



**Cboe Options Regulatory Circular 18-035**  
**C2 Options Regulatory Circular 18-018**  
**BZX Regulatory Circular 18-018**

**BYX Regulatory Circular 18-018**  
**EDGA Regulatory Circular 18-018**  
**EDGX Regulatory Circular 18-018**

**Date: September 25, 2018**

**To: Members and Trading Permit Holders**

**From: Regulatory Division**

**RE: SEC Staff Issues Guidance on Third-Party Recordkeeping Services**

The purpose of this Regulatory Circular is to inform Trading Permit Holders and Members that the Securities and Exchange Commission (“SEC”) staff recently issued guidance regarding contractual arrangements between broker-dealers and third-party recordkeeping service providers. The guidance specifically focuses on contractual arrangements that include provisions under which service providers assume a right to delete or discard the broker-dealer’s records required to be preserved pursuant to Securities Exchange Act of 1934 (“SEA”) Rules 17a-3 and 17a-4, typically in response to non-payment by the broker-dealer of fees due under the contract.<sup>1</sup>

In the guidance, the SEC staff stated that SEA Rule 17a-4(i) provides that, if the records a broker-dealer is required to preserve pursuant to SEA Rules 17a-3 and 17a-4 are prepared or maintained by an outside service bureau, depository, bank which does not operate pursuant to paragraph (b)(2) of Rule 17a-3, or other recordkeeping service (each referred to in the guidance as a “service provider”), the service provider shall file with the SEC a written undertaking in form acceptable to the SEC, signed by a duly authorized person, to the effect that such records are the property of the broker-dealer required to preserve such records and will be surrendered promptly on request of the broker-dealer. The SEC staff stated that the service provider also must undertake that with respect to any books and records preserved on behalf of the broker-dealer, the service provider will permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the SEC, and to promptly furnish to the SEC or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.

In addition, the SEC staff stated that the SEC adopted paragraph (i) of Rule 17a-4 to assure the accessibility of broker-dealer records in situations where, for example, a service bureau refuses to surrender the records due to nonpayment of fees. The SEC staff stated that, in adopting paragraph (i), it emphasized that the records of a broker-dealer must be available at all times for examination in order to assure the protection of customers. Prior to adopting paragraph (i), the SEC had found that, in situations where a broker-dealer or its service providers were experiencing financial difficulty, the records of the broker-dealer had not always been available to the broker-dealer or to the SEC. Accordingly, the SEC staff stated that contractual provisions that would permit, among other things, a

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<sup>1</sup> The SEC No Action Letter can be found at: <https://www.sec.gov/divisions/marketreg/mr-noaction/2018/finra-041218-17a5.pdf>

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service provider to delete or discard records in the event of non-payment by the broker-dealer are inconsistent with the retention requirements of SEA Rule 17a-4 and the undertaking requirements of paragraph (i) of Rule 17a-4. Moreover, the SEC staff stated that if a service provider deletes or discards broker-dealer records in a manner that is not consistent with the retention requirements of Rule 17a-4, such action would constitute a primary violation of the rule by the broker-dealer and may subject the service provider to secondary liability for causing or aiding and abetting the violation.

**Additional Information**

Any questions regarding this Regulatory Circular may be referred to Regulatory Interpretations at [RegInterps@cboe.com](mailto:RegInterps@cboe.com) or 312-786-8141.