



# Conduct Of Business

## **The differences between the treatment of Retail and Professional [including Elective Professional] clients**

For the avoidance of any doubt the points raised below do not constitute an offer or undertaking by XNT LTD. (also referred to as XNT) to provide any services to Retail Clients, or to categorise any client as a Retail Client, whether in the manner set out below or otherwise. Any references to "Professional Client" include: per se Professional Clients and Elective Professional Clients as defined by the MFSA.

Below is an assessment of the protections set out in the MFSA Conduct of Business Rules applicable to retail clients, which do not apply to you by virtue of your categorization as a per se professional client or an elective professional client, as applicable.

XNT will as a "regulated firm" engage with you in line with your categorization as a per se professional client or an elective professional client, as applicable:

1. Information about a regulated firm, its services, and its remuneration
  - 1.1. A regulated firm is expressly required to provide retail clients with information about it and its services (for example but not limited to: its authorisation, conflicts of interest, and methods of communication). The above requirements do not apply in respect of professional clients.
  - 1.2. A regulated firm that manages investments for a retail client is specifically required to provide the client with information on benchmarks, delegation, types of investments and objectives, or valuations. The above requirements do not apply in respect of professional clients.
  - 1.3. A regulated firm is required to provide its clients with information on costs and associated charges. The information provided to Professional Clients is generally less comprehensive than the information provided to Retail Clients.
2. Communicating with clients
  - 2.1. A regulated firm is required to communicate any financial promotions to the client, provided it is proportionate to the client categorisation, in a way that is fair, clear and not misleading. As a result



the way in which a regulated firm communicates with a professional client may be different from the way in which a regulated firm communicates with a retail client. The requirements relating to the extent of detail, the timing and the medium of the provision of information are dependent on the categorization of a client as a retail client or professional client.

2.2. The requirements relating to distance communications will apply in the event the client meets the definition of “consumer”.

### 3. Providing product information

3.1. A regulated firm is required to provide the client with information on the general nature of risks of designated investments ("Risk of Investments"). This requirement applies to both retail clients and professional clients. A regulated firm is however not required to provide professional clients with a detailed description of the Risks of Investments.

3.2. Where an investment is subject to an offer to the public, a regulated firm is required to inform a retail client that a Prospectus has been made available to the public and is required to do so in good time. The above requirement does not apply in respect of professional clients. Similarly a regulated firm is not required to provide a professional client with details required to make a fair assessment of the guarantor of any third party guarantees incorporated in an investment or to provide information concerning a designated investment prior to providing a service to the professional client.

3.3. A regulated firm that packages an investment service with another service or product in relation to a retail client is required to:

- (i) inform the retail client if the risks resulting from the package are likely to be different from the risks associated with the components when taken separately; and
- (ii) provide retail clients with an adequate description of the different components of the package and the way in which their interaction modifies the risks.

The above requirements do not apply in respect of professional clients.

3.4. A regulated firm that provides a retail client with information that sets out past performance of an investment or index and the indication is based on figures that are denominated in a currency other than that of the country in which that retail client is resident, a regulated firm is required to disclose the relevant currency and to clearly warn the retail client that the performance of the investment or index may increase or decrease as a result of currency fluctuations. This requirement does not apply



in respect of professional clients.

#### 4. Reporting information to clients

4.1. The regulated firm may when executing orders, other than in the course of managing investments, provide its retail clients with a simplified trade confirmation. The above requirements do not apply in respect of professional clients.

4.2. A retail client has a right to receive data in relation to each individual tranche, where the regulated firm has averaged certain data in relation to the execution of orders in tranches. The above requirements do not apply in respect of professional clients.

4.3. A regulated firm that holds assets belonging to a retail client that include leveraged financial instruments or contingent liability transactions must inform the retail client, where the initial value of each instrument depreciates by 10 per cent. and thereafter at multiples of 10 per cent. no later than the end of the business day in which the threshold is exceeded or, in a case where the threshold is exceeded on a non-business day, the close of the next business day. These requirements do not apply in respect of professional client accounts.

#### 5. Best execution and order handling

5.1. When executing orders for the client, or placing orders for the client with another firm the regulated firm must take all reasonable steps to obtain the "best possible result" for the client. Similarly a regulated firm is required to provide its clients with its order handling & execution policy. These requirements apply to both Retail and Professional Clients.

5.2. A regulated firm is required to provide a retail client with a summary of its order execution policy which includes a link to the most recent execution quality data for each execution venue listed in the policy. A regulated firm is not obliged to provide a summary that complies with these requirements to professional clients.

5.3. As outlined in [5.1] above a regulated entity is required to take all sufficient steps to obtain the "best possible result" for its clients when executing orders. The application and importance of the relevant execution factors may vary depending on whether the client is a retail or professional client.

5.4. Where a regulated firm executes orders for a retail client, the total consideration is generally considered an overriding factor when determining best execution. The other execution factors, namely, likelihood of execution and settlement, speed of execution, market impact, the size and type of order, and any other implicit transaction costs may be given precedence over the immediate price



and cost consideration only where they have a direct bearing on the delivery of the best possible result in terms of the total consideration.

- 5.5. Where a regulated firm executes orders for a professional client it may consider a number of factors when determining best execution. In this respect the regulated firm's execution policy should determine the relative importance of each of the execution factors. Obtaining the best possible price for a professional client is generally given high importance. However, the execution policy of a regulated firm may give more importance to other execution factors (other than price) when obtaining the "best possible result" for a professional client. In light of the above, when executing orders for professional clients and dealing with competing execution venues, a regulated firm may disregard its own commissions, and costs in the selection of an execution venue over another.
- 5.6. A regulated firm is required to inform a retail client of any material difficulty in carrying out the order promptly on becoming aware of the difficulty. This requirement does not apply to professional clients. In the latter case a regulated firm is only required to provide professional clients with "appropriate information".
- 5.7. It may be possible for a regulated firm's professional clients to enter into transactions for financial instruments on what is known as a "request for quote" basis, where the client requests a quote for the price at which the regulated firm is prepared to purchase an investment from, or sell it to the client. In such circumstances, the regulated firm may not owe the duty to "take reasonable steps to obtain the best possible result" for that professional client.

## 6. Custody

- 6.1. "Custody Rules" apply to the regulated firm when it receives or holds investments on behalf of both retail clients and professional clients. A regulated firm is in this respect required to hold documents of title to a safe custody investment either in the regulated firm's own physical possession or with a custodian in an account designated for clients' safe custody investments, or in accordance with a client's specific written instructions.
- 6.2. A regulated firm is required to obtain the client's express consent prior to undertaking or otherwise engaging in stock lending or other securities financing activity.
- 6.3. A regulated firm may not enter into title transfer collateral arrangements in respect of assets belonging to a retail client. This restriction does not apply to assets belonging to a professional client.

## 7. Client money

- 7.1. The Client Money Rules of the MFSA are more onerous and provide more protection to retail clients



than they do for professional clients.

7.2. A regulated firm is required to pay a retail client interest earned on that clients' money held for that client unless it has otherwise notified that retail client in writing. This requirement does not apply to professional clients. XNT does not pay interest on any money that it holds for its professional clients.

7.3. A regulated firm is required to treat all cash received from a retail client as "clients' money" and may not enter into title transfer collateral arrangements in respect of money belonging to a retail client.

7.4. In the case of Professional Clients, there are instances where money received by a regulated firm will not be considered "clients' money" for the purposes of the MFSA's Client Money Rules; in this case the Client Money Rules will not apply. For example, where a professional client transfers full ownership of money to a regulated firm for the purpose of securing or otherwise covering present or future, actual or contingent or prospective obligations, such money will no longer be regarded as "clients' money". Note the specific terms applicable to you in this regard are based on your client categorisation in accordance with XNT's Standard Terms of Business as amended from time to time.

## 8. Suitability Assessment

8.1. A firm that manages investments for a client is required to obtain and consider the following information in relation to the client:

- (i) the client's investment objectives and risk tolerance;
- (ii) the client's knowledge and experience in the investment field relevant to the specific type of investment or service; and
- (iii) the financial situation of the client.

When managing investments for a professional client, a regulated firm may assume that the client has the necessary level of experience and knowledge in order to understand the risks involved in the management of his portfolio. This assumption cannot be made for a retail client.

## 9. Appropriateness Assessment

9.1. When assessing appropriateness for non-advised services (i.e. where we do not make personal recommendations or carry on portfolio management) in respect of a retail client, a regulated firm is in certain instances required to determine whether the client has the necessary knowledge and



experience in order to understand the risks involved in relation to the product or service offered or demanded. This requirement does not apply to professional clients and a regulated firm may assume that a professional client has the necessary experience and knowledge in order to understand the risks involved in relation to the related investment services or transactions.

## 10. Access to the Arbiter for Financial Services

10.1. Elective Professional Clients that are individuals or SMEs (see below reference to micro enterprises) do not lose their right to complain before the Arbiter for Financial Services. That said, if an investor is properly categorised as a professional client then there is a higher likelihood that the Arbiter will not entertain the complaint given the complainant's expertise and experience as well as his/her request.

"eligible customer" means a customer who is a consumer of a financial services provider, or to whom the financial services provider has offered to provide a financial service, or who has sought the provision of a financial service from a financial services provider. It includes the lawful successor in title to the financial product which is the subject of the relevant complaint;

"customer" means a natural person, including his successors in title, or a micro enterprise;

"micro enterprises" means an enterprise which employs fewer than ten persons and whose annual turnover and, or annual balance sheet total does not exceed two million euro (€2,000,000);

## 11. Investor Compensation Scheme

11.1. Elective Professional Clients might lose their right to claim under the Investor Compensation Scheme Regulations. The First Schedule lists a number of per se professional clients that are excluded from claiming but then includes as its last item "18. Other categories of professional and institutional investors as may be determined from time to time by the Management Committee".

### **Changing your categorisation**

Please note that once you are categorised as an Elective Professional Client, the MFSA Rules state that it will be your responsibility to keep us informed of any changes that could affect your categorisation, and we require you to do so by writing to us within seven (7) business days of any actual or proposed changes occurring. In addition we remind you that you may request to be re-classified as a retail client.