

Procedural Guidance: 1.73(a)(2)(iv) Futures Give Ups

This Guidance relates to the Rule 1.73 Give Ups: Proposed Solution and the Agreement for Executing Broker to Screen for Clearing Broker Limits (“Screen Agreement”).

1. **Give Up Transaction.** A give up transaction that is subject to Rule 1.73(a)(2)(iv) is one where a firm executes an order on behalf of a customer but gives it up to an FCM for clearing. Note that this portion of the rule only applies to orders executed on behalf of a single customer, it does not apply to bunched orders executed by an account manager on behalf of multiple customers. Bunched orders are dealt with under Rule 1.73(a)(2)(v).

2. **Scope of Rule.** Rule 1.73 only applies to FCMs registered with the CFTC clearing those products for which the clearinghouse is registered with the CFTC as a DCO.

3. **Clearing Brokers Should Identify All Executing Brokers (and Executing Brokers Should Identify All Clearing Brokers) with Whom They Have an International Uniform Brokerage Execution Services (“Give Up”) Agreement: Customer Version (“Give Up Agreement”).** Utilize EGUS to identify the relevant populations. Clearing Broker and Executing Broker each need to review Give Up Agreements not housed in EGUS (if any) to determine if there are any additions to the population. (Please note that the International Uniform Brokerage Execution Services (“Give Up”) Agreements: Trader Version are not part of the relevant population as they would apply to account managers executing bunched orders on behalf of multiple customers, which is subject to Rule 1.73(a)(2)(v).)

4. **Identify Other Relationships.** To the extent that you are involved in transactions where a different firm executes than clears, determine whether a Give Up Agreement is necessary or if the executing firm is acting as an agent of the Clearing Broker. If a Give Up Agreement is needed, one should be executed and added to the population identified in Section 3 above. If an agency relationship exist, then the Screen Agreement will not apply and Clearing Broker will have to ensure that its agent (executing firm) is meeting the Clearing Broker’s screening requirements under Rule 1.73(a)(2)(i) and (ii). (As way of example, affiliates sometimes execute orders as an agent of an FCM and sometimes execute orders pursuant to a Give Up Agreement.)

5. **Types of Risk Limits.** The Screen Agreement contemplates that the Executing Broker and Clearing Broker will agree to a maximum limit that applies to every customer of Clearing Broker. In addition, Executing Broker and Clearing Broker could agree to a more stringent limit with respect to a particular customer. It is anticipated that such risk limits will be in the nature of fat finger limits (e.g., max order size). Some have suggested that the risk limits be a statement adopting the order size limits on a per product basis as adopted by the applicable clearing organization. The particular type of risk limits applied is up to the agreement of the Executing Broker and Clearing Broker.

6. **Propose/Negotiate Risk Limits.** Executing Brokers should contact Clearing Brokers with their proposed risk limits for all of the applicable customers of Clearing Broker. (Clearing Broker can initiate such discussions if it wants.) Executing Broker and Clearing Broker will document the agreed-to risk limits in Exhibit A to the Screen Agreement.

7. **Execution of the Screen Agreement via EGUS.** Screen Agreements should be executed via EGUS. To the extent the other party will not be utilizing EGUS, one will need to manually execute and store such Screen Agreements. Please note that Rule 1.73 requires the Clearing Broker to enter into an agreement in advance with Executing Broker to screen for the risk limit.

8. **Give Up Agreements.** The Screen Agreement applies to customers for which there are Give Up Agreements between a particular Executing Broker and a particular Clearing Broker. Accordingly, in order to make sure that all applicable customers are covered by the Screen Agreement, Clearing Broker should require that all give ups are documented with a Give Up Agreement prior to the commencement of trading by a customer.

9. **Screen Agreement Does Not Amend the Give Up Agreement.** Clearing Broker and Executing Broker should note that the Screen Agreement does not amend Give Up Agreements to which Executing Broker and Clearing Broker are parties.

10. **Notice to Customers.** Determine whether you have a contractual obligation under your futures account agreement to give notice to customers as to the risk limits being applied to their accounts. Send notices of such limits in advance in order to meet any applicable notice requirements.

11. **Executing Broker Screens for Risk limits.** Executing Broker must ensure that it has implemented controls to meet the screen requirements of Rules 1.73(a)(2)(i) and (ii) when imposing the risk limits agreed to with Clearing Broker. Executing Broker may impose and screen for limits that are more stringent than those agreed to with the Clearing Broker. Executing Broker does not need to communicate those more stringent limits to Clearing Broker.

12. **Clearing Broker Maintains Risk Systems Reasonably Designed to Ensure Compliance under Rule 1.73(a)(2)(iv)(B) .** Clearing Broker needs to actively monitor its customer accounts on a post-clearing basis to ensure that the accounts are complying with risk limits internally set by the Clearing Broker. Such risk limits can be of a different nature than those agreed to with, and screened by, the Executing Broker. (For example, Clearing Broker may evaluate accounts based on the initial margin of the entire portfolio instead of fat finger limits for which the Executing Broker is screening.)

13. **Termination.** Clearing Broker and Executing Broker should note that the Screen Agreement may be terminated by either party upon written notice. Because the Clearing Broker could be out of compliance with Rule 1.73(a)(2)(iv) with respect to any existing Give Up Agreements in the absence of the Screen Agreement, any termination of the Screen Agreement by the Executing Broker must be accompanied by a notice of termination of all applicable Give Up Agreements. As a result, if the Executing Broker and the Clearing Broker wish to change the terms of the Screen Agreement, they should consider amending the agreement rather than terminating it.

14. **Policies and Procedures.** Clearing Broker and Executing Broker should make sure that their policies and procedures are updated accordingly.