

Professional and or Well-Informed Investor

“**Professional investor**” means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II of the Investment Services and Activities and Regulated Markets Law as amended.

Professional client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered to be professional client, the client must comply with the following criteria:

PART I CATEGORIES OF CLIENT WHO ARE CONSIDERED TO BE PROFESSIONALS

The following shall all be regarded as professionals in all investment services and activities and financial instruments for the purposes of the Law:

(1) Entities which are required to be authorised or regulated to operate in the financial markets. The list below shall be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive of the European Union, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a third country:

- (a) Credit institutions;
- (b) Investment Firms (IFs);
- (c) Other authorised or regulated financial institutions;
- (d) Insurance companies;
- (e) Collective investment schemes and management companies of such schemes;
- (f) Pension funds and management companies of such funds;
- (g) Commodity and commodity derivatives dealers;
- (h) Locals;
- (i) Other institutional investors;

(2) Large undertakings meeting two of the following size requirements on a company basis:
— balance sheet total: EUR 20 000 000
— net turnover: EUR 40 000 000
— own funds: EUR 2 000 000

(3) National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations.

(4) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities referred to above are considered to be professionals. They must however be allowed to request non-professional treatment and IFs may agree to provide a higher level of protection. Where the client of an IF is an undertaking referred to above, the IF must inform it prior to any provision of services that, on the basis of the information available to the IF, the client is deemed to be a professional client, and will be treated as such unless the IF and the client agree otherwise. The IF must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the client, considered to be a professional client, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved.

This higher level of protection will be provided when a client who is considered to be a professional enters into a written agreement with the IF to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime of the IF. Such agreement shall specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

PART II

CLIENTS WHO MAY BE TREATED AS PROFESSIONALS ON REQUEST

1. Identification criteria

Clients other than those mentioned in Part I, including public sector bodies, local public authorities, municipalities and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules of IFs. IFs shall therefore be allowed to treat any of those clients as professionals provided the relevant criteria and procedure mentioned below are fulfilled. Those clients shall not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in Part I.

Any such waiver of the protection afforded by the standard conduct of business regime shall be considered to be valid only if an adequate assessment of the expertise, experience and knowledge of the client, undertaken by the IF, gives reasonable assurance, in light of the nature of the transactions or services recommended, that the client is capable of making investment decisions and understanding the risks involved.

The fitness test applied to managers and directors of entities licensed under Directives of the European Union in the financial field, may be regarded as an example of the assessment of expertise and knowledge. In the case of small entities, the person subject to that assessment shall be the person authorised to carry out transactions on behalf of the entity.

In the course of that assessment, as a minimum, two of the following criteria shall be satisfied:

—the client has carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous four quarters,

- the size of the client’s financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500 000,
- the client works or has worked in the financial sector for at least one year in a professional position, which requires knowledge of the transactions or services envisaged.

2. Procedure:

Those clients may waive the benefit of the detailed rules of business conduct only where the following procedure is followed:

- they must state in writing to the IF that they wish to be treated as a professional client, either generally or in respect of a particular investment service or transaction, or type of transaction or product,
- the IF must give them a clear written warning of the protections and investor compensation rights they may lose,
- they must state in writing, in a separate document from the contract, that they are aware of the consequences of losing such protections. Before deciding to accept any request for waiver, IFs must be required to take all reasonable steps to ensure that the client requesting to be treated as a professional client meets the relevant requirements stated in Section 1 of this Part. However, if clients have already been categorised as professionals under parameters and procedures similar to those referred to above, it is not intended that their relationships with IFs shall be affected by any new rules adopted.

IFs must implement appropriate written internal policies and procedures to categorise clients. Professional clients are responsible for keeping the IF informed about any change, which could affect their current categorisation. Should the IF become aware however that the client no longer fulfils the initial conditions, which made him eligible for a professional treatment, the IF shall take appropriate action.

“Well informed investor” means every investor which is not a professional investor and fulfils the following conditions:

- (a) the investor confirms in writing that he is a well-informed investor and that he is aware of the risks related with the proposed investment; and
- (b) either his investment in the AIF amounts, at least, to €125 000, or he is assessed as a well-informed investor, either by a credit institution that falls within the scope of the Banking Laws as amended, or by an Investment Firm, or by a UCITS management company and the above mentioned assessment shows that he has the necessary experience and knowledge to be able to evaluate the appropriateness of the investment in the AIF.