CFTC Rule 1.73 Pertaining to Give-Ups
FAQs

QUESTIONS ON WHO THIS RULE APPLIES TO:

Q: One screen agreement between 2 FCMs covers ALL customers. Technically, if you are CB with an FCM and also an EB with that same FCM, will you need two different screening agreements to cover the CB?

A. If you are an FCM that is a Clearing Broker and an Executing Broker to the same entity, you will need two different Screening Agreements with that entity; one with you as Clearing Broker and the other entity as Executing Broker and one with you as Executing Broker and the other entity as Clearing Broker.

Q: Will all jurisdictions be affected by the CFTC rules or only the U.S. entities?

A: Rule 1.73 applies to registered FCMs that are clearing products for which a clearinghouse is registered with the CFTC as a DCO. So if an FCM is a clearing member of a clearinghouse in a non-US jurisdiction that is not registered as a DCO with the CFTC, then the rule would not apply.

Q: So then customers can be defined in the appendix?

A: Just to be clear, the agreement itself talks about the scope of the customers that it applies to—customers for which there is a customer version of the give-up agreement between the executing broker and the clearing broker. If the executing broker and clearing broker want to have different limits on a per customer basis and they agree to that, then they would have to include that in the appendix.

Q: Just to clarify, this rule only applies to executing brokers who are registered FCMs?

A: No. That would not be accurate. Rule 1.73 applies to FCMs that are clearing members of DCOs. So as long as you have an FCM that is a clearing member of a DCO, that FCM is subject to this give-up portion of 1.73. It doesn't matter who the executing firm is. Those transactions would be in scope.

LIMIT QUESTIONS

Q: Is it mandatory to attach Risk Limit schedules?

A: Yes. The clearing broker and executing broker have to agree to limits that will be applied to each customer and you have to say what those limits are.

Firms should establish written procedures, you have to keep full and complete records according to the record retention rules.

To be clear there has to be an agreement as to what limits the executing broker will screen for, it cannot be just a generic agreement that the executing broker will screen for something. The executing broker and clearing broker have to agree on the limits that will be used.

Q: Does the screening agreement include the customer? In the example only the executing broker and clearing broker were mentioned.

A: It is an agreement solely between the executing broker and clearing firm. It is specifically designed not to include the customer.

Q: Does the executing broker need to check limits prior to each execution?

A: The executing broker needs to screen orders in accordance with CFTC Rule 1.73 sub section (a)(2)(i) and (ii). So for an order that's executed through automated means, the executing broker needs to screen those orders through automated means. For orders that are executed through non-automated means, the requirement is slightly different. The executing broker simply has to have systems reasonably designed to ensure compliance with the limits.

Q: Can unique screening risk levels be set for particular customers?

A: Yes. An executing broker and clearing firm could agree to specific limits for particular customers. They could put that in the appendix to the agreement or if the more stringent limit is particular to say the executing broker, the executing broker wants to have a more stringent limit on a particular customer, the executing broker doesn't need to communicate that more stringent limit to the clearing firm as long as it's more stringent than the maximum limit that the executing broker agreed to with the clearing firm under the agreement.

Q: What if there are different limits per customer because if there is no customer defined, how will the different limits be managed?

A: If the executing broker and clearing firm want to agree to different limits for each and every customer that they have, then they would have to use the appendix to set forth those customers and the differing limits for each of them. That's certainly an option for executing brokers and clearing firms. I don't know how operationally feasible that would be, which is why the agreement and the proposal that we've been pursuing has looked to a maximum limit that could be applied to all of the customers.

Q: Do the limits specified in the EGUS agreement need to be at an exchange product level or overall limit agreement between the EB and CF?

A: The limits that are agreed to between the executing broker and the clearing firm are ones that apply to each and every customer. Executing brokers and clearing brokers certainly can agree to adopt the per product limits that DCOs impose. That's one way to approach it. EBs and clearing firms could also approach it by simply having a maximum order size. Again that would be a limit and that limit would apply to each and every customer. It wouldn't be an aggregate that applied to the aggregation of the customers. So, if you say a hundred lot as a maximum order size, every order by every customer of the clearing firm would be subject to a screen for that 100 lot maximum size as opposed to the aggregation of all of those customers together collectively being under 100.

Q: Are the limits that we are talking about execution limits or position limits?

A: They are execution limits. You know, the executing broker is the one who is screening the limits as the trades are being executed. I mean that's one of the issues that we had when the rule came out, there really would be no way from a technological standpoint for an executing broker to be able to screen an order based on a customer's aggregated positions that are held at a clearing firm. So the nature of the limit that we expect would be execution limits.

Q: Will these limits be relating to trade size or all day volume?

A: The types of limits used are determined by the agreement of the Executing Broker and Clearing Broker. Trade size or all day volume could be used if the parties so agreed. However, most conversations have focused on maximum order size.

Q: Has the FIA received positive feedback from CFTC on the notion of making the risk limits appendix a "statement that the EB will screen for limits that correspond to the maximum per-order limits stated by the relevant DCO?" Or inserting a table outlining the max per order limits that are stipulated by the DCOs?

A: Using the DCOs' max per order limits was given as an example of the types of maximum fat finger limits that were contemplated.

QUESTIONS ON AGREEMENTS

Q: Do all existing agreements have to be updated?

A: No, and that is the beauty of the Give-Up Screening Agreement. You will not need to modify, amend or re-execute any of your existing give-up agreements. What you will need is a Give-Up Screening Agreement between each executing broker and clearing broker and that screening agreement will apply to those existing give-up agreements, but it doesn't amend them.

Q: Who initiates the screening agreement?

A: It's going to be an agreement between the executing broker and the clearing firm. Again, it can be proposed by the executing broker, it can be proposed by the clearing firm. It gives the maximum flexibility between the parties on how they are going to approach it.

EGUS

Q: Will the screening agreement data be available in reports the way that give-up agreements currently are?

A: Yes. We will be able to generate reports that show a firm's screening agreements in the same way that it does for give-up agreements now.

Q: Will the give-up agreement be able to be linked to the screening agreements for automatic termination via EGUS?

A: No, there won't be any linking of screening agreements to any specific EGUS agreements within the system. Terminating any individual agreement will happen completely independently of the screening agreement and vice versa.

Q: How will you link the screen agreement to the give-up agreement? Will there be something in EGUS we will be able to link them?

A: Within the system there won't be a hard link per se that will tie any set of agreements, give-up agreements to the screening agreement. You will be able to run agreement reports that will show you all of your screening agreements. This report will show you where you have agreements for different counterparties, and you can also run reports to show the total list of give-up agreements that you have between counterparties. So you can generate reports to show the specific agreements that you have with the counterparty

and the screening agreement that you might have with that counterparty, but the system doesn't link them.

DEADLINE

Q: Is this a phased implementation or does everything has to be completed by June 1st of this year?

A: The compliance deadline based on the no-action relief that we received back in the fall is compliance by June 1st. We have not received any indication that there would be a further extension of that no action relief.

TERMINATION OF THE SCREENING AGREEMENT

Q: If you terminate a regular give-up agreement, will that interfere with the screen agreement?

A: No. Termination of any underlying give-up agreement will not terminate or affect the Give-Up Screening Agreement. It just means there is one less customer that's subject to screening by the executing broker because it's no longer a customer covered by the Give-Up Screening Agreement.

Q: If you terminate a regular give-up agreement, that will not interfere with the Screen Agreement? Only if you terminate a Screening Agreement will that terminate all give-ups with that other FCM?

A: Terminating a give-up agreement will not terminate the Screening Agreement. Terminating the Screening Agreement does not automatically terminate all of the relevant Give Up Agreements. If the Executing Broker is the party that sends a notice terminating the Screening Agreement, it must send a notice terminating all of the relevant Give Up Agreements.

Q: If you have to replace a screening agreement... is the process the same? You do a version of the previous agreement. You should NOT just terminate a screening agreement, because that will terminate all Give-Up agreements with that other FCM

A: Terminating the Screening Agreement does not automatically terminate all of the relevant Give Up Agreements. If the Executing Broker is the party that sends a notice terminating the Screening Agreement, it must send a notice terminating all of the relevant Give Up Agreements.

OTHER

Q: What is a DCO as in relation to a FCM? That is an acronym I am not familiar with nor have encountered before.

A: DCO is a Derivatives Clearing Organization (i.e., clearing house) registered with the CFTC.

Q: Will risk contacts at each FCM be listed on EGUS (similar to give-up agreements) in order to put together screening agreements.

A: Contact FIA Tech at 202-772-3000 if you would like a list of contacts at each firm for the screening agreement.

Q: How does the ruling apply to block trades which already have limits?

A: Block trades are bilateral transactions submitted for clearing and are subject to Rule 1.73(a)(2)(iii) (but not to the give-up portion of the rule). Bunched Orders are orders executed by an account manager on behalf of underlying customers and are subject to Rule 1.73(a)(2)(v) (but not the give-up portion of the rule).