

CBOE/C2 FORM OE-418

LINE ITEM INSTRUCTIONS

FORM OE-418

- Line 1 **Reporting TPH:** The name and acronym of the natural person on whose behalf the form is completed. TPH Organizations are identified on line 5.
- Line 2 **Period Covered:** This is synonymous with “reporting period.” Ordinarily it will be the calendar year immediately prior to the year in which the form filings are made.
- Line 3 **Type of Organization:** If the type of organization has changed during the course of the reporting period, identify its type at the end of the reporting period.
- Line 4 **Filing As:** If your status changed during the course of the reporting period, then check the choice applicable at the end of the reporting period.

Every TPH organization using form OE-418 which employs non-TPH employees must designate a Senior Reporting Person. If none of the TPHs associated with a given TPH organization is identified as the Senior Reporting Person, then all TPHs associated with that organization may be found in violation of Rule 4.18, along with the TPH organization. The Senior Reporting Person is the person responsible for ensuring that the organization complies with Rule 4.18, obtains necessary affirmations of compliance from the organization’s non-TPH employees, and personally reviews trading in the accounts of the non-TPH employees, as necessary.

- Line 5 If status changed during the course of the reporting period, identify the TPH organization you were associated with (if any) at the end of the reporting period.
- Line 6 The term “business dealings” would include performing consulting work or some other business relationship which may expose you to material nonpublic information which the corporation regards as confidential. It does not include arms-length transactions of a routine nature.
- Line 7 See above.
- Line 8 **The term “non-TPH employee” refers to anyone who performs services for you for pay in connection with your business as a TPH and who is not also a TPH.** If you are unsure whether a given person is employed by the TPH then you must resolve this issue with the TPH. If the TPH claims that a given person was employed by another party, and there is no written documentation identifying who employed the person for purposes of Rule 4.18, then the TPH may be found to have violated the Rule.

All persons who are issued Exchange floor access badges, other than Exchange staff, are considered non-TPH employees for purposes of the Rule. The term also applies to persons not issued a floor access badge – you cannot claim that a person was not your employee by virtue that in some sense the person may be an “outside contractor.”

The definition of “non-TPH employee” includes all associated persons. The term "person associated with a broker or dealer" or "associated person of a broker or dealer" means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or

under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 15(b) (other than paragraph (6) thereof).

If you are the Senior Reporting Party and your organization employs someone who at one time during the reporting period was not a TPH but at the end of the reporting period was a TPH, *then you must answer line 9 affirmatively by checking choice a.* For information concerning your review of trading requirements, see the instructions for line 12.

If you employed a person on a part-time basis and that person was employed full-time by another TPH, *then you must answer line 9 affirmatively.* CBOE Rules do not distinguish between full and part-time employment. Therefore, all broker/dealer employers of a given person have an obligation to ensure that the person complies with CBOE and/or C2 Rules (as applicable).

Line 9 Attachment A, *Affirmation of Compliance by Non-TPH Employees*, must be read and signed by all new hires at the initiation of their employment and by every non-TPH employee once per year for the prior calendar year throughout the duration of such non-TPH's employment by a TPH or TPH organization. These forms must be retained for a period of no less than three years, and during the first two years, the forms must be retained in an easily accessible place. Copies of all such attachments must be attached to form OE-418 prior to filing.

Line 10 If a TPH does not permit non-TPH employees to maintain any retail securities brokerage accounts, then it is suggested that such employees be advised of the prohibition in writing. This may help protect the TPH in the event that a regulatory authority discovers that one of your non-TPH employees did have such an account and the employee claims he or she informed you of the existence of the account.

Line 11 The Senior Reporting Person must personally conduct non-TPH employee account reviews. If the TPH originally chosen to act as Senior Reporting Person becomes unable to do so, then a new or temporary Senior Reporting Person must assume the responsibilities. For information regarding conducting the reviews, see below under "Attachment B – Employee Account Checklist."

Note regarding the attestation (page 3 of Form OE-418): The word "material," as used in the phrase "material nonpublic information," is not defined by statute. In general, information should be considered material if it reasonably can be expected to affect the price of the security or securities in question. If it influences trading decisions, then it is material.

The word "nonpublic" is similarly undefined by statute. In general, with respect to corporate information, information is nonpublic if it has not been disclosed in the press and the corporation considers the information to be proprietary and confidential. With respect to imminent transactions in a security, such information is generally not considered public until the trades have been disseminated over the appropriate trade reporting system.

Attachment A – Affirmation of Compliance by Non-TPH Employees *(to be submitted with Form OE-418 and maintained on file for at least three years, the first two in an easily accessible place)*

As stated above, these forms must be completed by all new hires at the initiation of their employment, and by all non-TPH employees once per year for the prior calendar year through the duration of employment.

Attachment B – Employee Account Checklist *(to be submitted with Form OE-418 and maintained on file for at least three years, the first two in an easily accessible place)*

Attachment B – Account Review *(to be maintained on file for at least three years, the first two in an easily accessible place)*

Rule 4.18 require securities trading by all non-TPH employees of broker-dealers to be reviewed to detect possible violations. Situations of which the person conducting the review should be aware include, but are not necessarily limited to, the following:

- Did the employee appear to make a large profit by trading before a significant news announcement? (Such announcement would involve something the person conducting the review recalls reading about in the general press. TPHs using form OE-418 are not required to keep logs of news announcements.)
- Does the employee trade the same or related securities as those traded by the TPH(s) with whom the employee is associated? If so, does the employee appear to profit from information about any such TPH's trades?
- Does the employee day-trade such securities? If so, and such trades were profitable, why were they profitable? What strategy was the employee following?

TPHs are not required to conduct investigations of possible misuse of material nonpublic information by their employees. If you believe that such a misuse may have occurred, promptly notify the Regulatory Division of CBOE/C2 via email at OE418@cboe.com.

Individual TPHs and TPH organizations that are eligible to use form OE-418 and its attachments are not required to review all trades and are not required to conduct reviews on a daily basis, though conducting such a thorough review is not discouraged. The required reviews must encompass at least one full month of activity per calendar quarter. Employees must not be told in advance which month will be examined. Individual TPHs with more than three non-TPH employees, and TPH organizations associated with more than three TPHs and/or more than six non-TPH employees, which desire to use form OE-418 as a basis for complying with Rule 4.18 are urged to review a greater proportion of activity on a more frequent basis.

The Senior Reporting Person is not required to review the activity of the other TPHs, although such reviews are not discouraged. TPH organizations associated with more than three TPHs are urged to give careful consideration to reviewing all TPHs' accounts, if the organization desires to use form OE-418 as the basis for complying with Rule 4.18.

Note that the above two paragraphs should not be construed to imply a presumption that the forms are sufficient for a given organization to comply with Rule 4.18.

For TPHs subject to the annual filing requirement under Rule 4.18, completed forms should be emailed to OE418@cboe.com no later than sixty (60) days calendar days after December 31st of the prior year.