

# Terms of business for authorised 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 document sets out the terms of business relevant to intermediaries who introduce clients to the company to invest in the company's portfolio services. By introducing a client to a company portfolio service, an introducer will acknowledge that these *Terms of business* apply to the transactions(s) concerned, and that it undertakes to the company to perform the obligations set out below.

**1.2** The company will not accept business under these *Terms of business* from an introducer within the UK who is not, or ceases to be, authorised under the act or, in the case of an appointed representative, whose principal is not, or ceases to be authorised under the act, and reserves the right to cease to accept business from, or to refuse any particular business proposed by, an introducer.

**1.3** The introducer undertakes to notify the company promptly should its authorisation, or exemption (in the case of appointed representatives), in respect of carrying on regulated activity be suspended, modified or terminated, or if it becomes aware of any material breach on its part of the FCA rules, or any other applicable laws, or if it becomes the subject of a formal investigation or disciplinary or enforcement action by the FCA or any other 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/adviser charge can be paid to it until the form has been signed and returned to the company. Where the appointed representative signs the *Agency agreement form*, it is responsible for informing its principal or network of the fact that it has entered into an agreement for the introduction of business with the company. Where a principal or network signs the *Agency agreement form* on behalf of one or more or its appointed representative(s), it undertakes to provide each appointed representative with a copy of these *Terms of business* and will be responsible for ensuring that the appointed representative carries out its specific obligations under these terms.

**1.5** In the event of a change of name, or acquisition by another firm, the introducer agrees to provide written evidence of such changes and to sign a new *Agency agreement form* as required by the company.

## 2. Relationship with the client

**2.1** The introducer shall under general law be the agent of its client, save in respect of its obligations under these terms.

**2.2** The introducer may act as principal (on its own account) if so authorised pursuant to the act.

**2.3** 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.

**2.4** The client shall sign the company's *Customer agreement* documentation and shall become a client of the company.

**2.5** The company and the introducer undertake to perform their obligations under the *Terms of business* 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. Suitability

**3.1** Both the company and the introducer have obligations under COBS 9 in relation to suitability. When the introducer introduces a client, the client signs the company's *Client agreement* and becomes a client of the company as well as of the introducer. However, the company does not provide a general financial planning service. Under COBS 2.4, the company is entitled to rely on the introducer for any information it provides in respect of a client, and for the assessment of the suitability of its services, or of a particular investment strategy, for its clients.

**3.2** The introducer warrants that it has carried out an assessment of the suitability of the company's service(s) in accordance with the rules in COBS 9 of the *FCA Handbook*.

**3.3** The introducer warrants that it understands the investment strategy being provided for each client and in addition that it has carried out an assessment of the suitability of that particular strategy for the client in accordance with the rules in COBS 9 of the *FCA Handbook*.

**3.4** In assessing the suitability of either the service and/or the investment strategy for the client, the introducer will take into account all necessary "Know your client" information, including the client's knowledge and experience and financial situation, including capacity for loss, investment objectives and risk appetite.

**3.5** If the introducer utilises its own, or a bespoke, risk profiler to provide a suggested asset allocation for the client, it is the introducer's responsibility to satisfy itself as to the integrity of the risk profiler and to ensure that the resulting risk profile is consistent with the chosen investment strategy offered by the company and that the client is made aware of any material differences (if any) between the desired risk profile as assessed by the introducer and the actual risk profile of the company's investment strategy.

**3.6** Where the introducer provides information about the client, or about the client's investments, the company is entitled to assume that such information is complete and accurate and that it remains so unless the introducer advises otherwise. The introducer will provide the company with all such information as the company requires in relation to the client's circumstances in order to fulfil its own obligations under COBS 9. The company is entitled (under COBS 2.4) to rely on such information and on any assessment by the introducer of the suitability of the company's portfolio service or of a particular investment strategy for the client. The introducer undertakes to inform the company immediately if it has reason to believe that the client's circumstances have changed and that any particular service, investment strategy or investment is no longer suitable for the client.

**3.7** The introducer further undertakes that, in providing information, or making assessments, it has full understanding of the investments and services offered by the company, including its *Advice status disclosure* under the RDR. The company will provide brochures and other relevant information and the introducer should contact the company if further information is required.

**3.8** The introducer undertakes that it has explained to clients the relationships and respective responsibilities of the introducer and company. In particular, the introducer's responsibility is to select the client's investment objective, risk profile and consequent company investment strategy or approve the investment strategy suggested by the company and the company's responsibility is to act as their portfolio manager and select the investments in the portfolio.

**3.9** Upon the company's request, the introducer will reconfirm the suitability of the portfolios managed by SPW for its clients and will provide any other information as may be reasonably required by the company to demonstrate suitability. In certain instances, the company may require such information to be confirmed with the client.

**3.10** Where the introducer provides instructions to the company, such as in relation to the client's portfolio or personal circumstances, the introducer undertakes that it has obtained the client's authority to provide such instructions to the company. The introducer undertakes to provide all such instructions in writing. The company may require the client's verbal or written confirmation of certain instructions, or of the introducer's authority to provide such instructions in general.

**3.11** The introducer will determine whether its client is a US client for the purposes of:

- a) the US Investment Advisers Act 1940 (as amended and updated from time to time); and
- b) The Foreign Account Tax Compliance Act (FATCA). Any client identified as having one of the 'US indicia' detailed in the FATCA regulations is deemed to be a US person or entity.

Any client identified as a US client under either the US Investment Advisers Act or FATCA must be reported to the company, which may decline to accept them as a client.

## 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 client money. If the introducer is authorised to hold client money:

- 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 FCA'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 SPW 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. Client documentation and communication

**5.1** The introducer shall pass to a client in a timely manner, and without any amendment, any documents supplied by the company for the information of, or completion by, the client and shall pass to the company immediately any documents provided by the client for that purpose.

**5.2**

- a) The company's *Customer agreement* will be agreed and signed by the client.
- b) In the case of SPW ISAs, the introducer shall ensure that prior to subscribing to an ISA, the client has received the current documentation and application forms, and undertakes to pass on in a timely manner to the client such statements, and other information supplied by the company for that purpose.

**5.3** The introducer undertakes to comply with any other disclosure requirements in force at the time of recommending or effecting a transaction.

**5.4** The company may have an obligation to send certain documents and communications and reserves the right to send other documents and communications direct to the client.

**5.5** The company may, as agreed with the client, provide the introducer with copies of reports and valuations to clients introduced by that introducer.

**5.6** The company may record and monitor telephone calls for quality control purposes.

## 6. Money laundering

**6.1** The introducer will verify the identity of its client in connection with the introduction of business to the company in accordance with the Proceeds of Crime Act 2002, the Money Laundering Regulations, the relevant FCA rules and the Joint Money Laundering Steering Group guidance notes, as amended from time to time. The introducer also undertakes to comply with the provisions of the Bribery Act 2010 (as amended from time to time).

**6.2** The introducer shall give 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.

**6.3** The introducer will ensure that ongoing monitoring of suspicious transactions is carried out as relevant in accordance with the various acts and regulations mentioned in paragraph 6.1 above.

**6.4** The introducer is responsible for maintaining records relating to both verification of identity and transactions, regardless of paragraph 6.2, in accordance with the provisions of the various acts and regulations mentioned in paragraph 6.1 above and with regard to the time limit set out in those acts and regulations.

## 7. Data protection

You and we shall comply with the *Sanlam privacy statement for intermediaries* in respect of personal data processed under these terms, which is available at [www.sanlam.co.uk](http://www.sanlam.co.uk)

## 8. Introducer's remuneration

**8.1** All matters relating to the payment of any remuneration/fee/adviser charge to the introducer by the company in respect of the company's portfolio services shall be governed by such of the FCA's rules as may be applicable. The introducer is responsible for ensuring that it complies with the FCA's rules on client's best interests (COBS 2.1) and inducements (COBS 2.3) and with its expectations regarding Treating Customers Fairly (TCF) and the Retail Distribution Review (RDR) upon implementation in January 2013. Any arrangements regarding the payments of any remuneration/fee/adviser charge to the introducer may be subject to review and revision following the finalisation of the FCA's rules regarding payments for referrals to discretionary portfolio managers, which are currently still under consultation.

**8.2** Legacy business. Where the introducer has provided a recommendation of our discretionary management service and/or of a particular investment strategy (as opposed to the specific recommendation of retail investment product) and the client has signed and the company has received its customer agreement prior to 31 December 2012, this will be treated as legacy business upon which existing commission arrangements can continue to be paid. In accordance with the FCA's guidance in paragraph 6.19 CP 12/27 Quarterly Consultation No 34, top ups and reductions of investments under such arrangements will be treated as part of the existing contract and subject to the existing commission payment arrangements. Any changes to this arrangement that the FCA may require in its final rules may affect this treatment.

**8.3** Facilitation of adviser charging. The client may agree to pay the introducer an initial and/or ongoing adviser charge and that these are to be deducted from the client's portfolio(s) in addition to the company's fees and charges. In this case, the company will facilitate such adviser charging on behalf of the client provided that written confirmation of the client's agreement to such charges is received (usually via the company's *Client agreement form*). The company will withhold payment of adviser charges to the introducer until such confirmation has been received. The introducer undertakes to disclose the actual adviser charge to the client as required by the rules of the FCA (or any other regulator to which it is subject).

### 8.4 Payment terms

- a) Any initial/upfront adviser charge will be deducted upon receipt of the client's funds/assets and will be based upon the value shown in the initial valuation. Where applicable, and subject to sufficient cash being already available in the portfolio, the adviser charge will normally be paid to the introducer within 15 working days following the initial valuation date.
- b) Ongoing adviser charges or annual fees due under legacy business arrangements will be payable when the company's management fees are debited, which may be either quarterly or half yearly depending on the particular client, and will be calculated on the value of the client's portfolio, as determined by the company. The valuation dates for this purpose are usually 31 March, 30 June, 30 September

and 31 December or, in the case of half-yearly fees, 31 March and 30 September. Ongoing adviser charges/annual fees will be payable in arrears for the relevant period. For the first period of investment, the adviser charge will be paid in arrears from the effective date of the customer agreement to the first period end date. The effective date of the customer agreement is the date as at which the initial valuation/composition of the portfolio is compiled.

- c) Ongoing adviser charges will be paid to the introducer normally no later than 25 business days after the valuation date.
- d) The company may defer payment of fees/adviser charges until a total of £20 (excluding VAT), or such other amount as the company may notify, is due to the introducer.

**8.5** The company may at its discretion disclose the introducer's fees/adviser charges to the introducer's network. If the company considers the introducer's fee structure renders the company's portfolio service uneconomic for the client, the company reserves the right to refuse to take on such business.

**8.6** Where the client terminates his or her agreement with the company, the introducer's fee/adviser charge will be paid up to the date of termination.

**8.7** The company shall, at its discretion, cease payment of fees/fees/adviser charges to the introducer:

- a) if the introducer ceases to be authorised to carry on regulated activities or the introducer's authorisation is suspended;

- b) if the introducer dies, becomes bankrupt, compounds with or assigns his estate or effects for the benefit of creditors, has his goods seized in execution or, where the introducer is a company, goes into liquidation or receivership or is subject to an administration order; or
- c) if the introducer is subject to an investigation under Section 170 of the act or under the rules of the FCA or other appropriate regulator.

**8.8** Where an introducer moves to another firm, the company will continue to pay such fees/fees/adviser charges to the original firm until the company has received signed instructions from the client confirming the new agency. In the event of two or more introducers claiming remuneration in respect of the same transaction or client, the decision of the company as regards the payment of such fee/fees/adviser charge shall be final. The company may decide to take advice from the client, if necessary.

**8.9** The introducer is responsible for determining the VAT status of its fees and adviser charges. The introducer undertakes to supply the company with details of the VAT status of such fees and charges. Where such fee/adviser charge is in respect of a taxable supply for VAT purposes, VAT will be added to the fee/adviser charge only if the introducer has supplied VAT registration details or has issued a VAT invoice for the fee/adviser charge due.

## 9. Indemnity

**9.1** The introducer and the company agree to indemnify each other for any loss arising from:

- a) any failure by either party to comply with the provisions of the act, any regulations made thereunder and the rules of any relevant regulator; or
- b) any claims by clients arising out of the provision of services and regulated business for which the introducer and the company have agreed to be responsible under these *Terms of business*.

**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.

## 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. 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 each party may assign its rights under these *Terms of business* to another member 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 and any such assignment is subject to and must be carried out in accordance with the company's customer agreement(s) with its client(s).

## 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

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.

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.

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*.

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.

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

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.

**Adviser charge:** an initial and or ongoing fee agreed between the introducer and the client in accordance with the FCA's rules as implemented under the RDR.

**Appointed representative:** a person who is exempt from the act in relation to any regulated activity for which his principal has accepted responsibility. See the FCA's *Glossary and supervision manual* (SUP 12.2) for more detail.

**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.

**Network:** a firm which has appointed five or more appointed representatives, or if it appoints fewer than five appointed representatives, these have, between them, 26 or more representatives. See the FCA's *Supervision manual* (SUP 12.2) for more detail.

**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.

**Unit:** a unit in any manager's authorised or unauthorised unit trust scheme.

**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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