

**CBOE Regulatory Circular RG17-025  
C2 Regulatory Circular RG17-011**

**Date:** February 15, 2017  
**To:** CBOE and C2 Trading Permit Holders  
**From:** Regulatory Division  
**RE:** Form OE-418 and Attachments  
**Reminder:** 2016 Year-End Filing Due March 1, 2017

As a reminder, CBOE/C2 Rule 4.18 requires every Trading Permit Holder (“TPH”) to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of such TPH’s business, to prevent the misuse, in violation of the Securities Exchange Act of 1934 (the “Act”) and CBOE and/or C2 Rules (as applicable), of material nonpublic information by the TPH or persons associated with the TPH.

CBOE/C2 Rule 4.18 also provides TPHs that are required, pursuant to CBOE/C2 Rule 15.5, to file SEC Form X-17A-5 with the Exchange on an annual basis only, shall, contemporaneously with those submissions, file attestations signed by such TPH stating that the procedures mandated by the Rule have been established, enforced and maintained. These submissions should be emailed as attachments to [OE418@CBOE.com](mailto:OE418@CBOE.com).<sup>1</sup> As a reminder, please note that submissions for the 2016 year-end filing must be emailed no later than March 1, 2017.

The Exchange has developed a form, OE-418 (and its attachments), that may be used by individual TPHs and small TPH organizations who meet certain criteria (discussed below) to satisfy the filing and record-keeping requirements of Rule 4.18. Qualified TPHs that file the form in an accurate and timely manner and comply with the policies and procedures mandated by those forms will be deemed in compliance with the filing and record-keeping requirements of the Rule.

**Eligibility:**

Among other things, Rule 4.18 requires that each TPH that is required to file FOCUS Reports (SEC Form X-17A-5) annually (as opposed to monthly) as required by Rule 15.5 must also file an attestation that the aforementioned procedures have been established, enforced and maintained. For purposes of satisfying this submission requirement, form OE-418 and its attachments may be used by:

1. individual TPHs with no employees
2. individual TPHs who employ no more than three non-TPH employees<sup>2</sup>
3. TPH organizations with no more than three employees who are nominees and which employ no more than six non-TPH employees

<sup>1</sup> As previously announced, CBOE and C2 (collectively the “Exchanges”) have an agreement with Financial Industry Regulatory Authority, Inc. (“FINRA”) under which FINRA performs certain regulatory services on behalf of the Exchanges. In connection with the regulatory services program, and as also previously announced, the submission of various regulatory filings by CBOE and C2 TPHs transitioned to the electronic filing platform available via FINRA’s Firm Gateway. FINRA’s Firm Gateway (<https://firms.finra.org>) is a portal that provides consolidated access to various FINRA regulatory systems. (See CBOE Regulatory Circular RG15-084 / C2 Regulatory Circular RG15-023.) In the future, filings associated with Rule 4.18 *may* be transitioned to FINRA’s Firm Gateway. If that would occur, CBOE and C2 would first issue a circular advising TPHs when FINRA’s Firm Gateway would be required for Rule 4.18-related filings. However, until such time, please continue to use the [OE418@CBOE.com](mailto:OE418@CBOE.com) email address to file the Rule 4.18 reports referenced in this circular.

<sup>2</sup> The term “non-TPH employee” refers to anyone who performs services for a TPH in connection with the TPH’s business as a TPH and who is not also a TPH.

Larger TPH organizations that believe that they may rely on the form OE-418 and its attachments to maintain compliance with Rule 4.18 must submit an explanation as to why they believe the forms to be sufficient.

Factors which affect the ability of a given TPH to use the forms as a sole means of complying with Rule 4.18 include, but are not limited to, the following: size of organization; access during the course of normal business to material nonpublic market or corporate information; regular communications with listed corporations; relationships and/or business dealings with persons associated with listed corporations.

**Please be advised, however, that clearing TPHs, TPH organizations registered to do business with the public, and those that are registered with more than one securities exchange or FINRA are ineligible to rely solely on the forms to establish compliance with Rule 4.18. Note that the forms were developed with a view to constituting the minimum policies and procedures required by Rule 4.18. In addition, the Exchanges cannot warrant that use of the forms is sufficient to bring any particular TPH into compliance with any provisions of the Act related to the misuse of material nonpublic information. Each TPH and TPH organization must evaluate the appropriateness of the forms relative to the nature of its business.**

#### **TPHs That Do Not Use Form OE-418 and Its Attachments**

A TPH who decides not to use form OE-418 and its attachments as the basis for complying with Rule 4.18 and who is required to file FOCUS reports (SEC Form X-17A-5) with the Exchange annually (as opposed to monthly) *must* address correspondence to the Exchanges which includes an attestation that they have established, maintained and enforced written policies and procedures to prevent misuse of nonpublic information.

#### **List of Forms:**

The OE-418 set of documents is composed of the following:

<b>Document Descriptions</b>	<b>Applicable Form</b>
1. Instructions	
2. General Information and Attestation	OE-418
3. Affirmation of Compliance by non-TPH employees	Attachment A
4. Employee Account Checklist	Attachment B

All OE-418 documents listed above can be downloaded from <http://www.cboe.org/RegForms>.

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#### **Additional Information:**

TPHs that have questions regarding how to complete the forms may call the Regulatory Interpretations team at (312) 786-8141 or email [RegInterps@cboe.com](mailto:RegInterps@cboe.com).

*Note that Exchange Staff are not permitted to provide advice as to a TPH's eligibility to use the forms. TPHs that, after reading the instructions and the forms, are unsure as to the suitability of the forms as a means of establishing their own compliance with Rule 4.18 are advised to consult their own legal counsel.*