

# Policy of Client Categorization in OANDA TMS Brokers S.A.

## PRELIMINARY PROVISIONS

### Article 1

The purpose of this "Policy of Client Categorization in OANDA TMS Brokers S.A." (hereinafter "**Policy**") is to set out the principles of client categorization into relevant categories and define the principles of changing the category in accordance with the requirements of the Act on Trading in Financial Instruments of 29 July 2005, the Regulation of the Minister of Finance of 30 May 2018 on the procedure and conditions applied by investment firms, banks referred to in Article 70 clause 2 of the Act on Trading in Financial Instruments and custodian banks, the Commission Delegated Regulation 2017/565 of 25 April 2016 and the Decision No. DAS.456.2.2019 of the Polish Financial Supervision Authority dated on August 1, 2019 on the establishment of restrictions on the marketing, distribution and sale of contracts for difference (CFD) for retail clients (hereinafter: "**Decision**").

## CRITERIA OF CLIENT CATEGORISATION

### Article 2

1. OANDA TMS Brokers S.A. (hereinafter referred to as "**TMS Brokers**") classifies each Client to one of the following three categories:
  - a). Retail Client (in this we distinguish the status of an Retail Client Experienced),
  - b). Professional Client,
  - c). Eligible Counterparty.
2. The Client category shall be assigned in respect of a particular service or in respect of all brokerage services provided by TMS Brokers.
3. TMS Brokers may change the Client category on its own initiative.
4. TMS Brokers shall be entitled to classify all Clients to the Retail Client category.

### Article 3

1. TMS Brokers shall classify to the category of Professional Clients an entity which has the experience and knowledge allowing to make right investment decisions and to properly assess the risk associated with these decisions, being:
  - a). a bank,
  - b). an investment firm,
  - c). an insurance undertaking,
  - d). investment fund, alternative investment company, investment fund company or ASI manager (ie an entity referred to in Article 2 (3a) of the Polish Act of 27 May 2004 on investment funds and management of alternative investment funds,
  - e). a pension fund or pension fund management company (within the meaning of the Act on the Organisation and Functioning of Pension Funds of 28 August 1997,
  - f). a commodity brokerage houses,
  - g). an entity which as part of its business activities deals on own account on markets in forwards, options or other derivatives or on cash markets for the sole purpose of hedging positions on those markets or which deals for this purpose for the accounts of other members of those markets, if the responsibility for the performance of obligations under those transactions is assumed by clearing members of the same markets,
  - h). a financial institution other than the institution specified in items a).-g). above (by other than indicated in a point a) – g) financial institution is understood as a Client who is not customer or natural person conducting business activity),
  - i). an institutional investor, other than the investor specified in items a).-h). above, conducting regulated activities on the financial market,
  - j). an entity conducting outside of the Republic of Poland activities which are equivalent to the activities carried out by the entities specified in items a).-i). above,
  - k). an entrepreneur meeting at least two of the following requirements:
    - i. total assets of the entrepreneur amount to at least EUR 20,000,000,
    - ii. revenues from sales achieved by the entrepreneur amount to at least EUR 40,000,000,
    - iii. equity or own funds of the entrepreneur amount to at least EUR 2,000,000,

The equivalent of the amounts specified in EUR shall be calculated with the use of the EUR average exchange rate determined by the National Bank of Poland as of the date of the entrepreneur's financial statements.

- l). public body that manages public debt, central bank, the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank or other similar international organization,
  - m). other institutional investor whose main activity is to invest in financial instruments, including entities dedicated to the securitization of assets or other financing transactions, provided that the PKD disclosed in the Commercial Register is not the only reason to change the Client's classification;
  - n). an entity other than the entities specified in items a).-m). above, which is treated as a Professional Client pursuant to art. 3a paragraph 1 of the Act dated July 29, 2005 on Trading in Financial Instruments (hereinafter: "Act").
2. TMS Brokers classifies to the category of Retail Clients an entity not being a Professional Client within the meaning of Article 3 clause 1 of the Policy, in particular:
- a). natural persons,
  - b). entrepreneurs who do not meet at least two of the following conditions:
    - i. total assets of the entrepreneur amount to at least EUR 20,000,000,
    - ii. revenues from sales achieved by the entrepreneur amount to at least EUR 40,000,000,
    - iii. equity or own funds of the entrepreneur amount to at least EUR 2,000,000.
- The equivalent of the amounts specified in EUR shall be calculated with the use of the EUR average exchange rate determined by the National Bank of Poland as of the date of the entrepreneur's financial statements.
3. TMS Brokers may grant (on written request) to the Retail Client the status of a Retail Client Experienced in case of joint fulfillment of the following criteria:
- a). the Retail Client has concluded in the last 24 months:
    - i. opening transactions in the scope of CFD (contracts for differences) with a nominal value at PLN of at least EUR 50 000 EUR each (equivalent), at a frequency of at least 10 opening transactions per quarter during four quarters; or
    - ii. opening transactions in the scope of CFD (contracts for differences) with a nominal value at PLN of at least EUR 10 000 EUR each (equivalent), at a frequency of at least 50 opening transactions per quarter during four quarters; or
    - iii. opening transactions in the scope of CFD (contracts for differences) with a total nominal value at PLN of at least EUR 2 000 000 EUR (equivalent), whereas the Client has concluded at least 40 opening transactions for a quarter during four quarters.

The equivalent of amounts expressed in EUR is determined using the average euro exchange rate announced by the National Bank of Poland, in force on the day preceding the date of submission of the request by the Retail Client.
  - b). the Retail Client has appropriate knowledge of derivative instruments, including CFD (contracts for difference), supported by an appropriate document:
    - i. obtaining relevant professional certificates, in particular: Investment Adviser, Stockbroker, Chartered Financial Analyst, Financial Risk Manager, Professional Risk Manager, ACI Dealing Certificate, ACI Diploma; or
    - ii. having appropriate education; or
    - iii. completing a minimum of 50 hours of training related to derivative instruments, including CFD (contracts for difference), confirmed by obtaining relevant certificates or confirmations issued on the basis of knowledge verification by relevant training providers during the last 12 months;
    - iv. confirmation that the Retail Client performs or performed activities either working on the basis of a contract of employment or other contractual relationship, for at least one year in a position that requires professional knowledge regarding CFD transactions or other derivative instruments.
4. The status of an Retail Client Experienced is obtained only in relation to the determination by TMS Brokers of the value of the initial margin in CFD, whereas granting this status to a Retail Client does not release TMS Brokers from any other obligations to the Retail Client specified in the Decision and applicable law.
5. The basis for the verification of the conditions referred to in clause 1 item k). and clause 2 item b). above shall be in particular financial statements of the entrepreneur for the last financial year.
6. TMS Brokers includes the units of government and self-government administration in the Retail Clients category.
7. In special cases TMS Brokers may recognize a Professional Client as an Eligible Counterparty.
8. The status of the Eligible Counterparty shall be assigned to:
- a). the Professional Client referred to in Article 3 clause 1 items a)-j) and l)-m) of the Policy with which TMS Brokers enters into transactions or intermediates in their transactions as part of the following services:
    - i. receiving and transmitting orders to buy or sell financial instruments;
    - ii. executing orders of purchase or sell financial instruments;
    - iii. buying or selling financial instruments on own account;
  - b). the Professional Client referred to in Article 3 clause 1 item k) of the Policy who upon its request was recognized by TMS Brokers as an Eligible Counterparty, or

- c). a Client from another member state who has the status of an Eligible Counterparty in accordance with the legislation of the member state in which it is established.
9. If the transactions referred to in clause 8 above are entered into with the entrepreneur referred to in Article 3 clause 1 item k) of the Policy, the confirmation on paper or other durable medium from such entity that it agrees to be treated as an Eligible Counterparty shall be obtained. The confirmation may be either in the form of a general agreement or in respect of an individual transaction described therein.

## **PRINCIPLES OF CHANGING THE CLIENT CATEGORY**

### **Article 4**

1. Each Client shall have the right to submit a request for a change of its category.
2. The Retail Client has the right to apply for the status of an Retail Client Experienced.
3. The request, specified in the clause 1 above, shall be submitted at the registered office of TMS Brokers or sent by post to the address of OANDA TMS Brokers S.A. or by e-mail to the address [makler@tms.pl](mailto:makler@tms.pl) or to the e-mail address of the Client Assistant.
4. The request, specified in the clause 2 above, shall be submitted at the registered office of TMS Brokers or sent by post to the address of OANDA TMS Brokers S.A.
5. TMS Brokers shall be under no obligation to give its consent to a change of the category.
6. TMS Brokers shall be under no obligation to give its consent to grant the status of an Retail Client Experienced.
7. The information on a rejection of the request for a change of the category or grant the status Retail Client Experienced shall be delivered to the Client in the manner set out in Article 11 of this Policy within 30 days of the submission of the request.
8. A decision on a change of the classification shall be made by the Member of the Management Board.
9. The information on a change of the category shall be delivered to the Client in the manner set out in Article 11 of this Policy within 14 days of the submission of the request.
10. TMS Brokers shall periodically review the categories and shall undertake relevant measures if it obtains the information causing the Client to cease to satisfy any of the conditions for treating the Client as a Professional Client or Eligible Counterparty.
11. TMS Brokers, at least once in the period of 12 months until the date of granting the status of an Retail Client Experienced, verifies that the Clients meets the necessary conditions. The verification process consists in confirming by TMS Brokers, based on the data or information held, that the given Client still meets the conditions for maintaining the status of an Retail Client Experienced for the next 12 months. TMS Brokers may extend the status of an Retail Client Experienced for another 12 months, if the Retail Client Experienced meets the following two conditions:
  - a) concluded within the last 24 months the transactions referred to in § 3 clause 3 item a). of the Policy; and
  - b) has appropriate knowledge of derivatives, including CFDs, supported by the document referred to in § 3 clause 3 item b). of the Policy.
12. If it becomes aware that an Retail Client Experienced no longer meets the conditions referred to in § 3 clause 3 of the Policy, TMS Brokers takes steps to change the client's status (loss of the status of an Retail Client Experienced), but this does not affect the value of the initial margin for positions resulting from CFD transactions (contracts for difference) concluded during the period of being a Retail Client Experienced.
13. TMS Brokers may on its own initiative change the Client category into a lower category and apply to the Client the principles applicable to a given client category. The Client shall be informed of such a change.
14. If TMS Brokers receives a Client's request for a change of its category to a higher category or for a grant the status of an Retail Client Experienced, TMS Brokers shall on each occasion prior to making a decision review formally the rationale of such request, on the basis of relevant provisions of generally applicable law and internal regulations of TMS Brokers. Having regard to the current legal environment and for the sole purpose of ensuring for Clients the highest possible level of security, TMS Brokers reserves the right to refuse to change the Client category into a category ensuring a lower level of protection or the right to refuse to grant the status on an Retail Client Experienced.
15. TMS Brokers, before changing the Client's category to a higher one, sends to the Client on paper or other durable medium a warning regarding the levels of protection and compensation rights due to the Client, which may lose as a result of changing of the category.

## **RETAIL CLIENT REQUEST A GRANT THE STATUS OF AN RETAIL CLIENT EXPERIENCED**

### **Article 5**

1. A Retail Client may submit a written request for a grant the status of an Retail Client Experienced.
2. The status of an Retail Client Experienced is granted only in relation to the determination of the value of the initial margin in CFD (contracts for difference).
3. The status of an Retail Client Experienced is granted only to Retail Clients who have their registered office or habitual residence in the territory of the Republic of Poland understood as having a tax residence in the territory of the Republic of Poland.
4. TMS Brokers may grant the status of an Retail Client Experienced only to an entity that meets the criteria specified in Article 3 clause 3 of this Policy.

5. The basis for verifying the fulfillment of the criteria referred to in Article 3 clause 3 item a). of this Policy, are in particular extracts from operations on the financial instruments account for the last 24 months.
6. The basis for verifying the fulfillment of the condition referred to in Article 3 clause 3 item b). indent i., are indicated in Article 3 clause 3 item b). indent i. certificates or other not-listed reputable certificates confirming the knowledge of the Retail Client that allows to make the right investment decisions, as well as to properly assess the risks associated with these decisions.
7. The basis for verifying the fulfillment of the condition referred to in Article 3 clause 3 item b). indent ii., are in particular diplomas, supplements to diplomas or other similar documents confirming the obtaining of relevant education.
8. The basis for verifying the fulfillment of the condition referred to in Article 3 clause 3 item b). indent iii., are certificates or other confirmations issued on the basis of knowledge verification confirming completion of a minimum of 50 hours training in derivative instruments, including CFDs (contracts for differences), issued by competent training providers (CFD suppliers or other entities with appropriate competences, and human resources necessary to conduct training and to verify the knowledge acquired during the training) in the last 12 months counted against the date of submission of the request.
9. The basis for verifying the fulfillment of the condition referred to in Article 3 clause 3 item b). indent iii., are in particular, a CV, a work certificate, civil law agreements specifying the scope of duties or other documents confirming experience in the financial sector and knowledge in the field of investing in specific financial instruments and a statement of the Client regarding knowledge in the field of financial instruments or brokerage services provided for the Client. TMS Brokers may request additional documents from the Client if the documents provided are not sufficient to support the Client's experience.
10. In the case where the Client is an entrepreneur, the representing person being evaluated must be authorized to make investment decisions on behalf of that entity (the entrepreneur) in accordance with the representation rules of the given entity.

## RETAIL CLIENT REQUESTS A CHANGE OF CATEGORY INTO PROFESSIONAL CLIENT CATEGORY

### Article 6

1. The Client may submit a request on paper or other durable medium for a change of the category from the Retail Client into the Professional Client category.
2. A change of the category from the Retail Client to the Professional Client shall result in the waiver of selected investor protections.
3. The scope of protection available to Clients depending on the client category assigned is set out in **Appendix No. 1** to this Policy.
4. A change of the Client category shall be possible if the Client has knowledge and experience allowing to make right investment decisions as well as to properly assess the risks associated with these decisions.
5. TMS Brokers shall determine the Client's knowledge regarding the principles of treatment of Professional Clients at the provision of specific brokerage services.
6. TMS Brokers may assign the Professional Client category:
  - a). to an entity which meets one of the requirements set out in Article 3 clause 1 items a)-m),
  - b). a Retail Client if it satisfies, as a minimum, two of the following criteria:
    - i. the Client carried out transactions with the value being at least:
      - EUR 7 000 (in words: seven thousand euros) if the underlying instrument of the transaction was commodities other than gold;
      - EUR 21 000 (in words: twenty one thousand euro) if the underlying instrument of the transaction was gold;
      - EUR 40 000 (in words: forty thousand euros) if the underlying instrument of the transaction were currency pairs;
      - EUR 45 000 (in words: forty-five thousand euro) if the transaction was based on indices;
      - EUR 20 000 (in words: twenty thousand euro) if the underlying of the transaction was other assets not indicated above (under § 6 section 6 item b). indent i. of the Policy);

each, on the relevant market, at an average frequency of at least 10 transactions per quarter over the previous four quarters,
    - ii. the size of the Client's financial instrument portfolio including cash in that portfolio is at least a PLN equivalent of 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 in transactions in financial instruments or brokerage services to be provided by the investment firm to the Client on the basis of the agreement being concluded.
7. The equivalent of EUR-denominated amounts referred to in clause 6 item b). above shall be calculated with the application of the average EUR exchange rate published by the National Bank of Poland, applicable on the day preceding the date of submission of the request by the Client.
8. The basis of the verification of the condition referred to in Article 3 clause 1 item g). of the Policy shall include in particular the information equivalent to the current extract from the Register of Entrepreneurs (National Court Register) valid as of the date of the request submission and a declaration of the Client about the status of Client's business activity and dealing, as part of the business activity conducted, on own account on markets in forwards, options or other derivatives or on cash markets for the sole purpose of hedging positions on those markets or dealing for this purpose for the accounts of other members of those markets, if the responsibility for the performance of obligations under those transactions is assumed by clearing members of the same markets.

9. The basis for the verification of the satisfaction of the conditions referred to in Article 3 clause 1 item k). of the Policy shall be in particular financial statements of the entrepreneur for the last financial year.
10. The basis for the verification of the satisfaction of the condition referred to in Article 3 clause 1 item m). of the Policy shall be in particular the information equivalent to the current extract from the Register of Entrepreneurs (National Court Register), the Central Register and Information on Business Activity or other relevant register valid as of the date of the request submission as well as a declaration of the Client about the status of its business activity.
11. The basis for the verification of the satisfaction of the condition referred to in clause 6 item b). indent i. above shall be in particular statements concerning operations in the financial instruments account for the last 12 months.
12. The basis for the verification of the satisfaction of the condition referred to in clause 6 item b). indent ii. above shall be in particular statements confirming the value of the financial instrument portfolio, cash deposits and term deposits valid as of the date of the submission of the request as well as a declaration of the Client about a potential use of the above funds for the purposes of investments in financial instruments.
13. The basis for the verification of the satisfaction of the condition referred to in clause 6 item b). indent ii. above shall be in particular a certificate of employment, civil law agreements with job descriptions or other documents confirming the period of work in the financial sector and the knowledge about investing in specific financial instruments as well as a declaration of the Client about its knowledge of financial instruments or brokerage services provided to the Client.
14. If the Client is an entrepreneur, a representative being the subject of the assessment must be authorized to make investment decisions on behalf of that entity (entrepreneur) in accordance with the principles of representation of the given entity.
15. Prior to considering a request for a change of the category, TMS Brokers shall obtain from the Client declaration (on paper or other durable medium) of the knowledge of the principles of treatment of professional clients and consequences of treating a given Client as a Professional Client.

#### **PROFESSIONAL CLIENT REQUESTS A CHANGE OF CATEGORY INTO ELIGIBLE COUNTERPARTY CATEGORY**

##### **Article 7**

1. The Client may submit a written request for a change of the category from the Professional Client into the Eligible Counterparty category.
2. A Professional Client may obtain the status of Eligible Counterparty if:
  - a). it is one of the entities listed in Article 3 clause 5 items a).–c). of the Policy,
  - b). was not previously classified by TMS Brokers as Eligible Counterparty.

#### **PROFESSIONAL CLIENT REQUESTS A CHANGE OF CATEGORY INTO RETAIL CLIENT CATEGORY**

##### **Article 8**

1. The Client may submit a request on paper or other durable medium for a change of the category from the Professional Client into the Retail Client category.
2. In justified cases TMS Brokers may refuse to change the existing category.
3. If the request is successful, TMS Brokers shall provide the Client with all information that should be delivered to the Retail Client, if it was not previously provided to that Client.

#### **ELIGIBLE COUNTERPARTY REQUESTS A CHANGE OF CATEGORY INTO RETAIL CLIENT CATEGORY**

##### **Article 9**

1. The Client may submit a request on paper or other durable medium for a change of the category from the Eligible Counterparty into the Retail Client category.
2. In justified cases TMS Brokers may refuse to change the existing category.
3. If the request is successful, TMS Brokers shall provide the Client with all information that should be delivered to the Retail Client, if it was not previously provided to that Client.

#### **ELIGIBLE COUNTERPARTY REQUESTS A CHANGE OF CATEGORY INTO PROFESSIONAL CLIENT CATEGORY**

##### **Article 10**

1. The Client may submit a request on paper or other durable medium for a change of the category from the Eligible Counterparty into the Professional Client category.
2. In justified cases TMS Brokers may refuse to change the existing category.
3. If the request is successful, TMS Brokers shall provide the Client with all information that should be delivered to the Professional Client, if it was not previously provided to that Client.

## MISCELLANEOUS

### Article 11

1. Existing Clients shall be categorized on the basis of the possessed documents and information about a particular Client.
2. New Clients shall be categorized in accordance with the internal "*Procedure for Client Categorization in OANDA TMS Brokers S.A.*".
3. TMS Brokers shall notify new and existing Clients of the new classification and of a change of the existing classification.
4. As part of the notification of the assigned category of the Professional Client or Eligible Counterparty, TMS Brokers shall obligate its Clients to submit the information about changes in Client's data that may affect the possibility of treating the Client as the Professional Client or Eligible Counterparty.
5. The information about the Classification and a change of the Classification shall be delivered in accordance with the Client's instruction, in the manner specified in the Agreement, i.e.:
  - a). by post or courier to the correspondence address provided by the Client, or
  - b). by electronic mail to the email address provided, or
  - c). personally in TMS Brokers premises, or
  - d). using the application available in the Transaction System which allows to transfer the information, or
  - e). in other manner agreed with the Client.
6. TMS Brokers shall archive the information constituting the basis for assigning a relevant client classification to the Client for at least 5 year, counting from the first day of the year following the year in which the agreement was terminated.

### Article 12

This Policy shall apply as from September 1, 2021.

## **Appendix No. 1 — Scope of protection available to Clients depending on the Client Category assigned**

### **I — Protection of Retail Clients (including Retail Client Experienced)**

A Retail Client shall be provided the highest degree of protection with regard to investment services rendered by TMS Brokers. Implementing measures applied by TMS Brokers with regard to the Retail Client shall include:

1. Informing the Client about the methods of management of conflicts of interest and informing of existing conflicts of interest associated with the provision of a particular investment service to the Client,
2. Providing comprehensive (fair, clear and not misleading) information on:
  - a). TMS Brokers,
  - b). investment services provided to Clients,
  - c). commissions, fees and other costs related to the provision of investment services or conclusion of transactions;
  - d). execution venues;
  - e). financial instruments offered as part of the investment service provided, together with risks associated with these instruments.
3. Performing an assessment of the Client's knowledge and experience in relation to investment services to be provided to the Client.
4. Performing an assessment of the Client's knowledge and experience in investing in financial instruments, and reviewing investment objectives and the financial position of the Client, for the purposes of the provision of services by TMS Brokers.
5. Applying principles of conduct at the acceptance and transfer of monetary and non-monetary benefits by TMS Brokers.
6. Compliance with the best execution policy of TMS Brokers.
7. Delivery to the Client of relevant reports concerning investment services performed.

Measures that may be applied by the European Securities and Markets Authority (ESMA) and other measures adopted by competent national authorities aimed at the protection of Retail Clients shall apply.

### **II — Protection of Professional Clients**

A Professional Client shall be covered by a lower level of protection than a Retail Client. Implementing measures applied by TMS Brokers with regard to the Professional Client shall include:

1. Informing the Client about the methods of management of conflicts of interest and informing of existing conflicts of interest associated with the provision of a particular investment service to the Client,
2. Providing comprehensive (fair, clear and not misleading) information on:
  - a). TMS Brokers,
  - b). investment services provided to Clients,
  - c). commissions, fees and other costs related to the provision of investment services or conclusion of transactions;
  - d). execution venues;
  - e). financial instruments offered as part of the investment service provided, together with risks associated with these instruments.
3. Performing at a request of the Client an assessment of the Client's knowledge and experience in relation to investment services to be provided to the Client.
4. Performing an assessment of the Client's knowledge and experience in investing in financial instruments, and reviewing investment objectives and the financial position of the Client, for the purposes of the provision of services by TMS Brokers.
5. Applying principles of conduct at the acceptance and transfer of monetary and non-monetary benefits by TMS Brokers.
6. Compliance with the best execution policy of TMS Brokers.
7. Delivery to the Client of relevant reports concerning investment services performed.

### **III — Protection of Eligible Counterparties**

An Eligible Counterparty shall be covered by the lowest level of protection. Implementing measures applied by TMS Brokers with regard to the Eligible Counterparty shall include:

1. Informing the Client about the methods of management of conflicts of interest and informing of existing conflicts of interest associated with the provision of a particular investment service to the Client,
2. Providing comprehensive (fair, clear and not misleading) information on:
  - a). TMS Brokers,
  - b). investment services provided to Clients,
  - c). commissions, fees and other costs related to the provision of investment services or conclusion of transactions;
  - d). execution venues;
  - e). financial instruments offered as part of the investment service provided, together with risks associated with these instruments.
3. Delivery of relevant reports concerning investment services performed unless TMS Brokers agrees with the Eligible Counterparty otherwise.