

## 2018 FIA TECH GIVE-UP AGREEMENT TRANSFER PROTOCOL FAQ 10/2/18

FIA Technology Services, Inc. (**FIA Tech**), with assistance from the Futures Industry Association (**FIA**), has prepared this list of frequently asked questions (**FAQs**) to assist in you in considering the 2018 FIA Tech Give-Up Agreement Transfer Protocol (the **Protocol**). We may update this list from time to time as additional questions are raised and/or to amend the response to any question set out below.

**THESE FAQs ARE FOR GENERAL GUIDANCE ONLY AND DO NOT CONSTITUTE LEGAL ADVICE OR DEFINITIVE ADVICE OF ANY NATURE.**

THE FAQs ARE NOT AND SHOULD NOT BE VIEWED AS GUIDANCE FOR ALL ISSUES OR CONSIDERATIONS IN CONNECTION WITH THE **PROTOCOL**. PARTIES SHOULD CONSULT WITH THEIR APPROPRIATE ADVISERS, INCLUDING, WITHOUT LIMITATION, THEIR LEGAL ADVISERS PRIOR TO ADOPTING THE PROTOCOL OR ACTING THEREUNDER, AND SHOULD NOT RELY ON THE FAQs.

IF THERE IS ANY INCONSISTENCY BETWEEN ANY OF THE INFORMATION PROVIDED IN THESE FAQs BELOW AND THE PROVISIONS OF THE PROTOCOL, THE PROVISIONS OF THE PROTOCOL SHALL PREVAIL. NEITHER FIA NOR FIA TECH ASSUMES RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

The Protocol enables parties to existing give-up agreements and screening agreements to replicate those existing agreements such that new agreements are deemed entered into on the same terms, save that the relevant party to the existing agreement is replaced by a Qualified Transferee in the new agreement, in accordance with the terms of the Protocol. The Protocol became available for adoption on Monday, 17 September 2018 and is supported by the launch of a new release of the FIA Tech Docs system entering production on 16 September 2018.

Any capitalized term used but not defined below shall have the meaning given to it in the Protocol.

### 1. **PROTOCOL BASICS**

#### 1.1 **Where can I find the Protocol text?**

The full language of the Protocol, as well as additional details, may be found on FIA Tech's website, <https://fia-tech.com/gua-transition-protocol>.

#### 1.2 **What types of agreements are covered by the Protocol?**

Various GUAs and Give-Up Screening Agreements listed in the Protocol, in each case, based on the version available on the FIA website (<https://www.fia.org>) and any other agreement as determined by FIA Tech from time to time and notified on the FIA Tech website (<https://www.fia-tech.com>), may be replicated under the Protocol (such GUAs, **Original GUAs** and such Give-Up Screening Agreements, **Original Give-Up Screening Agreements**).

#### 1.3 **Is there a fee to adopt the Protocol?**

There is no fee to adopt the Protocol.

#### **1.4 Who can adopt the Protocol?**

Any party to an Original GUA or Original Give-Up Screening Agreement (each, an **Original Agreement**), whether they have executed a System User Agreement with FIA Tech or not, can adopt the Protocol. Membership of FIA is not a requirement for adoption.

#### **1.5 Is adoption of the Protocol made public?**

Yes. A list of Adopting Parties will be available on the FIA Tech website at <https://fia-tech.com/gua-adopting-parties/>

#### **1.6 Do all parties to an Original Agreement have to adopt the Protocol for that Original Agreement to be replicated pursuant to the Protocol?**

Yes. Only an Original Agreement in respect of which all parties have adopted the Protocol is eligible for transition under the Protocol. In addition, the new party replacing the Eligible Sender to such Original Agreement in the corresponding new agreement (such new agreement, the **New Agreement**) must also adopt the Protocol. For further information on 'Eligible Senders' please refer to the response to Question 3.1 below.

#### **1.7 What is the Qualifying Condition to replication of an Original Agreement?**

The Qualifying Condition requires the New Adopting Party which is replacing the Eligible Sender in the New Agreement to be a Qualified Transferee of the Eligible Sender. A Qualified Transferee is a branch of the Eligible Sender (or where such Eligible Sender is a specific branch of an entity, any other branch of such entity) or an entity that controls, is controlled by, or is under common control with the Eligible Sender. Parties should note neither FIA Tech nor FIA will be monitoring or diligencing whether a New Adopting Party is a Qualified Transferee of the Eligible Sender. If FIA Tech is not notified prior to the Cut-Off Time that a New Adopting Party is not a Qualified Transferee of an Eligible Sender, a New Agreement will be deemed entered into pursuant to the Protocol notwithstanding the failure to meet the Qualifying Condition.

#### **1.8 How do I adopt the Protocol?**

A party may adopt the Protocol by completing and electronically delivering an Adoption Letter:

- (a) if a Conformed Party, via the FIA Tech Docs system, or
- (b) if a Non-Conformed Party, in the form of a locked PDF attachment.

in each case, to FIA Tech, as agent.

#### **1.9 If I am an Agent, can I adopt the Protocol on behalf of the Principals for which I act?**

Yes. An Agent can adopt the Protocol on behalf of the Principals which it represents. When adopting the Protocol as Agent, the Adopting Party will be deemed to be making certain representations,

including representations regarding its authorization to execute and deliver the Adoption Letter and, where applicable, other notices under the Protocol on behalf of such Principals.

**1.10 If I adopt the Protocol as Agent on behalf of the Principals for which I act, do I have to identify such Principals in the Adoption Letter?**

No. An Agent is not required to identify each Principal in its Adoption Letter.

**1.11 Can I adopt the Protocol with respect to just a branch of my company?**

Yes. A party may adopt the Protocol on behalf of the branch specified in its Adoption Letter only. Adopting on behalf of multiple branches requires the submission of multiple Adoption Letters to FIA Tech, as agent, one for each branch. Where a party does not specify a branch in its Adoption Letter, it will be deemed to adopt the Protocol on behalf of such party.

**1.12 Can I subsequently revoke my adoption of the Protocol?**

A party may revoke its adoption of the Protocol by delivering to FIA Tech, as agent, a Revocation Notice. A Revocation Notice is deemed effective under the Protocol on the second Business Day after the day it is delivered to FIA Tech, as agent, if delivered prior to 22:00 UTC on a Business Day (a) in the form of a locked PDF attachment to [protocol@fia-tech.com](mailto:protocol@fia-tech.com) in the case of a Non-Conformed Party, or (b) via the FIA Tech DOCS system, in the case of a Conformed Party.

**2. OPERATION OF THE PROTOCOL**

**2.1 How does the Protocol operate to replicate Original Agreements?**

Once (a) all parties to an Original Agreement and (b) the new party which will replace the Eligible Sender to such Original Agreement adopt the Protocol, an Eligible Sender may send a Transition Notice in respect of such Original Agreement to FIA Tech, as agent, through the FIA Tech Docs system. Any purported Transition Notice sent to FIA Tech, as agent, is subject to the review and approval by FIA Tech, acting in its sole discretion. Any purported Transition Notice that FIA Tech, as agent, determines in good faith is not in compliance with the Protocol will be void. If no other party to the Original GUA sends a Rejection Notice to FIA Tech, as agent, prior to the Cut-Off Time, and no party to the Original GUA otherwise terminates such Original GUA pursuant to its terms prior to the Cut-Off Time, a New GUA will be deemed entered into on the same terms as such Original GUA, except that the Eligible Sender will be replaced with the specified affiliate or branch designated as the New Adopting Party in the Transition Notice. See further the section of this FAQ titled 'Transition Notices.'

**2.2 What happens to any Clearing Broker limits or conditions on orders that were notified pursuant to the Original GUA?**

Unless otherwise agreed by the relevant parties, any notices sent prior to the Lock-Down Commencement Time by the Clearing Broker which place limits or conditions on the orders the Clearing Broker will accept for give-up in the relevant customer's account pursuant to the terms of the Original GUA will also apply to the corresponding New GUA.

**2.3 What is the governing law of the Protocol and the Adoption Letters under the Protocol?**

The Protocol and any Adoption Letter entered into under the Protocol shall be governed by New York law. Any New Agreement deemed entered into pursuant to the Protocol is subject to the governing law specified in the corresponding Original Agreement. If the parties to such New Agreement wish to amend the governing law of such New Agreement, including, without limitation, due to any legal, regulatory or other concerns, they will need to agree any amendments to such New Agreement outside of the Protocol.

**3. TRANSITION NOTICES**

**3.1 Only Eligible Senders can send a Transition Notice. Am I an Eligible Sender?**

An Eligible Sender is a party to an Original Agreement which (a) has adopted the Protocol, (b) has executed a System User Agreement with FIA Tech and (c) is an "Executing Broker", "Clearing Broker", "Executing Administrative Clearer", "Clearing Administrative Clearer", "Carrying Broker", "Order Passing Broker", "LME Clearing Member", "LME Executing Member", or "Dealer," pursuant to such Original Agreement.

**3.2 What information must be included in a Transition Notice?**

A Transition Notice must include:

- (a) the Agreement ID(s) of the Original Agreement(s) proposed for replication;
- (b) the identity of the New Adopting Party replacing the Eligible Sender in respect of such Original Agreement(s);
- (c) an election from the Eligible Sender as to whether it wishes to terminate such Original Agreements upon (i) the rejection of the Transition Notice and (ii) the entry into of the corresponding New Agreement(s);
- (d) the Eligible Sender's Intended Transition Date; and
- (e) a representation and warranty from the Eligible Sender that the Qualifying Condition is satisfied.

**3.3 Can any other conditions be included in the Transition Notice?**

No. An Eligible Sender may not specify additional provisions, conditions or limitations in the Transition Notice.

**3.4 Is the Intended Transition Date the date the New Agreement deemed entered into pursuant to the Protocol becomes effective?**

No, the Intended Transition Date is the date the Eligible Sender intends any New Agreement deemed entered into under the Protocol to be effective. The Eligible Sender indicates the Intended Transition Date in the Transition Notice. Moreover, the Intended Transition Date is not the same as the Effective Date of the New Agreements. The Effective Date is the date the New Agreement will be deemed effective, being the Business Day falling 11 Business Days following the Lock-Down Commencement Date, subject to the terms of the Protocol. The Intended Transition Date is included for operational purposes only and has no legal effect as between Adopting Parties to the Protocol.

**3.5 What happens once an Eligible Sender effectively delivers a Transition Notice to FIA Tech, as agent?**

FIA Tech, as agent, will notify each other remaining party to the Original Agreement(s) specified in such Transition Notice by sending the Transition Notice to such parties (a) by way of email via the FIA Tech Docs system for Conformed Parties and (b) to the email address specified in the relevant Adoption Letter for Non-Conformed Parties.

**3.6 How much time do the receiving parties have to review the Transition Notice upon receipt from FIA Tech?**

A Transition Notice is deemed effective on the day it is delivered by FIA Tech to the Remaining Adopting Parties, provided delivery is on a Business Day prior to 22:00 UTC time. If delivered on a day that is not a Business Day, or after 22:00 UTC, the Transition Notice will be deemed effective the following Business Day. The day a Transition Notice is effectively delivered is the **Lock-Down Commencement Date**. Receiving parties have until 22:00 UTC time on the Business Day falling ten Business Days from the Lock-Down Commencement Date (such time, the **Cut-Off Time**) to reject the Transition Notice.

**4. REJECTION NOTICES**

**4.1 How can a party reject a Transition Notice?**

Subject to the response to Question 4.3 below, a party may reject a Transition Notice by delivering a Rejection Notice to FIA Tech, as agent, prior to the Cut-Off Time (a) in the form of a locked PDF attachment to [protocol@fia-tech.com](mailto:protocol@fia-tech.com) in the case of a Non-Conformed Party, or (b) via the FIA Tech DOCS system, in the case of a Conformed Party. A Rejection Notice will be deemed effective on the day it is delivered to FIA Tech, as agent, save that any delivery of a Rejection Notice to FIA Tech, as agent, on a day that is not a Business Day or after 22:00 UTC will be deemed delivered on the following Business Day.

**4.2 Can a party reject a Transition Notice with respect to only some of the Agreement IDs and/or Principals specified in such Transition Notice?**

A Rejection Notice may reject the terms of a Transition Notice with respect to all or some only of the Agreement IDs specified in the Transition Notice. However, a Rejection Notice that rejects the terms of a Transition Notice in respect of any Agreement ID must reject with respect to all (but not some only) of the Principals pursuant to such Agreement ID.

**4.3 Can the New Adopting Party replacing the Eligible Sender send a Rejection Notice?**

No. A New Adopting Party does not have the ability to reject a Transition Notice. Only Remaining Adopting Parties (ie those parties that are neither the Eligible Sender nor the New Adopting Party) can send Rejection Notices.

**4.4 Are parties still able to exercise the termination provisions in the Original Agreement?**

Yes. A party to an Original Agreement may terminate such Original Agreement in accordance with its terms outside of the Protocol. If such a termination occurs prior to the Cut-Off Time, any outstanding Transition Notice will be deemed void immediately and no New Agreement will be deemed entered into under the Protocol in connection with such Transition Notice.

**4.5 How long after the delivery of the Transition Notice is the New Agreement deemed entered into?**

If no Rejection Notice is delivered in respect of a Transition Notice and the underlying Original Agreement is not terminated, in each case by the Cut-Off Time, a New Agreement is created at the Effective Time and on the Effective Date, which is 00:00 UTC 11 Business Days after the Lock-Down Commencement Date.

**4.6 If the Eligible Sender elects to terminate an Original Agreement in the Transition Notice, when does the Original Agreement terminate?**

As referenced in the response to Question 3.2 above, the Eligible Sender must elect in the Transition Notice whether or not to terminate an Original Agreement upon (a) the rejection of such Transition Notice and (b) the deemed entry into a New Agreement.

If the Eligible Sender elects to terminate an Original Agreement in the Transition Notice upon the rejection of such Transition Notice, and a Rejection Notice in respect of such Transition Notice is subsequently delivered to FIA Tech, as agent, prior to the Cut-Off Time, the Original Agreement shall be deemed terminated immediately prior to 00:00 UTC time 11 Business Days following the Lock-Down Commencement Date.

If the Eligible Sender elects to terminate an Original Agreement in the Transition Notice upon the deemed entry into a New Agreement, and no Rejection Notice is delivered to FIA Tech, as agent, prior to the Cut-Off Time, the Original Agreement shall be deemed terminated immediately prior to 00:00 UTC time 11 Business Days following the Lock-Down Commencement Date.

An Eligible Sender should be aware that electing to terminate an Original Agreement upon a rejection of the relevant Transition Notice will mean that the Eligible Sender cannot send a subsequent Transition Notice under the Protocol with respect to such Original Agreement, notwithstanding any bilateral discussions it may have had with the parties to such Original Agreement outside of the Protocol.

## **5. MULTIPLE TRANSITION NOTICE SCENARIOS**

### **5.1 Can multiple parties to the same Original Agreement send a Transition Notice?**

Yes. Any party that is an Eligible Sender to an Original Agreement can send a Transition Notice.

### **5.2 Do Transition Notices sent by multiple Eligible Senders for the same Original Agreement need to be sent at the same time and have the same Intended Transition Date?**

No, Transition Notices sent by multiple Eligible Senders for the Same Original Agreement do not need to be sent at the same time and do not need to have the same Intended Transition Date.

### **5.3 How does the Protocol accommodate Transition Notices sent by multiple Eligible Senders for the same Original Agreement?**

Where a Transition Notice results in the deemed entry into of a New Agreement, a Subsequent Transition Notice sent by another Eligible Sender shall operate on that New Agreement as if it were the Original Agreement to be replicated under the Protocol. The Protocol, therefore, accommodates multiple Eligible Senders' Transition Notices by allowing the sequential deemed entry into of New Agreements, subject to the terms of the Protocol.

## **6. ELECTRONIC COPIES OF AGREEMENTS**

### **6.1 What happens after the deemed entry into of a New Agreement?**

After the deemed entry into of a New Agreement, FIA Tech may, but is not required to, create an electronic copy of the New Agreement within the FIA Tech Docs system and circulate such electronic copy to the parties to the New Agreement, via (a) the FIA Tech Docs system in the case of Conformed Parties and (b) email in the case of Non-Conformed Parties.

### **6.2 What if there is an inconsistency between the terms of the New Agreement deemed entered into pursuant to the Protocol and the electronic copy created by FIA Tech?**

The New Agreement deemed entered into pursuant to the Protocol shall prevail.

**6.3 Will FIA Tech create an electronic copy of the New Agreement in all circumstances?**

While FIA Tech expects to create an electronic copy of all New Agreements deemed entered into pursuant to the Protocol, it is under no obligation to do so. The failure by FIA Tech to create an electronic copy for any reason will not impact the deemed entry into of the New Agreement pursuant to the Protocol.

**6.4 What if FIA Tech creates an electronic copy of a purported New Agreement even if no such New Agreement is deemed entered into pursuant to the Protocol?**

Such an electronic copy shall not result in a binding New Agreement between any of the Adopting Parties.

**7. MISCELLANEOUS**

**7.1 Can the Protocol be used to replicate Original Agreement(s) for reasons other than Brexit?**

While created with careful consideration of Brexit-driven transitions, the Protocol is not limited to Brexit-related transitions, and has been designed to support other types of corporate or regulatory-driven transitions.

**7.2 What if FIA Tech fails to take any action pursuant to the Protocol?**

In no event shall FIA Tech or any of its officers, servants or agents be liable to any Adopting Party or any other person for any lost business, lost profits, loss of use, business interruption, loss of data, cost of cover or any other consequential, special, punitive, exemplary, incidental or indirect losses, damages, expenses or claims whatsoever suffered or incurred by any Adopting Party or any other person arising out of or in connection with the Protocol (including, without limitation, any action pursuant to or a failure by FIA Tech to take any action pursuant to, in each case, the provisions of the Protocol), an Adoption Letter (including, without limitation, a failure by FIA Tech to publish a party's name on its website), a Transition Notice or any New Agreement (including, without limitation, any orders executed thereunder) deemed entered into pursuant to the provisions of the Protocol, regardless of the form of action, whether based on statute or arising in contract or tort and regardless of whether such Adopting Party or other person has reason to know or in fact knows of the possibility thereof.