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FIA'S LAW & COMPLIANCE DIVISION

Explanation of the 2006 Revisions to the International Uniform Brokerage Execution Services ("Give-up") Agreement

Approximately 11 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 other industry organizations, provided a uniform Give-up Agreement ("Agreement") to the futures industry. With very few exceptions, it very quickly became accepted globally, and currently is the standard agreement by which most futures industry participants document give-up transactions globally. Over time, however, so much has changed, particularly with the advent of electronic futures trading, that the L&C recognized the need to bring the Agreement up-to-date. Accordingly, the L&C has revised the Agreement, once again with the assistance of the FOA and MFA. The changes include provisions that address 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.

Also, with the development of the new FIA Electronic Give-Up System ("EGUS"), these revised versions will be the standard to be used by all parties going forward.

Summarized below are the revisions that were made and the drafters' rationale for making them. Please note that the section numbers listed below refer to the Trader Version of the Agreement, but the Customer Version is revised similarly.

- 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 produced several London Metal Exchange (“LME”) versions specifically designed to comply with the LME’s rules which require that the Executing and Clearing Members of the exchange be parties to the Agreement, even when the Customer or Trader transmits orders to a non-member or when the Customer’s account is carried and cleared by a non-member.

LME Version 1 may be used when orders are transmitted to a member and the account is carried by a non-member that maintains a clearing account with a member; LME Version 2 may be used when orders are transmitted first to a non-member that uses a member to execute, and the Customer’s account is carried and cleared by a member; and LME Version 3 may be used when orders are transmitted to a non-member and the Customer’s account is carried by a non-member.