

COURT ENFORCEABLE UNDERTAKING

Australian Securities and Investments Commission Act 2001

Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (**ASIC**) by:

Sanlam Private Wealth Pty Ltd
ACN 136 960 775
North Sydney, New South Wales

1. Definitions

In addition to terms defined elsewhere in this undertaking, the following definitions are used:

Acceptance Date means the date of acceptance by ASIC of this court enforceable undertaking.

AFSL means Australian Financial Services Licence, as defined by section 9 of the *Corporations Act 2001 (Cth)*.

ASIC Act means the *Australian Securities and Investments Commission Act 2001 (Cth)*.

Authorised Representative or **AR** has the meaning given by section 9 of the Corporations Act.

Corporate Authorised Representative or **CAR** means an Authorised Representative that is a body corporate.

Corporations Act means the *Corporations Act 2001 (Cth)*.

Financial service has the meaning given by section 766A of the Corporations Act.

Licensee means a holder of an AFSL.

Sanlam means Sanlam Private Wealth Pty Ltd, ACN 136 960 775.

Relevant Period means 13 March 2019 to 22 November 2023.

Retail client has the meaning given by sections 761G and 761GA of the Corporations Act.

RM means an individual appointed as a responsible manager in accordance with ASIC Regulatory Guide 105: AFS licensing: Organisational competence.

Wholesale client has the meaning given by sections 761G and 761GA of the Corporations Act.

2. Background

ASIC's role

- 2 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers to, among other things, promote the confident and informed participation of investors and consumers in the financial system.

Sanlam's business

- 3 Sanlam is part of the Sanlam Group, a financial services company headquartered in South Africa and listed on the Johannesburg Stock Exchange.
- 4 Sanlam carries on a financial services business within the meaning of Chapter 7 of the Corporations Act.
- 5 Since August 2009, Sanlam has held AFSL Number 337927 which authorises it to provide financial product advice for, and deal in, specified classes of financial products, as well as to provide custodial or depository services. Sanlam's AFSL authorises it to provide financial services to retail and wholesale clients.
- 6 Since at least 2019, Sanlam has appointed CARs and ARs under its AFSL to provide financial services on its behalf. Its business comprises the following divisions:
 - 6.1 "Core": its wealth management business focused on listed equities supported by CARs based in Sanlam's offices in Sydney or Melbourne;
 - 6.2 "Core funds": which provides unlisted wholesale and retail funds support; and
 - 6.3 "Fintechs": described by Sanlam as providing a framework for its external CARs, being fintech start-up entities offering diverse products and services, targeted at retail clients (and to a lesser extent, wholesale clients).
- 7 The total number of CARs and ARs Sanlam appointed across the Relevant Period were as follows (noting that these CARs and ARs mainly related to Sanlam's "core" businesses):

As at:	No. of CARs	No. of ARs
13 March 2019	24	40
31 December 2019	27	44
31 December 2020	37	57
31 December 2021	42	71
31 December 2022	42	71
22 November 2023	38	65

- 8 In respect of Sanlam's "core" businesses, as at July 2023, its CARs provided financial services to at least 2,300 customers; and the total funds under management approximated \$118 million.

- 9 In respect of Sanlam's "fintech" business, at least twelve fintech entities maintained or entered into CAR agreements with Sanlam during the Relevant Period. These fintech CARs were often referred to as neo-brokers, offering diverse services including online trading platforms and one CAR offered crypto-based investment products. A number of these fintech CARs targeted large retail client bases and, over time, managed large pools of assets. Further, some offered trading apps marketed as being easy to use. These apps give consumers access to Australian and international listed equities, exchange traded funds, and crypto-linked investment products, among other things.
- 10 The nature of these fintech businesses meant that they posed various risks to retail clients, particularly in circumstances where those businesses have not been subject to adequate monitoring and oversight by Sanlam. These risks are heightened where inadequate controls are in place, including risk and compliance controls, and training processes. Additionally, ASIC is concerned that insufficient human resources were available to oversee and implement those controls and processes effectively.

Details of conduct

- 11 ASIC has conducted an investigation into Sanlam under section 13 of the ASIC Act. The investigation, and the conduct the subject of this court enforceable undertaking, relates to Sanlam's compliance with its general obligations as a licensee under s 912A(1) of the Corporations Act. As a result of that investigation, ASIC holds the following concerns:

Supervision and monitoring of representatives

- 12 Section 912A(1)(ca) requires a licensee to take reasonable steps to ensure that its representatives comply with financial services laws. ASIC is concerned that during the Relevant Period, Sanlam:
- 12.1 did not undertake adequate ongoing due diligence to review its CARs' and ARs' suitability to operate under its AFSL;
 - 12.2 did not have adequately formalised and systematic review processes to assess whether its employees, CARs and ARs were complying with financial services laws;
 - 12.3 relied primarily on informal processes and CARs self-reporting as supervisory mechanisms, which it did not verify or document; and
 - 12.4 had inadequate processes to ensure its ARs were properly trained.

Human resources

- 13 Section 912A(1)(d) requires a licensee to have available adequate resources (including human resources) to provide the financial services covered by its licence and to carry out supervisory arrangements. ASIC is concerned that during the

Relevant Period, Sanlam:

- 13.1 had inadequate human resources dedicated to risk management or overseeing an effective review programme to monitor CARs and ARs across its three business divisions;
- 13.2 had a limited number of employees across all aspects of its operations, including compliance;
- 13.3 did not develop and implement a human resourcing plan consistent with its current and future needs; and
- 13.4 did not have an adequately documented succession plan that dealt with the "key person" risk and attendant business disruption potentially arising from the unexpected absence of its Managing Director/CEO (given Sanlam depended heavily on his organisational knowledge).

Competence to provide financial services

14 Section 912A(1)(e) requires a licensee to maintain the competence to provide the financial services covered by its licence. ASIC is concerned that during the Relevant Period, Sanlam:

- 14.1 had RMs who, given the number and breadth of CARs and ARs Sanlam had authorised, and their other responsibilities, were not in a position to devote sufficient time to effectively discharge all of their duties;
- 14.2 failed to have an adequate number of RMs with the expertise to cover the complexity and diversity of the financial services offered by its CARs;
- 14.3 failed to adequately document and implement processes to ensure that it had the appropriate number of suitably qualified RMs having regard to the financial services it provided, the complexity of those services and the industries to which they related, as well as the number and breadth of CARs and ARs it had authorised; and
- 14.4 did not have adequate and structured processes to assess the ongoing suitability of its RMs.

Training of representatives

15 Section 912A(1)(f) requires a licensee to ensure that its representatives are adequately trained and are competent, to provide the financial services covered by its licence. ASIC is concerned that during the Relevant Period, Sanlam:

- 15.1 failed to implement a training and competency program to assess or develop its ARs' skills;
- 15.2 had insufficient resources to develop and implement an appropriate training and competency program; and
- 15.3 failed to maintain comprehensive and consistent training records.

Risk management systems

16 Section 912A(1)(h) requires a licensee to ensure that it has adequate risk management systems. ASIC is concerned that during the Relevant Period Sanlam's risk management arrangements were inadequate in that:

16.1 Sanlam's limited existing risk management framework did not address the distinct risks and compliance obligations applying to each division of its financial services business;

16.2 Sanlam failed to implement adequate tools and systems to identify, address and monitor the risks in its business;

16.3 Sanlam did not have adequate employees, officers or third-party service providers, with appropriate risk management expertise; and

16.4 Sanlam failed to ensure that there was sufficient independent oversight of its risk management and compliance systems.

3. ASIC's view of the conduct

17 ASIC is concerned that Sanlam has not adequately managed and supervised its CARs and ARs, particularly given the number of CARs and ARs appointed across its entire business, and noting that the fintech CARs operate in sectors outside Sanlam's traditional "core" businesses. Sanlam's compliance framework is not directed to the specific risks associated with products offered by, or accessed through, the fintech CARs. Given the nature of the fintech services, this lack of proper oversight exposes retail clients to various risks.

18 ASIC considers that, as a result of the matters outlined in paragraphs 12 to 16, Sanlam has contravened the obligations imposed on licensees contained in subsections (ca), (d), (e), (f) and (h) of s 912A(1) of the Corporations Act.

4. Admissions by Sanlam

19 Sanlam admits to:

19.1 the conduct identified at paragraphs 12 to 16; and

19.2 each of the contraventions identified at paragraph 18.

5. Undertakings

Acceptance of court enforceable undertaking

20 Under section 93AA of the ASIC Act, Sanlam has offered, and ASIC has agreed to accept as an alternative to pursuing civil penalty proceedings, the undertakings in paragraphs 21 and following below.

Engagement of Independent Expert

21 Sanlam undertakes that within 30 business days of the Acceptance Date (or within

- such longer period as may be agreed by ASIC), it will request ASIC to approve:
- 21.1 the appointment of an independent compliance expert that meets the criteria in paragraph 23 of this court enforceable undertaking (**Independent Expert**); and
 - 21.2 draft terms of the engagement of the Independent Expert that meets the requirements of this court enforceable undertaking.
- 22 If ASIC approves the appointment of the Independent Expert and the draft terms of the engagement (as referred to in paragraph 24), Sanlam undertakes to appoint the approved Independent Expert on the terms approved by ASIC, within 10 business days of receiving ASIC's approval (or within such longer period as may be agreed by ASIC) (**Appointment Date**).
- 23 Sanlam undertakes to nominate an Independent Expert whom Sanlam and ASIC both agree and reasonably believe:
- 23.1 has the necessary expertise, experience and operational capacity to perform the role contemplated by this court enforceable undertaking;
 - 23.2 is independent of Sanlam, its related bodies corporate, and its officers;
 - 23.3 has no actual or potential conflicts of interest at the time of appointment; and
 - 23.4 is capable of exercising objective and impartial judgment.
- 24 Sanlam undertakes to ensure that the terms of the Independent Expert's engagement provided to ASIC for approval meet the requirements of this court enforceable undertaking and:
- 24.1 includes a statement that the work of the Independent Expert is being carried out for Sanlam and ASIC, acknowledging that ASIC will be reviewing and relying on, the work of the Independent Expert;
 - 24.2 includes a statement that upon ASIC's request, ASIC is to be copied into all, or some, of the communications between Sanlam and the Independent Expert;
 - 24.3 requires the Independent Expert to notify ASIC where an actual or potential conflict of interest arises during the engagement or when the Independent Expert becomes aware of information that adversely affects its ability to exercise objective and impartial judgement; and
 - 24.4 includes a timetable for the delivery of reports to ASIC and Sanlam.
- 25 Sanlam undertakes to seek approval (as provided for under paragraph 21) for the appointment of a new Independent Expert within 15 business days of becoming aware that the Independent Expert is unable to continue its appointment.
- 26 Sanlam undertakes to:

- 26.1 give the Independent Expert any information or explanation reasonably requested by the Independent Expert of any matter in any way connected with any report required to be prepared by the Independent Expert under this court enforceable undertaking;
 - 26.2 provide that ASIC may seek from the Independent Expert an update or information of any relevant matter the subject of this court enforceable undertaking;
 - 26.3 otherwise reasonably assist the Independent Expert in carrying out the terms of its engagement and producing the reports required to be prepared by the Independent Expert under this court enforceable undertaking; and
 - 26.4 allow ASIC to replace the Independent Expert, in circumstances where ASIC is not satisfied with the quality or timeliness of the Independent Expert's work. Prior to exercising this discretion, ASIC will give the Independent Expert a reasonable opportunity to address ASIC's concerns about the quality or timeliness of the work.
- 27 Sanlam undertakes that it will not vary the terms of engagement of the Independent Expert without the prior written approval of ASIC.

Compliance review

- 28 Sanlam undertakes to require that the Independent Expert, within 10 business days of the Appointment Date (or within such longer period as may be agreed by ASIC), commences review of Sanlam's systems, processes and controls in respect of the following matters to assess Sanlam's compliance with certain obligations set out in s 912A(1) of the Corporations Act:
- 28.1 processes and procedures for the monitoring and supervision of Sanlam's employees, CARs and ARs to ensure they have the ongoing ability to comply with the financial services laws (s 912A(1)(ca));
 - 28.2 arrangements to ensure Sanlam has adequate human resources (including compliance personnel) to continue to provide the financial services covered by its licence and to carry out supervisory arrangements (s 912A(1)(d));
 - 28.3 arrangements and processes to ensure Sanlam maintains the competence to provide financial services, including having a suitable number of suitably qualified and experienced RMs (s 912A(1)(e));
 - 28.4 arrangements and processes to ensure Sanlam's representatives (including its staff) are appropriately trained, including ongoing training requirements (s 912A(1)(f)); and
 - 28.5 to have adequate risk management systems (including compliance management) (s 912A(1)(h)).
- 29 Sanlam undertakes to require the Independent Expert to deliver to Sanlam and

- ASIC, within three months of the Appointment Date (or such longer period as may be agreed by ASIC), a report (**Independent Expert Report**) which:
- 29.1 details the Independent Expert's findings of the review referred to in paragraph 28 above, including any deficiencies identified in the systems, processes and controls necessary to ensure compliance by Sanlam with its obligations under s 912A(1) of the Corporations Act (as described in paragraph 28);
 - 29.2 sets out the Independent Expert's recommendations as to any action that should be taken by Sanlam in response to any of its findings; and
 - 29.3 sets out the Independent Expert's opinion of a reasonable time period for implementation by Sanlam of all recommended actions.
- 30 Sanlam undertakes to require the Independent Expert to deliver to Sanlam and ASIC, at the same time it provides the Independent Expert Report, a written summary of that report (**First Summary Report**).
- 31 Within 21 business days (or such other times as agreed by ASIC) of receipt of the Independent Expert Report, Sanlam undertakes to consider the report and provide to the Independent Expert and to ASIC a plan (**Remedial Action Plan**) which:
- 31.1 sets out the actions Sanlam proposes to take to implement the recommendations made in the Independent Expert Report;
 - 31.2 specifies the date by which each action will be taken; and
 - 31.3 sets out the actions Sanlam proposes not to implement and why.
- 32 If ASIC or the Independent Expert requires any reasonable modifications to the Remedial Action Plan, ASIC or the Independent Expert must notify Sanlam in writing within 10 business days of receipt of the plan. Sanlam undertakes to make such modifications to the Remedial Action Plan and provide a copy of the modified Remedial Action Plan to ASIC and the Independent Expert within 5 business days of receipt of such notification.
- 33 Subject to paragraph 32, Sanlam undertakes to implement the Remedial Action Plan in full and within the specified time periods.
- 34 Sanlam undertakes to notify ASIC and the Independent Expert, within two business days of the full implementation of the Remedial Action Plan.
- 35 Sanlam undertakes to require, within three months (or such longer period as ASIC agrees to) of the notification required by paragraph 34, the Independent Expert to review Sanlam's implementation of the Remedial Action Plan and to prepare and deliver to Sanlam and ASIC, a written report that sets out the Independent Expert's findings on:
- 35.1 whether Sanlam has adequately implemented each of the actions set out in the Remedial Action Plan;

- 35.2 whether each action described in the Remedial Action Plan continues to be operational since it was first implemented, and if not, the extent to which the action has not been operational;
 - 35.3 whether any issues precluded or materially impacted the implementation or operation of any part of the Remedial Action Plan;
 - 35.4 any further actions required to implement that plan; and
 - 35.5 reasonable timeframes for those actions (**Implementation Report**).
- 36 Sanlam undertakes to require the Independent Expert to deliver to Sanlam and ASIC, at the same time that it provides the Implementation Report, a written summary of that report (**Second Summary Report**).
- 37 Within 21 business days (or such other time as agreed by ASIC) of receipt of the Implementation Report, Sanlam undertakes to consider the report and if applicable, provide to the Independent Expert and ASIC, its revised Remedial Action Plan (**Second Remedial Action Plan**) which:
- 37.1 sets out how it will implement any further actions recommended in the Implementation Report;
 - 37.2 specifies the date by which each action will be taken; and
 - 37.3 sets out the further actions Sanlam proposes not to implement and why.
- 38 If ASIC or the Independent Expert requires any reasonable modifications to the Second Remedial Action Plan, ASIC or the Independent Expert must notify Sanlam in writing within 10 business days of receipt of the plan. Sanlam undertakes to make such modifications to the Second Remedial Action Plan and provide a copy of it to ASIC and the Independent Expert within 5 business days of receipt of such notification.
- 39 Sanlam undertakes to notify ASIC within two business days of full implementation of the Second Remedial Action Plan.
- 40 Within 5 business days of the notification referred to in paragraph 39, Sanlam undertakes to provide ASIC with a written statement, signed by a director of Sanlam, stating whether or not Sanlam:
- 40.1 has complied with all the terms of this court enforceable undertaking; and
 - 40.2 has the ongoing ability to comply with its obligations under subsections 912A(1)(ca), (d), (e), (f) and (h) of the Corporations Act.
- 41 If Sanlam is unable to confirm positively the matters in paragraph 40, it must provide to ASIC a statement explaining why it is unable to provide such confirmation.

Refrain from appointing further CARs or ARs

- 42 Sanlam undertakes not to appoint any further CARs or ARs under its AFSL where the

appointment involves the provision of financial services outside those provided through Sanlam's "core" businesses, until it has notified ASIC in accordance with paragraph 40.

Cost of compliance

43 Sanlam undertakes that it will pay all costs associated with its compliance with this court enforceable undertaking.

Provision of documents

44 Sanlam undertakes to provide all documents and information requested by ASIC from time to time for the purpose of assessing its compliance with the terms of this court enforceable undertaking.

6. Acknowledgements

45 Sanlam acknowledges that ASIC:

45.1 may issue a media release on execution of this undertaking, referring to its terms and to the concerns of ASIC which led to its execution;

45.2 may from time to time, publicly refer to this undertaking;

45.3 will from time to time, publicly report about compliance with this undertaking;

45.4 will make this undertaking available for public inspection;

45.5 may issue a media release referring to the content of the Independent Expert Report, First Summary Report, Implementation Report and Second Summary Report;

45.6 may from time to time, publicly refer to the content of the reports required to be prepared under this court enforceable undertaking; and

45.7 may make available for public inspection, a summary of the content of the reports required to be prepared under this court enforceable undertaking, or a statement that refers to the content of those reports.

46 ASIC acknowledges that it will not refer to any information from the Independent Expert that:

46.1 consists of personal information of an identified natural person whose acts or omissions are not the subject of, or a concern mentioned in, this court enforceable undertaking;

46.2 ASIC is satisfied would be unreasonable to release, because the release of the information would unreasonably affect the business, commercial or financial affairs of Sanlam or a third party, otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of this court enforceable undertaking;

46.3 ASIC is satisfied should not be released because it would be against the

public interest to do so; or

46.4 Sanlam has asked not to be released if ASIC is satisfied:

46.4.1 it would be unreasonable to release, because the release of the information would unreasonably affect the business, commercial or financial affairs of Sanlam or a third party, otherwise than in a way that arises from the execution, implementation and reporting of the outcomes of this court enforceable undertaking; or

46.4.2 it should not be released because it would be against the public interest to do so.

47 Further, Sanlam acknowledges that:

47.1 ASIC's acceptance of this undertaking does not affect ASIC's power to investigate, conduct surveillance or pursue a criminal prosecution or its power to lay charges or seek a pecuniary civil order in relation to any contravention not the subject of ASIC's concerns in this court enforceable undertaking or arising from future conduct;

47.2 this undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this undertaking or arising from future conduct;

47.3 this undertaking has no operative force until accepted by ASIC; and

47.4 the date of this court enforceable undertaking is the date on which it is accepted by ASIC.

Executed by Sanlam Private Wealth Pty Ltd)
in accordance with section 127 of the)
Corporations Act 2001 (Cth):



..... Director



..... Director/Company Secretary

Accepted by the Australian Securities and Investments Commission under section 93AA
of the ASIC Act by its duly authorised delegate:



Molly (Amal) Choucair
Delegate of Australian Securities and Investments Commission

Date accepted by ASIC: 23/12/24