



## FIA DOCUMENTATION SERVICES

# Now Available! FIA Terms of Business 2018 – Version 2.0 and more

In November 2021, FIA published several updates to our comprehensive suite of industry standard contractual terms for derivatives execution and clearing. Following a review of the FIA Terms of Business and associated documents, FIA released the following templates and materials:

- FIA Terms of Business 2018 – Version 2.0;
- Update Patch 2021;
- Updated User Guide to the FIA Terms of Business 2018;
- New Indirect Clearing Terms (suitable for longer chains indirect clearing); and
- Updated versions of the Indirect Clearing Terms published in 2018.

The review focused on recent UK and EU regulatory developments and reforms, as well as on member feedback. External counsel and the FIA Terms of Business Working Group considered the following points when determining whether amendments to the FIA Terms of Business are required:

- The end of the Brexit transition period;
- Changes to UK insolvency legislation;
- Article 4(3a) EMIR, which requires clearing members and clients providing clearing services to provide those services under fair, reasonable, non-discriminatory and transparent commercial terms (FRANDT);
- IBOR transition;
- The potential for a firm to retain profits that a client has accumulated rather than paying them out as variation margin;
- Changes to the netting sets aggregation provision and the mechanics of it under the Indirect Clearing Terms;
- Recent court cases relevant in the context of the FIA Terms of Business;
- Supplementing the Indirect Clearing Terms modules to cater for the provision of indirect clearing services by indirect clients; and
- The impact of the LME's proposal to dematerialise warrants.

FIA has maintained a suite of English law governed Terms of Business for the provision of client clearing services for over 15 years, in partnership with the law firm Clifford Chance LLP. In mid-2018, we released a fully updated and comprehensive state-of-the-art set of industry standard contractual terms for derivatives execution (ETD only) and clearing (ETD and OTC) – the FIA Terms of Business 2018. More information is available [here](#).

Learn more about the FIA standard clearing documentation and how to subscribe at [FIA.org/2018ToBs](https://FIA.org/2018ToBs). If you have further questions, please contact Mitja Siraj at [msiraj@fia.org](mailto:msiraj@fia.org).



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# FIA Terms of Business 2018 – Version 2.0 and Update Patch 2021

The FIA Terms of Business 2018 – Version 2.0 reflect the latest regulatory developments in Europe and in the United Kingdom and include other important improvements. For example, we have updated the indemnity clause as a result of the Citi/Revlon judgment and introduced an optional exclusive jurisdiction clause. The base agreement continues to provide a modular structure allowing clearing firms to document customised client clearing relationships. The terms have been drafted with a principal-to-principal clearing model in mind and do not apply to the US FCM clearing model.

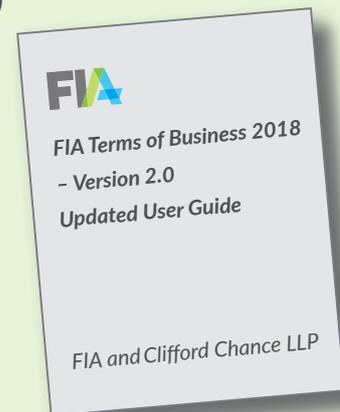
The purpose of the Update Patch 2021 is to provide an update for firms using the FIA Terms of Business 2018 to reflect the changes that have been made in Version 2.0 of the 'core' agreement.

### ***FIA Terms of Business 2018 – Version 2.0 Updated User Guide***

FIA has also updated the User Guide to the FIA Terms of Business 2018 to assist firms in understanding the regulatory background and rationale for the new and amended provisions.

The User Guide consists of:

- Explanation of clauses;
- Regulatory references and notes;
- Alternative/additional provisions; and
- Diagrams, decision trees and other user information.



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### FIA Indirect Clearing Terms

The FIA Indirect Clearing Terms are designed to supplement contractual terms based on either the 2011 Professional Client Agreement or the 2018 Terms of Business. Different versions of the indirect clearing terms were published in 2018, depending on the FIA documentation being supplemented, whether the terms will apply between the CM and DC or the DC and IC, and whether they will be used with Basic OSAs only or Basic OSAs and GOSAs. Those terms were drafted for use with 'simple' indirect clearing chains only (CCP-CM-DC-IC). More information on FIA indirect clearing documentation can be found [here](#).

We have now updated all the FIA Indirect Clearing Terms that we published in 2018 to cater for, among other things, Brexit-driven amendments.

In addition, we have also published new sets of indirect clearing terms that can be used to document 'longer chain' indirect clearing arrangements. These new indirect clearing terms are generic and flexible enough to be used also in the context of 'simple' indirect clearing chains. Therefore, firms can use one set of terms for both 'longer' and 'simple' indirect clearing chains. One set of the new (longer chains) FIA Indirect Clearing Terms 2021 has been drafted to supplement the FIA Terms of Business 2018 and a separate set of equivalent terms has been drafted for use with the 2011 Professional Client Agreement. Each set comprises three documents: one for CM-DC at the top of the chain, one for (all) the middle links in the chain, and one replicating what is currently the DC-IC module, for the final link in the chain.

### Overview of FIA Indirect Clearing Terms

	Professional Client Agreement 2011				FIA Terms of Business 2018			
	CM-DC	DC-IC1	IC1-IC2	IC2-IC3	CM-DC	DC-IC1	IC1-IC2	IC2-IC3
*Updated* BOSA only Terms	X	X	N/A	N/A	X	X	N/A	N/A
*Updated* BOSA/GOSA Terms	X	X	N/A	N/A	X	X	N/A	N/A
*NEW* Longer chains CM-DC Terms <sup>1</sup>	X	N/A	N/A	N/A	X	N/A	N/A	N/A
*NEW* Longer chains 'middle links' Terms <sup>2</sup>	N/A	X	X	N/A	N/A	X	X	N/A
*NEW* Longer chains 'end of chain' Terms <sup>3</sup>	N/A	X	X	X	N/A	X	X	X

Learn more about the FIA standard clearing documentation and how to subscribe at [FIA.org/2018ToBs](https://www.fia.org/2018ToBs). If you have further questions, please contact Mitja Siraj at [msiraj@fia.org](mailto:msiraj@fia.org).

<sup>1</sup> These terms cover the following links in the chain: CCP - CM - DC - IC1 - IC2, CCP - CM - DC - IC1 - IC2 - IC3 and CCP - CM - DC - IC.

<sup>2</sup> These terms cover the following links in the chain: CCP - CM - DC - IC1 - IC2 and CCP - CM - DC - IC1 - IC2 - IC3.

<sup>3</sup> These terms cover the following links in the chain: CCP - CM - DC - IC1 - IC2, CCP - CM - DC - IC1 - IC2 - IC3 and CCP - CM - DC - IC.



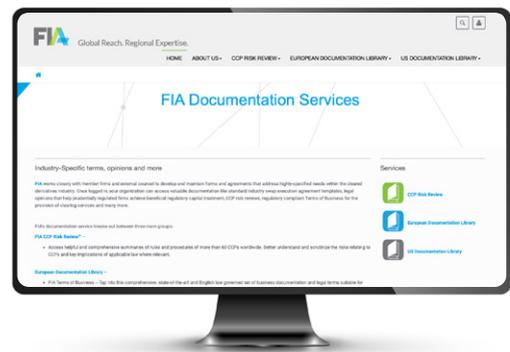
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### *Impact on FIA legal opinions*

No amendments to the Core Provisions have been made in the FIA Terms of Business – Version 2.0, so the updated terms do not have any impact on the netting provisions or the legal opinions. Due to the new and amended FIA Indirect Clearing Terms, which introduce new/amended FIA Indirect Clearing Netting Provisions, updates to the existing FIA Indirect Clearing Supplemental Netting Opinions will be required.

### *How can I access the updated documentation package that FIA released?*

All documents published as part of the ‘2021 documentation package update’ are available online on the [FIA Documentation Platform](#). A sample version of the FIA Terms of Business 2018 – version 2.0 is available to anyone who wishes to preview the document. A customizable template agreement, user guide and the other templates are available for purchase. They are available to FIA member and non-member firms for a one-off fee (GBP3,500 for FIA members and GBP5,000 for non-members). We have also made available blacklines against the original documents that were reviewed and updated as part of this exercise.



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