

NASD Notice to Members 99-34

NASD Offers Guidance On Complying With New SEC Rule Regarding Alternative Trading Systems; Rule Effective April 21, 1999

Suggested Routing

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Executive Summary

On April 21, 1999, Securities and Exchange Commission (SEC) Rules 3a1-1, 3b-16, and Regulation Alternative Trading System (ATS) will become effective. Regulation ATS establishes certain thresholds for share volume of trading. For ATSs that are National Association of Securities Dealers, Inc. (NASD[®]) members subject to these requirements, this *Notice* provides information regarding the steps they should take to calculate their volume in order to determine whether they exceed the volume thresholds of Regulation ATS.

Questions regarding this *Notice* may be directed to Eugene A. Lopez, Vice President, Trading & Market Services, The Nasdaq Stock Market, Inc., at (202) 728-6998.

ATS Volume Calculations

ATSs that are NASD members must measure their trading volume on a security-by-security basis for the purpose of determining whether they exceed the thresholds established by Regulation ATS (17 CFR Sec. 242.300-303)¹ and therefore must meet certain regulatory requirements. NASD members operating ATSs should calculate whether they exceed the SEC-imposed thresholds with respect to Nasdaq[®]-listed securities by following the standards set out below:

1. Need For Uniform Criteria.

Volume calculations for broker/dealer-operated ATSs must be performed under uniformly applied criteria. That is, each such ATS must use the same standards in making its volume threshold calculations.

2. Total Nasdaq Volume - the Appropriate Denominator. For purposes of establishing a denominator, ATSs should use the Nasdaq-reported volume figures

published monthly by Nasdaq on its NasdaqTrader.com Web Site (www.nasdaqtrader.com²). The reported volume is provided on a security-by-security basis and includes all trades reported by NASD members and UTP exchanges through the Automated Confirmation Transaction ServiceSM. The following trades, however, are not included within the monthly figures provided on this Web Site: (1) trades that are reported AS/OF after T+1; (2) broken, canceled, or trades reported in error; (3) declined trades; and (4) trade reports later deemed No/Was.

3. Individual ATS Volume. Each ATS must calculate the share volume that it executes within its own system and use that share volume as the numerator for the purpose of calculating share volume thresholds. Each ATS should calculate its own volume based on the following standards.

A. Trade Reported Volume Should Not Be Used. Based on discussions with the SEC, ATSs should not use the volume that is officially reported pursuant to NASD trade reporting rules. Such rules were developed for regulatory purposes and the standards under which volume is counted capture the volume of trading activity that occurs within some ATSs in a manner from that required by the SEC's ATS Rules. Accordingly, ATSs should not rely on the individual member trade volume figures reflected on the Nasdaq Trader Web Site, because such figures are based on reported volume.

B. Volume To Be Reported - Shares Executed Within the ATS. In calculating its share volume, an ATS must include each trade that occurs as a result of an execution between its subscribers within the ATS. In

addition, an ATS should include within its share volume calculation any execution that results when SelectNetSM is used to execute against the ATS quote displayed in the Nasdaq quote montage. ATSs that allow subscribers to send SelectNet orders under the MMID of the ATS to access other Market Maker or ECN/ATS quotes should not, however, include as a part of its volume any subsequent execution of such orders. In addition, some ATSs have links with other ATSs or broker/dealers that permit subscribers to send directly to or receive orders from these other entities seeking to access the ATSs' quotations. An ATS should include an execution of an order shipped to it by such means as a part of its volume. An ATS should not include any execution of an order that it ships by such means to another ATS or broker/dealer as its volume. In calculating this volume, an ATS

should be counting only share volume for executions that occur within its system as its volume.

4. ATS Activity in non-Nasdaq securities. Certain ATSs permit their subscribers to trade securities that are listed on the New York Stock Exchange (NYSE) or American Stock Exchange (Amex[®]). These ATSs are required to perform the same sort of calculation for these securities that they perform for Nasdaq securities. These ATSs should consult with the Consolidated Tape Association (CTA) to determine the process by which CTA calculates total share volume.

Endnotes

¹Specifically, for each Nasdaq and exchange-listed security in which an ATS's share volume is five percent or more of total share volume, an ATS must provide its best-priced order displayed to more than one other ATS subscriber to a national securities exchange or national securities association.

In addition, an ATS must meet certain fair access and computer system integrity standards if its volume for any security is 20 percent or more of the total share volume in that security.

²To reach the Share Volume figures on www.nasdaqtrader.com, navigate from the Homepage by selecting the Trading Data button to reach: www.nasdaqtrader.com/dynamic/tdhome.htm. Single issues can be viewed by entering an issue symbol in the white text area, and then selecting the view button. The response will give totals for the issue for the month and a list of MPs trading volume within that issue. For a complete listing of *all* MP volumes in *all* issues, take the following actions: at the above location, find the section entitled **Share Volume Download**; from this location, a text file can be saved and then imported to a spreadsheet or database; the spreadsheet can then be manipulated to calculate Total Volume.

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