

# **2017 GIVE-UP AGREEMENT TEMPLATES**

A Joint Webinar Between FIA Tech and FIA's Law and Compliance Division

**AUGUST 28, 2107**

# Agenda

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- FIA Tech - Review of EGUS Modernization Project
  - Migration of old agreements
  - Use of new agreement templates
- L&C - Review of agreement text changes

# EGUS Modernization Project

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- Aims:
  - Increase usability
  - Improved design
  - Faster delivery of system updates
- Project Timeline:
  - Continuous: New releases every two weeks
  - Sept 5<sup>th</sup>: Public testing starts
  - Sept – Oct: Training and testing for current EGUS users
  - Late Oct – Early Nov: System launch

# Agreement migration

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- Agreements from current EGUS application will be migrated onto the new platform
  - Executed and Terminated agreements will be migrated as is.
  - Any agreement in process will be migrated and can be executed on the new system.
- All agreements migrated from EGUS will use the agreement templates from current platform
  - Non-executed agreements will be executed with these templates
- Any agreement initiated on the new platform will use the 2017 templates.
  - Users will be able to edit these new templates as well.

# REVISED INTERNATIONAL GIVE-UP AGREEMENT VERSIONS – LANGUAGE CHANGES TO THE TEMPLATES

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## Address Legal and Regulatory Concepts

- **Effective Date**

Agreement made effective as of this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and among

- **Signature Date**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized persons on the date set forth below and effective as of the date set forth above.

- **FATCA Language (Section 5)**

In the event Clearing Broker is billed and remitting payment to Executing Broker, Clearing Broker is acting as payment agent by collecting fees at the instruction of Customer.

- **Cross-Trade, Client Qualifications, Pre-Execution Discussions (Section 8)**

Customer acknowledges that, subject to the limitations and conditions of Applicable Law, the Executing Broker and its agents may act on the other side of a Customer order by the purchase or sale for an account in which the Executing Broker, an affiliate or a related person has a direct or indirect interest or may engage in pre-execution discussions in executing any order. In the event that at any time Customer must meet specific criteria or have a specified status in order to trade in a certain product, Customer represents and warrants that it meets such criteria and/or specified status (as applicable). The consent and representations and warranties from Customer shall be deemed repeated each time Customer enters a new transaction.

# REVISED INTERNATIONAL GIVE-UP AGREEMENT VERSIONS – LANGUAGE CHANGES TO THE TEMPLATES

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- **Jurisdiction (Section 10)**

This Agreement shall be exclusively governed by, and construed in accordance with, the laws of the jurisdiction specified below without regard to principles of choice of law.

# REVISED INTERNATIONAL GIVE-UP AGREEMENT VERSIONS – LANGUAGE CHANGES TO THE TEMPLATES

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## Address Industry Developments

- **Electronic Billing**

Executing Broker, where applicable, will bill commissions per contract, per half turn, and through GPS and eGains where possible, as specified on attached Addendum, electronic rate schedule, or as separately agreed. In the event of a conflict between rate documents, the electronic rate schedule shall govern.

- **New Order Passing Broker Versions**

Customer version with OPB

Trader version with OPB

- **Enhanced Give-Up Agreement Definitions**

Address when to use the OPB versions

Bilateral vs. Give-Up transactions from a contractual perspective

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- **Use of Agents**

In general, Give-Up Agreements were designed to detail the obligations under a give-up arrangement and clearly delineate the parties to the execution and clearing relationship. The key to the successful and accurate Give-Up Agreement is that the parties to the Agreement readily match the operational trade flow, making it easier for both the Clearing Broker and Executing Broker to resolve any out-trades or other operational matters. Thus, the additional definitions above were developed over the years to address those parties which may be involved in the handling of a futures order, but not necessarily in the operational trade flow. If one of the parties to a Give-Up Agreement intends to use an agent that is neither an affiliate of that party nor a member of the relevant exchange or clearinghouse, best practice would be to clearly identify the agent and its role (for example, an order passing broker) in the Give-Up Agreement.

- **Bilateral vs. Give Ups**

Some futures trades such as blocks and EFRPs are executed bilaterally and entered into an exchange system for settlement (e.g., Clearport or ICE-Block). These are not give-up transactions necessarily. The customer's clearing firm enters limits directly into Clearport or ICE-Block and can, with permission, at the customer's request, allow another firm which the customer has engaged (either as broker or counterparty) to enter the trade into the account. If the trade exceeds the limits set by the clearing firm, it will be rejected. Thus, this type of transaction is a bi-lateral transaction submitted for clearing as set forth in CFTC Rule 1.73(a)(2)(iii) and not a give-up transaction as discussed in Rule 1.73(a)(2)(iv). The clearing firm pre-sets limits in Clearport or ICE-Block and transactions exceeding such limits will be rejected. If an executing firm or counterparty does not have access to Clearport or ICE-Block and chooses to execute the futures block or EFRP as a give-up, the executing firm will have a screening requirement under Rule 1.73(a)(2)(iv).



# Contact information

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- For information on the EGUS Modernization Project, contact [egus.testing@fia-tech.com](mailto:egus.testing@fia-tech.com)
- Information on the new agreement templates will be posted in the US Documentation Library:
  - <https://www.fiadocumentation.org/fia/us-documentation-library>