# Member Information for Proposed Business Expansion

**ALTERNATIVE TRADING SYSTEMS (ATS)**

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| Member Firm: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Person Completing This Form: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. Provide copies of any and all information and documentation filed with SEC, and The Nasdaq Stock Market, Inc. (Nasdaq) regarding the establishment and operation of the proposed ATS. This information should include the following:
2. method(s) of operation, including whether it will be linked with Nasdaq, an exchange, and/or another ATS;
3. a detailed description of the proposed ATS, including its functions;
4. a description of the types of securities to be available through the ATS and the types of customers (cash account, margin account, short seller, discretionary, retail, institutional, day traders, employees of ATS sponsor or operator, restricted [i.e., SOES], etc.) to be serviced;
5. a description of the type of orders (unsolicited, solicited, day, limit, market, stop-loss, good till canceled, block, etc.) to be processed through the ATS;
6. a copy of the firm’s current Form ATS, including all attachments and/or exhibits thereto;
7. (if applicable) information regarding the firm’s approval by the Nasdaq Board. Copy of the firm’s executed Nasdaq Subscriber Agreement and a copy of the letter from the Nasdaq Board approving the ATS should be provided.
8. Provide a copy of the proposed ATS Participant Agreement(s) and a description of any due diligence procedures and approval process the firm will use in reviewing potential subscribers to the ATS.
9. Provide a representative sample of the books and records to be generated by the ATS pursuant to SEC Rule 17a-3 as amended effective April 21, 1999.
10. Provide a detailed written description of the ATS’s method(s) of:
11. obtaining best execution; facilitating payment-for-order-flow arrangements with or between ATS participants;
12. facilitating trade reporting responsibilities of the ATS participants; monitoring orders for potential non-compliance (e.g., order splitting) with Small Order Execution System (SOES) order size limitations;
13. filtering restricted accounts for assuring compliance with the usage requirements of SOES, the provisions of the Free-riding and Withholding Interpretation of NASD Rule 2110, options trading approvals and limits, etc.;
14. clearing and settling transactions;
15. monitoring customer and or proprietary trading limits;
16. monitoring volume in each “covered security” for determining compliance with the public display requirements and fair access requirements of Regulation ATS;
17. handling situations involved in locked markets; and
18. facilitating market-making activities with and/or between ATS participants.
19. Provide a detailed written description of the ATS’s computer back-up capabilities and record retention procedures.
20. Provide a detailed written explanation of the ATS’s contingency plan for accepting and executing orders in the event that the ATS becomes inoperable at any time. Include the rationale for determining the adequacy of the plan in light of the Applicant’s current staffing, (number and qualifications of available persons to accept and process orders), equipment (number of designated and/or reserved incoming telephone lines and telephones), etc. to facilitate the contingency plan.
21. Provide a written flowchart disclosing all steps pertaining to the acceptance, execution, clearing, and settlement of an order to be processed through the ATS.

**Written Supervisory Procedures - General Guidelines**

Provide a copy of the Firm’s Written Supervisory Procedures (WSPs), internal operating procedures, compliance procedures, internal inspections plan, written approval process, and qualifications investigations which should comply with NASD Rule 3010 and Regulation ATS as they relate to the proposed ATS.

Please be advised that the following should not be considered to include all topics and issues applicable to the firm’s proposed ATS business, but is intended as a general guide to assist the firm in the preparation of WSPs.

1. **Responsible Supervisor(s)**.The firm’s WSPs should identify the supervisor(s) responsible for this proposed business line, what actions the supervisor(s) will take to ensure compliance with regulatory requirements, when such actions will be taken, and how the supervisor(s) will evidence that the required supervisory steps were taken.

*Please note that for each of the items numbered 2 through 9 below, the firm’s WSPs should include a description of what actions will be taken by the supervisor(s) to ensure compliance with Regulation ATS, when such actions will be taken, and how the supervisor(s) will evidence that the required steps were taken.*

1. **Filing of Form ATS**. Procedures governing the filing of Form ATS with the SEC: (1) 20 days prior to commencing operations; (2) notifying the SEC of material changes to the operation of the ATS by filing an amendment to Form ATS 20 days prior to implementing such changes; (3) quarterly amendments to any changes in the operation of the ATS which have not been previously reported to the SEC; and (4) prompt filing of a notice of cessation if the ATS ceases operation.
2. **Public Display Requirement**. Procedures to be followed where, if the firm’s ATS has 5% or more of the trading volume in any “covered security” (i.e., exchange listed, Nasdaq NM and Nasdaq SmallCap securities), the firm will publicly disseminate its best priced orders in these securities.
3. **Fair Access**.
4. **Member Access**. Pursuant to Regulation ATS, where the firm is required to publicly display its best priced orders because it has 5% or more of all trading in that security, the firm’s WSPs should include guidelines governing the ability of members of the self-regulatory organization (SRO) with which the firm’s ATS is linked to effect a transaction with these orders.
5. **Fair Access Standards**. A description of the standards to be applied by the firm in granting access to its ATS to prospective subscribers. (Note: Where, during four of the preceding six months, the firm’s ATS accounts for 20% or more of the trading volume in any equity security, the firm must comply with the fair access requirements in granting access to trading in that security.)
6. **Capacity, Integrity, and Security Standards**. Regulation ATS requires that ATSs trading 20% or more of the volume in any equity security or in certain categories of debt securities are required to comply with standards regarding the capacity, integrity, and security of their automated systems.
7. **System Assessment and Review**. Where the firm’s ATS meets the volume thresholds, its WSPs should include provisions to:
8. establish reasonable current and future capacity estimates;
9. conduct periodic capacity stress tests of critical systems to determine such system’s ability to process transactions in an accurate, timely, and efficient manner;
10. develop and implement reasonable procedures to monitor system development and testing methodology;
11. review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters; and
12. establish adequate contingency and disaster recovery plans.

*Note: An ATS is required to meet these standards with respect to all systems that support order entry, order handling, execution, order routing, transaction reporting, and trade comparison in a particular security.*

1. **Annual Audit**. ATSs that meet the volume thresholds are required to perform an annual independent review of the systems that support order entry, order handling, execution, order routing, transaction reporting, and trade comparison.[[1]](#footnote-1) The firm’s WSPs should include provisions governing this audit, as well as proper retention of records evidencing same.
2. **Examination, Inspection, and Investigations of Subscribers**. The firm’s WSPs should contain an acknowledgment that the firm understands that the exemption of its ATS from registration as an exchange is conditioned on it cooperating with the SEC’s or an SRO’s inspection, examination, or investigation of the ATS or any of its subscribers.
3. **Recordkeeping**. Regulation ATS requires ATSs to make and keep the records necessary to create a meaningful audit trail. Therefore, the firm’s WSPs should include provisions for the creation and retention of the following:
4. Daily summaries of trading and time-sequenced records of order information.
5. Record of subscribers and any affiliations between subscribers and the ATS.
6. Record of notices provided to subscribers, including notices addressing hours of operation, system malfunctions, changes to system procedures, and instructions pertaining to access.
7. Documents evidencing compliance with the systems capacity, integrity, and security standards.
8. **Reporting and Form ATS-R**. The firm’s WSPs should contain procedures addressing the firm’s obligation to file Form ATS-R with the SEC within 30 calendar days of the end of each calendar quarter.
9. **Procedures to Ensure Confidential Treatment of Trading Information**.Pursuant to Reg. ATS, the firm’s WSPs should include procedures:
10. Requiring that information, such as the identity of subscribers and their orders, be available only to those employees of the ATS who operate the system or are responsible for its compliance with Regulation ATS;
11. To ensure that all its employees are unable to use any confidential information for proprietary or customer trading unless the customer agrees; and
12. To ensure that employees of the ATS cannot use such information for trading in their own accounts.
1. Note: An independent review should be performed by competent, independent audit personnel following established audit procedures and standards. If internal auditors are used by the ATS to complete this review, these auditors should comply with the standards of the Institute of Internal Auditors and the Electronic Data Processing Auditors Association (“EDPAA”). If external auditors are used, they should comply with the standards of the American Institute of Certified Public Accountants (“AICPA”) and the EDPAA. [↑](#footnote-ref-1)