



# CLIENT CATEGORISATION

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Address: **O.C.M. Online Capital Markets Ltd**, Spyrou Kyprianou 38, CCS Building,  
P.O.B 70091, Kato Polemidia , Limassol 4160, **Cyprus**

Tel: **+357 25 028 544** | Fax: **+357 25 333 067**  
Mail to: [support@askobid.com](mailto:support@askobid.com) | Web: [www.askobid.com](http://www.askobid.com)

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## CLIENT CATEGORISATION

The Investments Services and Activities and Regulated Markets Law of 2007 (Law 144(I)/2007) is a Cypriot legislation which implements the European Directive on Markets in Financial Instruments (“MiFID”) which in turn requires O.C.M ONLINE CAPITAL MARKETS (the “Company”) to categorize its Users into one of the following three categories:

- (1) Retail client; or,
- (2) Professional client; or,
- (3) Eligible Counterparty Parties (“ECPs”).

“**ECPs**” are considered to be the most sophisticated investors and therefore, apply to a limited range of businesses to which a credit institution or an investment firm will provide the following services (i) receiving and transmitting of orders (ii) executing of orders on behalf of clients; and, (iii) dealing on own account. Examples of business which are considered as ECPs are Cyprus and/or Greek investment firms, credit institutions, insurance companies, UCITS and their management companies, pension funds and their management companies, Portfolio Investment Companies, other financial institutions regulated by Community laws or the laws of a Member State, national governments and their corresponding offices including public bodies that deal with public debt, central banks, supranational organizations and, undertakings that are exempted from article 3(2)(iα) and (iβ) of the Cyprus Law 144(I)/2007 and/or the corresponding Law No. 3606/2007 “Markets in Financial Instruments and Other Issues”.

A “**Retail Client**” is a client/user who is not a professional client or an eligible counterparty.

A “**Professional Client**” is a client/user who is considered to possess the experience, knowledge and expertise to make its own investment decisions and assess the risks inherent in its decisions.

The MiFID recognizes the following entities as persons having these qualifications

- (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 Directive, entities authorized or regulated by a Member State without reference to a Directive, and entities authorized and regulated by a non-Member State:

- credit institutions;
- investment firms;
- other authorized or regulated financial institutions;
- insurance companies;
- collective investment schemes and their management companies;
- pension funds and their management companies;
- commodity and commodity derivative dealers;
- locals;
- other institutional investors.

- (2) Large undertakings meeting two of the following size requirements on a company basis:
- Balance sheet total of €20m,
  - Net turnover of €40m,
  - Own funds of €2m.
- (3) National and regional governments, public bodies that manage public debt, central banks and international and supranational institutions.
- (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.

## REQUESTS FOR DIFFERENT CATEGORIZATION

Client may submit to the Company requests for changing their category. A Retail Client may request to be categorized as a Professional Client or, a Professional Client to be categorized as a Retail Client. Similarly, an Eligible Counterparty can request to be categorized either as a Professional or a Retail Client. The Company retains the right to reject any of the above requests.

## PROFESSIONAL CLIENTS REQUESTING FOR HIGHER PROTECTION

Professional clients enjoy less regulatory protection than Retail Clients due to the higher expertise and sophistication they have compared to Retail Clients. Nevertheless, Professional clients have the right to request from the Company to be treated as non-professionals and in effect enjoy a higher level of protection in relation to one or more particular services or transactions, or in relation to one or more types of product or transaction. MiFID is clear that the professional client is responsible for making this request when it is unable to properly assess or manage the risks involved. The higher degree of protection will only be finalized if after the request of the client, the Company and the client enter into a written agreement confirming that the client will not be treated as a professional client and stating whether the retail classification relates to one or more particular services or transactions or one or more types of product or transaction.

## NON-PROFESSIONAL CLIENTS REQUESTING TO BE TREATED AS PROFESSIONALS

As explained above, retail clients enjoy the highest regulatory protection since they are considered the most inexperienced and unable investors to properly assess or manage the risks involved. Nevertheless, clients other than those mentioned 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.

Under MiFID, investment firms must take reasonable care to ensure that a retail client requesting treatment as a professional client is able to meet the 'qualitative' criteria and, as part of these criteria, a separate 'quantitative' test. What the **qualitative assessment** basically requires, is that, the firm to undertake 'an adequate assessment' of the expertise, experience and knowledge of the client' to give 'reasonable assurance, in the light of the nature of transactions or services envisaged, that the client is capable of making his own investment decisions and understanding the risks involved'.

In assessing the client's expertise, experience and knowledge, the client must satisfy at least two of the following **quantitative criteria**:

- ❖ 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.

Examples of such assessment of expertise and knowledge would be:-

- in the financial field, the fitness test applied to managers and directors of entities licensed under Directives
- in small entities, the person subject to the above assessment should be the person authorized to carry out transactions on behalf of the entity. In order for a retail client to be considered as a professional client, such request to be considered as valid, must be made in writing. The investment firm must give a clear written warning of the protection and investor compensation rights the client will lose. Moreover, the client, in a separate document from the contract, must state that it is aware of the consequences of waiving the retail protections. Where other parameters and procedures categorize clients as professionals then the new rules pursuant to the Directive and legislation as mentioned above shall not affect the client-Company relationship. It is emphasized that it is the responsibility of the client/user to inform the Company of any changes that may affect the category status. In the event that any conditions emerged that resulted to the change in the initial categorization of the client/user for professional treatment and which have not been drawn to the Company's attention by the client/user, then the Company will take proper action.

## PROTECTION RIGHTS

Retail Clients enjoy the greatest regulatory protection among the Professional Clients or ECPs, the primary reason for this being that such investors are considered as inexperienced and incapable of making their own investment decisions and/or properly assessing the risks involved in the trading of financial instruments such as foreign exchange and therefore, they need the protection.

This means that among other things, the Company is obliged, to a greater extent to adapt the services it offers to the needs and qualifications of the clients. When compared to the **Professional Clients** the

Company will provide to the **Retail Clients** in addition to the general good business code of conduct, the following protections:

- (a) Retail Clients have an extensive right to receive more information from the Company regarding the financial instruments in questions and of the risks relating to these, information on the company itself, its services and any investments and, costs, commissions, fees and charges of transactions so that the client is enabled to make an informed investment decision.
- (b) Retail Clients shall also receive from the Company more information with regards to execution of orders, other than for portfolio management.
- (c) Retail Clients should receive more frequently than Professional Clients periodic statements in respect of portfolio management activities carried out on their behalf.
- (d) Where there are material difficulties in the proper carrying out of Retail Clients' orders, the investment firm is under an obligation to warn the clients accordingly when such difficulty becomes known to the firm.
- (e) Compensation is possible to be obtained from the Investor Compensation Fund for Bank Clients or the Investor Compensation Fund for Clients of Investment Firms, as the case may be.
- (f) Where the Company offers investment services, the Company shall obtain from clients or potential clients such information as is necessary for the firm 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:
  - (i) it meets the investment objectives of the client in question;
  - (ii) it is such that the client is able financially to bear any related investment risks consistent with his investment objectives;

- (iii) 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 portfolio.

The difference where an investment firm provides an investment service to a Professional Client is that the investment firm 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 sub-paragraph d(iii) above.

Where that investment service consists in the provision of investment advice to a professional client covered by Section 1 of Annex II to Directive 2004/39/EC, the investment firm shall be entitled to assume for the purposes of sub-paragraph d(ii) above that the client is able financially to bear any related investment risks consistent with the investment objectives of that client.

- (g) Where services are provided that have an element of recommendation i.e. to purchase, hold, or sell any securities or make any other investment decisions such as investment advisory services or discretionary portfolio management services, then prior to any trading taking place or advice given, the Company shall request from the Retail Client or the Professional to provide information about his/her investment goals, financial position and experience and knowledge of the service/transaction in question. Should the Company consider that the particular transaction in which the client wishes to engage is not appropriate for the client, the Company has a duty to warn the client accordingly. Despite the warning, the client can still proceed with making the transaction.

The difference with a Professional Client is that, the investment firm will not, unlike with the case of a Retail Client, look into the client's experience. The investment firm will only assume that a professional client has the necessary experience and sophistication to understand the precise nature of the transaction and the possible risks involved and will only consider the client's financial situation and investment objectives.

It is emphasized however, that under the law, the Company's duty to assess whether a service/transaction is appropriate for a client does not apply in all cases.

- (h) Upon the execution of orders, the Company must take all reasonable steps to achieve the best possible result for the clients. This is also known as the obligation for "best execution". When complying with the best execution requirement upon executing clients' orders, the Company must ensure that the clients' orders receive the best possible prices i.e. prices that reflect the optimal mix of price improvement, speed of execution and the possibility that trade will be executed.

Where the Company offers investment services other than in the form of investment advice, then the Company must enter into a written agreement with the client/user where the essential rights and obligations of both the Company and the client/user are specified

- (i) Where the Company offers portfolio management transactions for retail clients or operates client accounts that include an uncovered open position in a contingent liability transaction, it shall also report to the retail client any losses that exceed any threshold that was determined from before by

the Company and the client/user. Reporting must be effected the latest by the end of the business day in which the threshold is exceeded or, if such day is a non-business day, on the close of the next business day.

**Eligible Counterparties** have the lowest level of investor protection. Although, Eligible Counterparties basically have the same protection as a professional Client, the investor protection for this group is significantly reduced in addition to the above and the Company is not further required to:-

- (a) provide the Client with best execution when executing orders
- (b) disclose information on expenses such as fees, commissions or charges that the Company receives or Pays
- (c) provide information on the Company, its services and arrangements through which the Company is remunerated;
- (d) assess the client's suitability and/or appropriateness, as prescribed in paragraphs (f) and (g) above as the Company can assume that the Client has the expertise, knowledge and sophistication to choose the most appropriate services for the Client's self, that the Client can properly assess the risks involved and that, the Client is financially able to bear such investment risks;
- (e) provide reports on the execution of his orders or the management of the Client's investments
- (f) provide risk disclosures on the Company's products or, services the Client has selected.