



# Client Categorization Policy

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## 1. Introduction

The Website of NessFx is owned and operated by FXNET Limited. FXNET Limited (the 'Company') is a Cypriot Investment Firm (CIF) which is authorized and regulated by the Cyprus Securities and Exchange Commission ('CySEC'), under license number 182/12, incorporated and registered under the laws of the Republic of Cyprus (Certificate of Incorporation No. 300624), registered office at 4 Theklas Lysioti St, Harmony House, Office 31, 3rd floor, 3030 Limassol, Cyprus.

## 2. Scope

- 2.1** The Client Categorization Policy (the 'Policy') sets out the process and the procedure adopted by the Company for the categorization of its Clients in compliance with applicable laws and Regulations.
- 2.2** According to the Investment Services and Activities and Regulated Markets Law 87(I)/2017, as subsequently amended from time to time ("the Law"), the Company is required to categorise its Clients into one of the following three categories: retail, professional or Eligible Counterparty. Categorisation is undertaken on the basis of objective criteria. A Client may be placed in different categories for particular investment services or transactions or types of transactions or products. The Company notifies each Client of his categorisation as a Retail Client or Professional Client or, as the case may be, Eligible Counterparty.

It is stressed that different rules and different levels of protection apply to Clients depending on their categorisation.

## 3. Definitions and Criteria for Categorization

### 3.1 Retail Client

The Retail Client is a Client who is not a Professional Client by default, as defined in paragraph 3.2 below. It is noted that Retail Clients are afforded with the highest level of protection.

### 3.2 Eligible Counterparty

Eligible Counterparty is any of the following entities to which a credit Institution or an Investment Firm provides the services of Reception and Transmission of Orders on behalf of clients and/or Execution of such orders and/or Dealing on own account: Cyprus Investment Firms, other Investment Firms, Credit Institutions, Insurance Undertakings, UCITS and their management companies, Pension Funds and their management companies and other Financial Institutions authorized by a Member State or regulated under Community legislation or the National law of a Member State, undertakings exempted from the application of the Investment Services and Activities and Regulated Markets Law of 2007 under article 3(2)(k) and ( l), National Governments and their corresponding offices including Public Bodies that deal with Public Debt, Central Banks and Supranational Organizations.

### 3.3 Professional Client

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 case of Professional Clients, the Company must inform the Client, prior to any provision of services that, on the basis of the information available to the Company, the Client is deemed to be a Professional Client, and will be treated as such unless the Company and the Client agree otherwise. The Client may request a variation of the terms of the agreement in order to secure a higher degree of protection. In order to be considered a Professional Client, a Client must meet the following criteria:

**3.3.1** Entities which are required to be authorized or regulated to operate in the financial markets. The list below should be understood as including all authorized entities carrying out the characteristic activities of the entities mentioned: entities authorized by a Member State under a European Community Directive, entities authorized or regulated by a Member State without reference to such Directive and entities authorized or regulated by a Non-Member State:

- a) Credit institutions
- b) Investment firms
- c) Other authorized or regulated financial institutions
- d) Insurance Undertakings
- 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; firms which provide investment services and/or perform investment activities consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivatives markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets.
- i) Other institutional investors

**3.3.2** Large undertakings meeting two of the following size requirements on a proportional basis:

- a) Balance sheet total of at least EUR 20,000,000
- b) Net turnover of at least EUR 40,000,000
- c) Own funds of at least EUR 2,000,000

**3.3.3** National and regional governments, public bodies that manage public debt, 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 organizations.

**3.3.4** Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitization of assets or other financing transactions.

The entities mentioned above are considered to be Professional Clients by default. So, where the Client fulfils one of the criteria referred to above, the Company shall inform it prior to any provision of services that, on the basis of the information available to the Company, the Client is deemed to be a Professional Client and will be treated as such unless the Company and the Client agree otherwise.

#### 4. Protection Rights

**4.1** The type of Client Categorization will determine the level of protection afforded to the Client under applicable legislation. A Retail Client is afforded with the highest regulatory protections available. The Company will notify the Client in writing to inform him/her of his/her loss of certain regulatory protection(s) prior to agreeing a re-categorization request.

#### **4.2 Retail Clients and Professional Clients**

Where the Company treats a Client as Retail, the Client is entitled to more protections under the Law, than if the Client was treated as a Professional Client. In summary, the protections Retail Clients are entitled to are as follows (the list may not be exhaustive):

- i. A Retail Client will be given more information/disclosures with regard to the Company, its its financial instruments and their performance, the nature and risks of financial instruments, its costs, commissions, fees and charges and the safeguarding of Client financial instruments and Client funds, including summary details of any relevant investor compensation or deposit guarantee scheme, as applicable.
- ii. Under the law, where the Company provides investment services other than investment advice (in the form of personal recommendations) or discretionary portfolio management, the Company shall ask a Retail Client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the Company to assess whether the investment service or product envisaged is appropriate for the Client. In case if the Company considers, on the basis of the information received, that the product or service is not appropriate to a Retail Client, it shall warn the Client accordingly. Please note that the Company is not required to assess appropriateness in certain cases specified by law.

The Company shall be entitled to assume that a Professional Client has the necessary experience and knowledge in order to understand the risks involved in relation to those particular investment services or transactions, or types of transaction or product, for which the Client is classified as a Professional Client.

Consequently, the Company should not generally need to obtain additional information from the Professional Client for the purposes of the assessment of appropriateness for those products and services for which the Client have been classified as a Professional Client.

- iii. When executing orders, investment firms and credit institutions providing investment services must take all reasonable steps to achieve what is called 'best

execution' of the Client's orders that is to obtain the best possible result for their clients.

Where the Company executes an order on behalf of a Retail Client, the best possible result shall be determined in terms of the total consideration, representing the price of the financial instrument and the costs related to execution, which shall include all expenses incurred by the Client, that are directly related to the execution of the order, including execution venue fees, clearing and settlement fees and any other fees paid to third parties involved in the execution of the order.

When providing Professional Clients with best execution, the Company is not required to prioritize the overall costs of the transaction as being the most important factor in achieving best execution.

- iv. Investment firms and credit institutions providing investment services must obtain from Clients such information as is necessary for the firm or credit institution, as the case may be, to understand the essential facts about the Client and to have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of providing a portfolio management service, satisfies the following criteria:
  - a) it meets the investment objectives of the client in question;
  - b) it is such that the Client is able financially to bear any related investment risks consistent with his investment objectives;
  - c) it is such that the client has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his/her portfolio.

Where the Company provide an investment service to a Professional Client it shall be entitled to assume that, in relation to the products, transactions and services for which it is so classified, the Client has the necessary level of experience and knowledge for the purposes of paragraph (c) above.

In addition, under certain circumstances, the Company shall be entitled to assume that a Professional Client is able financially to bear any investment risks consistent with its investment objectives.

- v. The Company must inform Retail Clients of material difficulties relevant to the proper carrying out of their order(s) promptly upon becoming aware of the difficulty.
- vi. The Company is required to provide Retail Clients:
  - a. with more information than Professional Clients as regards execution of orders, other than for portfolio management,
  - b. with periodic statements in respect of portfolio management activities carried out on their behalf, more frequently than for Professional Clients.

- vii. Where the Company provides portfolio management transactions for Retail Clients or operate Retail Client accounts that include an uncovered open position in a contingent liability transaction, it shall also report to the Retail Client any losses exceeding any predetermined threshold, agreed between the Company and the Client, 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.
- viii. If the Company provides an investment service other than investment advice to a new Retail Client for the first time after 1 November 2007, the Company must enter into a written basic agreement with the Client, setting out the essential rights and obligation of the Company and the Client.
- ix. The Company shall not use financial instruments held by the Company on behalf of a Client for its own account or the account of another Client, without the Client's prior express consent to the use of the instruments on specified terms, as evidenced, in the case of a Retail Client, by his signature or equivalent alternative mechanism.
- x. Retail Clients may be entitled to compensation under the Investor Compensation Fund for Bank Client or the Investor Compensation Fund for Clients of Investment Firms, as the case may be.
- xi. Retail Investors<sup>1</sup> will be provided with negative balance protection and as such, may not lose more than the total amount deposited in their trading account(s). Professional Clients by default and/or Eligible Counterparties will not be provided with negative balance protection.
- xii. The Company cannot conclude title transfer financial collateral arrangements with Retail Clients for the purpose of securing or covering present or future, actual or contingent or prospective obligations of Clients. In respect of Professional Clients and/or Eligible Counterparties, the Company is not subject to such restriction. Where the Company uses title transfer collateral arrangements, it shall highlight to Professional Clients and/or Eligible Counterparties the risks involved and the effect of any title transfer collateral arrangement on the Client's financial instruments and funds.

#### **4.3 Eligible Counterparties**

Where the Company treats the Client as an eligible counterparty, the Client will be entitled to fewer protections under the law than he would be entitled to as a Professional Client. In particular, and in addition to the above:

- i. The Company is not required to provide the Client with best execution in executing the Client's orders.

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<sup>1</sup> Retail Investor means: (a) a retail client as defined in point (11) of Article 4 (1) of Directive 2014/65/EU and (b) a customer within the meaning of Directive 2002/92/EC, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU;

Nevertheless, Eligible Counterparties may request on a trade by trade basis or in general, treatment that would allow the Company to take all sufficient steps to achieve best execution;

- ii. The Company is not required to disclose to Client information regarding any fees or commissions that the Company pays or receives;
- iii. The Company is not required to assess the suitability or appropriateness of a product or service that it provides to the Client but can assume that the Client have the expertise to choose the most appropriate product or service for him/her and that he/she is able financially to bear any investment risks consistent with his investment objectives;
- iv. The Company is not required to provide the Client with information about the Firm, its services and the arrangements through which the Company will be remunerated.
- v. The Company is not required to provide the Client with risk disclosures on the products or services that he/she selects.
- vi. The Company is not required to provide reports to the Client on the execution of his/her orders or the management of his/her investments.
- vii. The Investors Compensation Fund does not cover Eligible Counterparties.
- viii. The Company, when dealing with Eligible Counterparties, is not required to ensure that it does not remunerate its staff in a way that conflicts with its duty to act in the best interests of its Clients and that it does not accept any fees/commissions in relation to the provision of services to Clients.

However, Eligible Counterparties will be entitled to the same reporting obligations as they apply to Retail and Professional Clients.

## 5. Re-categorization Requests

**5.1** The Company may, either on its own initiative or at the Client's request, treat a Professional Client or a Retail Client a Client that might be otherwise be categorized as an Eligible Counterparty or treat a Retail Client as a Professional Client pursuant to the provisions of the law. If a Client desires to be re-categorized as either a Professional Client or an Eligible Counterparty, then the Client needs to send a written request to the Company. The Company shall consider such request at its own discretion after reviewing Client's change in circumstances.

**5.2** **The following requests may be submitted to the Company:**

- i. A Retail Client requesting to be categorized as a Professional Client. In that case the Client will be afforded a lower level of protection.



- ii. An Eligible Counterparty requesting to be categorized as a Professional Client or Retail Client. In that case the Client seeks to obtain a higher level of protection.
- iii. A Professional Client requesting to be categorized as a Retail Client. In that case the Client seeks to obtain a higher level of protection.

Professional Clients are allowed to request non-professional treatment and the Company may agree to provide a higher level of protection.

It is the responsibility of the Client, considered to be a Professional Client, to ask for a higher level of protection when the Client deems that he/she is unable to properly assess or manage 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 Company to the effect that he/she shall not be treated as a Professional for the purposes of the applicable conduct of business regime. Such agreement will specify whether this applies to one or more particular services or transactions, or to one or more types of products and/or transactions.

- iv. A Professional Client requesting to be categorized as an Eligible Counterparty. In that case the Client seeks to obtain a lower level of protection

#### **Clients who may be treated as Professionals on request (Elective Professionals)**

**a) Identification criteria:**

- Clients other than those mentioned in the paragraph 3.1 above, including public sector bodies and private individual investors, may also be allowed to waive some of the protections afforded by the conduct of business rules.

The Company is allowed to treat any of the above Clients as Professionals provided the relevant criteria and procedures mentioned below are fulfilled. These clients will not, however, be presumed to possess market knowledge and experience comparable to that of the categories listed in 3.1 above.

Any such waiver of the protection afforded by the standard conduct of business regime will be considered valid only if an adequate assessment of the Expertise, Experience and Knowledge of the Client, undertaken by the Company, gives reasonable assurance, in light of the nature of the transactions or services envisaged, that the Client is capable of making his/her own investment decisions and understanding the risks involved.

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

- Retail Clients, as defined in the paragraph 3.1 above.
- b)** In the course of the above assessment, as a minimum, two of the following criteria should be satisfied:
  - i.** 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.
  - ii.** The size of the Client's financial instrument portfolio, defined as including cash deposits and financial instruments exceeds EUR 500,000.
  - iii.** 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.
- c)** Procedure:

The Clients defined above may waive the benefit of the detailed rules of conduct only where the following procedure is followed:

- i.** they must state in writing to the Company 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 transactions or products,
- ii.** the Company will give them a clear written warning of the protections and investor compensation rights they might lose,
- iii.** 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, the Company is 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 paragraph 5.2 above. However, if Clients have already been categorized as Professionals under parameters and procedures similar to those above, it is not intended that their relationships with the Company should be affected by any new rules adopted pursuant to the Directive and legislation mentioned above.

The Company implements appropriate written internal policies and procedures to categorize Clients. Professional Clients are responsible for keeping the Company informed about any change, which could affect their current categorization. If the Company become aware that the Client no longer fulfils the initial conditions which made him eligible for a Professional treatment the Company reserves the right to take an appropriate action.

All Clients are responsible for keeping the Company informed about any change which could affect their current categorisation. However, if the Company becomes aware that the Client no longer fulfils the initial conditions which made it eligible for a professional treatment, the Company should take appropriate action.

## Assessment

In the course of the above assessment, as a minimum, two of the following criteria should 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 500,000 Euros;
- 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.

In the case of small entities, the person subject to the above assessment should be the person authorised to carry out transactions on behalf of the entity.

### 5.3 Elective Professional Application

1. If you wish to proceed with your application for the change of your Client Categorization Type from Retail to elective Professional, please read and sign the 'Re-categorization Request Form' (Attachment 1) on each page and send it back to us via e-mail or upload it to your Members Area directly as 'Re-categorization Request Form' (Profile → Upload Documents).
2. Once we will receive your signed Re-categorization Request Form, we will perform a Fitness Test in order to ensure that we can qualify you as an elective Professional Client.
3. You will receive a final reply from us within 5 working days, counting from the date when you provided us with your Re-categorization Request Form.
  - If the reply will be negative and your application will get rejected, no changes will be applied to your trading account and your Client Categorization type will remain as RETAIL.
  - If the reply will be positive and your application will get approved then:

#### STEP 1:

We will ensure that there are no open transactions on your current trading account and we will create a new Professional account for you. You will receive your new MT4 login credentials via e-mail (your Members Area credentials will remain the same). Additionally, we will transfer all your funds into your Professional account and we will disable the Retail account(s) you have with us.

#### STEP 2:

You will receive an e-mail confirmation from us, informing you that your re-categorization process has been successfully completed and your Professional account is ready to be used.

4. General Restrictions:

- The Client is allowed to have only Retail or only Professional Account(s). He/she cannot have both Retail and Professional Accounts open and active simultaneously with the Company.
- In order to create a Professional Account for the Client, there cannot be any open transactions on pre-existing Retail account(s), which the Client may have with the Company

**5.4 Professional Clients Requesting to be treated as Retail**

It is noted that Professional Clients are allowed to request non-professional treatment and instead be treated as Retail Clients, so as to enjoy a higher level 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.

Such request shall be communicated to the Support Department via e-mail sent from the Client's registered mailbox. 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 Company to the effect that it shall not be treated as a Professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

- 5.5** The Company reserves the right to decline any of the above requests for different categorization.

Attachment 1 – Re-categorization Request Form

**Request for re-categorization as an elective Professional Client**

Under the Markets in Financial Instruments Directive (MiFID), we may treat you as an elective Professional Client if, after our assessment of your expertise, experience, and knowledge of you, we are reasonably assured that, in light of the nature of the transactions or services envisaged, you are capable of making your own investment decisions and you understand the risks involved in trading complex financial instruments such as CFDs.

In making our assessment we may rely on information we already possess about you and/or request additional information from you and/or call you to discuss your investment experience.

**Please specify which of the following criteria describes your Knowledge & Experience.**

- I have carried out transactions, in significant size, on the relevant market at an average frequency of 10 per quarter over the previous 4 quarters.
- The size of my financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500 000.00
- I work or I have worked in the financial sector for at least one year in a professional position, which requires knowledge of the transaction or services envisaged

**CLIENT DECLARATION AND WARRANTIES:**

I warrant that I satisfy at least two of the three criteria listed above and all information provided is true of my best knowledge.

Furthermore, I confirm that I wish to be treated as an elective Professional Client generally by NessFx. I have read and understood the written warning below from NessFx regarding the protections and compensation rights that I may lose, and I am aware of the consequences of losing such protections.

**Name Printed:** \_\_\_\_\_**Signature:** \_\_\_\_\_**Date:** \_\_\_\_\_

**The below serve as a clear warning by the Company, following your opting-up to an Elective Professional Client:**

1. A 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. As such, it is provided a lower degree of protection than Retail Clients.
2. Being an elective Professional Client entails losing your right to participate in the investors' compensation fund (ICF) scheme.
3. Duties of diligence of the Company are minimized, when dealing with a Professional Client, in particular with regard to the following:
  - The duty of inform: supplementary information about the Company's structure, services and financial products on offer is mandatory only for Retail Clients;
  - When the Company is providing Professional Clients with investment services it is authorized to assume that the Clients possess the requisite level of experience and knowledge to understand the risks inherent in a given transaction or the management of their portfolio;
  - When managing investments for a Client, the Company must provide the Client with a periodic statement. For Retail Clients, the content of the statement is prescribed, but for Professional Clients, it is not.
  - The Company may not be required to give warnings to Professional Clients if the Company cannot determine appropriateness with respect to a given services or product;
  - The Company is only obliged to inform Retail Clients of any serious difficulties it may encounter that could affect order-execution;

**Name Printed:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## My Declaration

**I hereby declare and confirm by my signature below:**

1. To have read, understood and agreed with the Agreement “Client Agreement-Terms & Conditions of Business”, “Client Categorization”, “Investor Compensation Fund Adherence Statement”, “Order Execution Policy” which are all found on the website of the Company
2. I am fully aware of the consequences of losing the protection rights, as afforded to Retail Clients.
3. I am fully aware that my re-classification to Professional Client may waive part of the protection afforded by best-execution rules, as found in the Company’s Document “Order Execution Policy”
4. I understand that Professional Clients that have made an opt-out request may only be treated as opt-out Professionals by the Company after the assessment procedure (i.e Fitness Test) has been completed and that in case the Fitness Test criteria are not met, the Company reserves the right to choose whether to provide services under the requested categorization.
5. The Company shall assume that I understand the risks involved with all products and services, I have elected to be categorized as a Professional Client
6. That acceptance of my request by the Company will depend on my compliance, at all times, with established legal/regulatory requirements rendering the change effective.
7. I understand that the Company is not obliged to accept my categorization request as an elective Professional Client.
8. I understand that my request for a change from Retail to Professional Client specifically implied the express renunciation of the right to be treated as a Retail Client and of my rights to the associated level of protection.
9. That all information disclosed in the Fitness test assessment will be complete, true and accurate and I agree to promptly notify the Company of any changes in this information or it ceases to be true and accurate.

I understand that Professional Clients have an obligation to inform the Company of any change that could affect my categorization. If no such information is received from me, the Company will consider that I continue to meet the conditions to be categorized as, a Professional Client.

**Name Printed:** \_\_\_\_\_

**Retail Account Number(s):** \_\_\_\_\_

**ID/Passport Number:** \_\_\_\_\_

**Requested Leverage:**  1:50  1:100  1:200  1:300  1:500

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PROCEDURE:**

1. If you wish to proceed with your application for the change of your Client Categorization Type from Retail to elective Professional, please read and sign this 'Re-categorization Request Form' on each page and send it back to us via e-mail or upload it to your Members Area directly as 'Re-categorization Request Form' (Profile → Upload Documents).
2. Once we will receive your signed Re-categorization Request Form, we will perform a Fitness Test in order to ensure that we can qualify you as an elective Professional Client.
3. You will receive a final reply from us within 5 working days, counting from the date when you provided us with your Re-categorization Request Form.
  - If the reply will be negative and your application will get rejected, no changes will be applied to your trading account and your Client Categorization type will remain as RETAIL.
  - If the reply will be positive and your application will get approved then:

**STEP 1:**

We will ensure that there are no open transactions on your current trading account and we will create a new Professional account for you. You will receive your new MT4 login credentials via e-mail (your Members Area credentials will remain the same). Additionally, we will transfer all your funds into your Professional account and we will disable the Retail account(s) you have with us.

**STEP 2:**

You will receive an e-mail confirmation from us, informing you that your re-categorization process has been successfully completed and your Professional account is ready to be used.

I confirm that I understand the procedure described above. **In the event of the approval of my re-categorization request from the Retail to an elective Professional Client**, I hereby authorize the Company to:

- create a new Professional account on my behalf
- transfer any funds I may have on my Retail account(s) to my Professional account
- disable all Retail accounts I currently hold with the Company

**Name Printed:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_