

**FIA'S LAW & COMPLIANCE DIVISION**  
**Explanation of the 2006 and 2008 Revisions to the International Uniform Brokerage Execution Services ("Give-up") Agreement**

Approximately 13 years have elapsed since the Law & Compliance Division (the "L&C") of the Futures Industry Association ("FIA") (in special consultation with the Futures and Options Association ("FOA"), the Managed Futures Association ("MFA") and representatives from several leading law firms, exchanges and FCMs) developed the International Uniform Execution Services ("Give-up") Agreement ("Agreement") that today is the standard agreement by which futures industry participants document give-up transactions globally. Over time, however, changes in the way futures contracts are traded (particularly the proliferation of electronic futures trading) created the need to bring the Agreement up-to-date.

Accordingly, in December 2006, the L&C revised the Agreement, once again in consultation with other industry organizations and participants. The changes included provisions that addressed order transmittal through electronic order routing systems as well as other issues the drafters realized should be included, such as the recording of telephone conversations and adding additional accounts to an existing agreement. These 2006 Customer and Trader versions were copyrighted by the FIA and became the new standard used by all parties. At the same time, FIA also created agreements specific to give-up transactions on the London Metal Exchange ("LME").

Now, two years later, new developments, such as the establishment of the new FIA Electronic Give-Up System ("EGUS") and new requirements by the LME for specific members, necessitated another update of the Agreements. Accordingly, in April 2008, the L&C revised the 2006 versions, and, going forward, they will be the standard used in EGUS and are recommended to be used by all parties when establishing a manual copy. In order to enable the LME's Category 4 members to use EGUS, the L&C also created additional LME agreements that comply with the LME's unique requirements for such members.

Summarized below are explanations of (i) the revisions that were made in 2006 and (ii) the revisions that were made in 2008. Please note that the section numbers listed below refer to the Trader Version of the Agreement, but the Customer Version is revised similarly.

**2006 Revisions**

- 1. Title:** Previously, the word "International" only appeared in the title of the Customer Version; we are now able to add it to the Trader Version. We also added "2006", to indicate the year of the revised versions.
  
- 2. Footnote:** The FOA, which was inadvertently omitted from the original Agreement, was added to the list of consultants. Occasionally, users of the Agreement have made changes to the standard document without clearly indicating such changes in bold or italicized type. Language was added to remind them that it is misleading to do so. Although the second and third sentences may not be necessary when the Agreement is entered into electronically, it will be relevant for instances when agreements are done on paper. Please note also that the Agreements are copyrighted.

- 3. Section 1:** Language was added to include transactions executed “orally, in writing and through an electronic order facility.” The words, “regulations, interpretations and protocols,” were added to the definition of Applicable Law to cover an agreement or protocol governing the operation of electronic order facilities and thus avoid the inadvertent creation through the Agreement of a conflicting statement of obligations in Section 4.
- 4. Section 2:** Language was added to provide that orders may be transmitted orally, in writing or through an electronic order facility, and, as permitted by Applicable Law, may be transmitted directly to an exchange.
- 5. Section 4:** Language was added (i) to ensure that the Trader (or Customer, as the case may be), when placing orders, is responsible for the accuracy and validity of such orders, whether they are placed orally, in writing or electronically, (ii) to prevent a conflict with any electronic services agreement between the Customer or Trader and the Executing Broker, the phrase, “except as otherwise agreed in writing” was inserted before the list of the Executing Broker’s responsibilities; and (iii) to add “electronic order facilities” to the list of facilities for which the Trader, Executing Broker and Clearing Broker shall have no responsibility in the event of a failure.
- 6. Section 6:** This section gave the Executing and Clearing Brokers the right to liquidate a trade if the Trader disputes or denies knowledge of it after it is confirmed to him/her. Since electronic trades are not confirmed by the Executing Broker after execution, the words “confirmed to Trader” were deleted.
- 7. Section 11:** The phrase, “Electronic services”, was added to the list of agreements that take precedence over the Agreement.
- 8. Section 12:** This section retains the blank space to be completed when there is only one execution fee for all contracts, but is amended to include a reference to a rate schedule, which may be a part of the Addendum or a separate attachment.
- 9. New Sections:** In addition to revisions relevant to electronic trading, the drafters recognized the opportunity to add the following new provisions for other issues that have arisen over the years:

  - A. Section 13:** Although some jurisdictions permit a person to record his/her own telephone conversations without the consent of the other parties to the conversation, many jurisdictions require the consent of all parties. To comply with such requirements, the drafters added a new section to provide for the mutual consent of the parties to the recording of telephone conversations without a warning tone between and among them. No provisions were made regarding the use of such recordings since the drafters agreed that the use and preservation of recordings may be at each party’s discretion and should not be mandated by this Agreement.

**B. Section 14:** This new provision permits any party to the Agreement to add a new account simply by sending written notice to the other parties, provided that all other conditions remain the same. The words, “Unless otherwise prohibited by Applicable Law,” were added to modify the provision to allow for any jurisdiction that requires the signed consent of each party.

**C. Section 15:** At the request of certain advisors (i.e., Traders), this provision was added to make clear that, where the Trader enters into the Agreement on behalf of more than one customer, each customer is a separate party to the Agreement and shall not be liable for any obligations of any other customer.

**D. Section 16:** This section provides for the Agreement to be signed in counterparts, and is applicable only when paper copies are circulated for signatures.

**E. Addendum:** An Addendum is made a part of the Agreement to ensure that (i) information is provided for contact persons at each party, (ii) account numbers are provided for Customers who are not identified by name; and (iii) the rates for execution commissions are specified for each market where trading is contemplated.

In addition to the standard Trader and Customer Versions of the Agreement, the L&C also created several London Metal Exchange (“LME”) versions specifically designed to comply with the LME’s rules. **Please note that for Give-Ups executed on the LME when both the Executing Broker and Clearing Broker are clearing members of the LME and no non-member clearing or executing brokers are parties to the transaction, the standard Customer or Trader Versions should be used.**

**LME Version 1** is used when orders are transmitted to an LME member and the Customer’s account is carried by a non-member (Carrying Broker) which maintains an omnibus clearing account with an LME clearing member.

**LME Version 2** is used when orders are transmitted first to a non-member (Executing Broker) who subsequently transmits them to a member (LME Executing Member) for execution on the LME and the Customer’s account is carried and cleared by an LME Clearing Member.

**LME Version 3** is used when orders are transmitted first to a non-member (Executing Broker), who subsequently transmits them to a member (LME Executing Member) for execution on the LME and the Customer’s account is carried by a non-member (Carrying Broker) which maintains an omnibus account with the LME Clearing Member.

### **2008 Revisions**

1. **Dates:** The dates of all versions of the Give-Up Agreement, including the FIA copyright date, are changed to April 2008.

2. **Section 12:** In order to conform to the format of the Agreements on EGUS (due to technical characteristics of the system), the boxes to check in order to elect a payer and the space to insert execution fees are deleted and the parties are directed to the Addendum or a separate rate schedule for information regarding execution fees and the address to which invoices are to be sent.

3. **Addendum:** Since rates have become more complex, and with the development of eGains, most Agreements will have rate schedules attached. Therefore the space to insert execution rates is deleted and reference is made instead to a rate schedule or prior

agreement. Where the billing address section formerly instructed the Executing Broker to send invoices, it now allows for the possibility that a party other than the Executing Broker may be sending invoices and merely instructs bills to be sent to the address indicated.

#### **4. New Sections:**

**A. Section 17:** For the avoidance of doubt when there are both electronic and manual signatures on the Agreement, this new section provides a representation by the manual signer that it agrees that the copy electronically signed by the other parties and stored on EGUS is the correct and binding agreement.

**B. Section 18:** This new section states that the conformed signatures were executed electronically in accordance with the FIA Electronic Give-Up Agreement System User Agreement.

#### **5. LME Agreements**

**A. All LME Agreements** were revised to include the applicable April 2008 changes and additions described above. To all LME Agreements to which both an Executing Broker and an LME Executing Member are parties, a new sentence (requested and approved by the LME) is added at the end of Section 3 to clarify that the Executing Broker is acting for and on behalf of the LME Executing Member.

**B. LME Versions 4, 5, 6, 7 and 8:** In accordance with LME's requirements, new LME Agreements in both the Customer and Trader Versions were created specifically for Category 4 members. In each case, one or more additional LME parties are added, as described below:

**LME Version 4** is used when a Category 4 member is the Executing Broker and an Executing Administrative Clearer is added as a party to the standard Agreement.

**LME Version 5** is used when a Category 4 member is the Clearing Broker and a Clearing Administrative Clearer is added as a party to the standard Agreement.

**LME Version 6** is used when both the Executing Broker and the Clearing Broker are Category 4 members and an Executing Administrative Clearer and a Clearing Administrative Clearer are added as parties to the standard Agreement.

**LME Version 7** is used when a Category 4 member is the Executing Broker and an Executing Administrative Clearer is added as a party to the versions that also include a Carrying Broker.

**LME Version 8** is used when both the Executing Broker and the Clearing Broker are Category 4 members and both an Executing Administrative Clearer and a Clearing Administrative Clearer are added as parties to the versions that also include a Carrying Broker.