of business for persons who introduce customers to SPW and where such introductions do not constitute a regulated activity, as defined by the act. Such introducers may include overseas persons, solicitors and accountants regulated by a designated professional body in the UK and individuals not subject to the rules of a regulatory body.

1.2 SPW is regulated by the FCA, and is an authorised person for the purposes of the act.

1.3 Where the introducer is not FCA regulated but is regulated by another regulator such as a designated professional body (DPB) or an overseas regulatory body, SPW will assume that the introducer's membership of the relevant regulator remains in full force and effect unless informed otherwise by the introducer. The introducer

should be aware that SPW has no obligation to ensure that the introducer is in compliance with any rule or requirement of the act, or of any other regulator. SPW is responsible for ensuring its own compliance with the rules and requirements of the FCA and of the act. The introducer undertakes to notify the company promptly should its authorisation be suspended, modified or terminated, or if it becomes aware of any material breach on its part of the regulator's rules, or any other applicable laws, or if it becomes the subject of a formal investigation or disciplinary or enforcement action by any applicable regulator, which is in either case material to these *Terms of business*.

1.4 The introducer will sign the company's *Agency agreement form* and acknowledges that no fee can be paid to it until the form has been signed and returned to the company.

2. Scope

2.1 This agreement will apply to all customers introduced to SPW by the introducer in the circumstances referred to in clause 1.1 above.

2.2 SPW will not accept business from an introducer which is not an authorised person if, in its opinion, such arrangements would constitute a regulated activity as defined by the act.

2.3 SPW may decline to accept any introduction to a customer defined as a US person under the US identified as having one of the 'US indicia' detailed in the Foreign Account Tax Compliance Act (FATCA).

2.4 The introducer may not act as agent of the company. The introducer will not issue any circular, advertisement, leaflet or other promotional material about the company or its business, whether on electronic media or otherwise, unless the company has supplied the document or approved it in writing.

2.5 The customer shall sign the company's customer agreement documentation and shall become a client of the company.

2.6 The company and the introducer undertake to perform their obligations under this agreement in accordance with all relevant regulatory and legislative requirements and each will use its best endeavours to meet their obligations under these *Terms of business*.

3. Services to be provided

3.1 The services SPW shall offer to customers under this agreement shall be provided in accordance with the scope of the FCA's Perimeter Guidance applicable to the exclusions available to each type of introducer and may include trade execution, discretionary management or the provision of advice on portfolios of designated investments. The introducer should be aware, however, that not all of SPW's services can be offered to certain categories of non-FCA regulated introducers under the act.

3.2 SPW recognises that introducers regulated by their DPB may need to demonstrate that SPW's services fall within the scope of services recognised by its DPB as suitable for its clients. SPW undertakes to provide any relevant information required to assist the Introducer in satisfying its own regulatory requirements.

3.3 Customers introduced under this agreement will be customers of SPW and all services provided to such customers will be provided under customer agreement between SPW and the customer.

3.4 The company shall expect all instructions in relation to the portfolio(s) to be signed by the customer and shall not accept instructions from the introducer unless confirmed in writing by the customer.

3.5 The company shall expect to provide all information, valuation and other reports direct to the customer, with a copy provided to the introducer if authorised to do by the customer in writing. If the customer authorises the company in writing to send such information direct to the introducer, the introducer undertakes to pass to the customer immediately and without any amendment any such documents supplied by SPW for the information of, or completion by, the customer and to pass to SPW immediately any documents provided by the customer for that purpose. SPW will be entitled to rely on such information as the basis upon which SPW's services will be provided.

4. Handling of client money

4.1 Unless the introducer informs it otherwise, the company will assume that the introducer is not authorised to hold/operate client accounts under the rules of any applicable regulator. If the introducer is authorised to operate client accounts:

- a) the introducer is responsible for informing the company that it is so authorised;
- b) the introducer is responsible for handling client money strictly in accordance with the regulator's rules in relation to client money as amended from time to time;
- c) the introducer is responsible for ensuring that payment in respect of any contract for SPW ISAs effected by or through the introducer is received by the company with the client's signed application form in the relevant tax year; and
- d) where the company makes payment to the introducer in respect of a client, such payment will discharge the company's obligations to the client and the introducer shall indemnify and keep indemnified the company against all loss, costs, claims, expenses and demands arising from such payment to the introducer.

4.2 If the introducer has undertaken to a client to pass on monies to the company, the introducer shall do so in a timely manner.

4.3 The introducer shall indemnify the company against all loss or claims incurred directly or indirectly by the company by reason of the introducer's failure to pass on client monies or client applications promptly. For the purpose of this provision, loss shall include any loss resulting from the cancellation of the contract or application and, without limitation by the foregoing, any other loss or expense caused to the company directly or indirectly by a failure of the introducer to pass on monies or applications in a timely manner. The company shall be entitled to charge interest in respect of delayed payment at a rate of 4% above the base rate of Barclay's Bank plc.

4.4 The company shall not be responsible for any applications for ISAs for which payment is not received by the end of the relevant tax year and shall be entitled to cancel in whole or in part any contract or application in respect of which payment is not made, or which is found to be ineligible for ISA status for any other reason.

4.5 Cheques in favour of partial or full liquidation of investments in the company's portfolio services will be drawn in favour of the client unless the company is instructed otherwise in writing by the client (in accordance with the customer agreement) and subject to any regulatory requirements to the contrary.

5. Introducer's fees

5.1 Where it is agreed between the introducer and the customer that the introducer shall charge the customer an initial fee, SPW will, upon receipt of the customer's specific written instructions, debit the customer's portfolio with the agreed amount and pay it over to the introducer.

5.2 Where it is agreed that SPW will pay a finder's fee to the introducer, the introducer

undertakes to inform the customer of the size and nature of the fee if so required by local rules and regulations.

5.3 The introducer understands that SPW may, if so required by law or the rules of the FCA or any relevant regulatory body, disclose such amounts direct to the customer.

6. Anti-money laundering

6.1 If the introducer is subject to the rules of a regulator, the introducer will:

- a) verify the identity of its client in connection with the introduction of business to the company in accordance with the Money Laundering Regulations, as amended from time to time;
- b) provide written assurance to the company that it has verified the identity of its client and will supply as required by the company such relevant verification data with regard to the client, and any relevant third party, including the source of wealth, as the company may reasonably consider appropriate;

- c) maintain records relating to both verification of identity and transactions in accordance with the provisions of the applicable law and with regard to the time limit set out in those acts and regulations; and
- d) inform the company if at any time the introducer has reasonable grounds to suspect that a particular transaction is suspicious.

6.2 The introducer also undertakes to comply with any reasonable requests for information to enable the company to comply with the provisions of the Bribery Act 2010 (as amended from time to time).

7. Reliance on information

The company is entitled under COBS 2.4 to rely on the introducer for any information which it provides in respect of a client and may use such information to fulfil its suitability obligations under COBS 9. The introducer undertakes to notify the company

promptly if it becomes aware of any material changes to the information provided. The company will verify with the client all information provided by the introducer prior to opening any account.

8. Data protection

You and we shall comply with the *Sanlam privacy statement* for intermediaries in respect of the data processed under these terms, which is available at www.sanlam.co.uk

9. Indemnity

9.2 The introducer shall indemnify and keep indemnified the company in relation to the transaction(s) concerned from all losses, costs, claims, expenses or demands incurred by the company arising from:

a) any breach by the introducer of any of these *Terms of business* including, without limiting the foregoing, any failure

to provide promptly and accurately the information or documentation required pursuant to these *Terms of business*; or

b) any loss arising from the introduction of business beyond the scope of the introducer's authorisation under the act (if applicable).

10. Service of documents

Any letter or other document shall be deemed to have been served upon the introducer if it is sent by post to, or left at, any address of the introducer from which the introducer has informed the company that the introducer was last trading or the introducer's registered office (if appropriate). Any letter or document sent by post shall be deemed to have

been served on the second business day following that on which it was posted and service shall be sufficiently proved if there is evidence that the envelope containing the letter or document was properly addressed, stamped and posted. Any letter served by the introducer on the company must be sent to its registered address.

11. Amendment and assignment

11.1 The company reserves the right to vary these *Terms of business* in so far as required by the act or any regulations made thereunder or any rules of a relevant regulator or any other law or regulation to which the company and/or business is subject.

11.2 The company may vary these *Terms of business* for reasons other than those mentioned in 11.1 above, provided that not less than 28 days' notice shall be given to the introducer of, and prior to, a variation.

11.3 The introducer shall not be entitled to sub-contract any of his rights and obligations under these *Terms of business* without the prior written consent of the company.

11.4 These *Terms of business* may not be assigned by either of the parties without the written consent of the other party. Such consent is not to be unreasonably withheld, except that the company may assign its rights under these *Terms of business* to another member from time to time of its group without consent, provided that such assignment does not breach or is inconsistent with any applicable law or regulation or the FCA rules.

12. Complaints

Any complaints or grievances arising under these *Terms of business* should be addressed in writing to the head of compliance at the company's registered address.

In the event of either party receiving a client complaint about the functions performed by the other party, each party undertakes to despatch the client complaint promptly, within five business days, to the other party.

13. Termination

Either party may terminate this agreement by not less than 28 days' written notice to the other party.

Without prejudice to any legal right or remedy that either party may have pursuant to the *Terms of business*, either party shall be entitled by notice in writing to the other to terminate these *Terms of business* with immediate effect if:

- a) it has been required by the FCA to terminate these *Terms of business*;
- b) the other party commits a material breach of any of the provisions of these *Terms of business* and, in the case of a material breach that is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice specifying the breach and requiring it to be remedied;
- c) the other party becomes insolvent or unable to pay its debts when they become due, or is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (as amended from time to time);
- d) either party has presented to it a petition for or has an order made in respect of it or passes a resolution or is the subject of analogous proceedings for the winding up or appointing an official or is the subject of a notice issued for convening a meeting for the purpose of passing any such resolution; or
- e) either party has an administrator, an administrative receiver, a trustee, a liquidator or other similar official (each such official being hereafter referred to as 'official') appointed in respect of all (or substantially all) of its undertakings and assets.

14. General

14.1 These *Terms of business* (as amended from time to time) together with any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings, proposals or representations, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these *Terms of business*. Nothing in this clause shall operate to limit or exclude any liability for fraud or deliberate misrepresentation.

14.2 If any provision of these *Terms of business* is held by any court or other competent authority to be void or unenforceable in whole or in part, these *Terms of business* shall continue to be valid as to the other provisions hereof and the remainder of the affected provision.

14.3 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of these *Terms of business* shall either be or be deemed to be a waiver or in any way prejudice any right of that party under these *Terms of business*.

14.4 A person who is not a party to these *Terms of business* has no right to enforce any term of this agreement under the Contracts (Rights of Third Parties) Act 1999.

14.5 These *Terms of business* are subject to English law and each party submits to the exclusive jurisdiction of the English courts.

14.6 If, in any case, the provisions of any law or regulation which applies to the company, or the terms of the trust deed or other document constituting the scheme concerned, conflict with the obligations expressed to be assumed by the company hereunder, such provisions shall prevail.

Appendix

1.1 The following words and expressions shall have the following meanings in these *Terms of business*.

Except where stated, or where the context otherwise demands, words and phrases shall have the same meaning as in the FCA rules.

Act: the Financial Services and Markets Act 2000 as from time to time amended or re-enacted.

Business day: any day excluding Saturdays, Sundays and public holidays.

Client money: money of any currency that a firm receives or holds for, or on behalf of, a client in the course of, or in connection with its business, or which a firm treats as client money in accordance with the client money rules (see the FCA's *Client assets sourcebook* for more detail).

Company: Sanlam Private Wealth (SPW).

Customer agreement: the company's client *Terms of business* and associated documents.

FCA: the Financial Conduct Authority.

Introducer: the person, partnership or company who signs the company's *Agency agreement form*, whether authorised to carry on regulated activities pursuant to the act, or an appointed representative.

ISA: an individual savings account managed by SPW. Please note that ISAs are designed for UK taxpayers and are only available to individual investors (not a company or trustee) who are resident and ordinarily resident in the UK (or is a Crown servant serving overseas or the spouse of such an individual who accompanies their spouse abroad).

Overseas person: a person whose activities would, in the UK, be regulated, but who is not conducting such activities from a permanent place of business inside the UK.

Regulated activity: the business of engaging in one or more of the regulated activities described in section 22, part II and schedule 2 of the act in relation to units or shares.

Regulator: any regulatory body set up under the act.

SPW ISA: an individual savings account managed by SPW.

The company's portfolio service: any portfolio management service provided by SPW in accordance with each individual *Customer agreement* between the company and its client.

1.2 Where the context so admits the singular shall include the plural and vice versa, and the masculine gender shall include the feminine. Any reference to a statutory provision is to be construed as a reference to that provision as for the time being amended or re-enacted and shall include any regulations or other subordinate legislation made under it.

1.3 The appendix to these *Terms of business* shall have the same effect as if contained in the body of the *Terms of business*, and any reference to these *Terms of business* shall include the appendix.



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