

NOTICE

In recognition of the development of innovative securities trading and other trading markets in the local financial sector brought about by the continuous advancement of information and communication technology and the globalization of financial markets, the Commission has formulated the following rules on alternative trading systems in accordance with Section 37 of the Securities Regulation Code (SRC).

The provisions in the following rules are based and premised on the Securities Regulation Code and international best practices gathered as part of the research effort behind their development.

Nothing in these rules shall be construed as amending the rules and regulations adopted by the Bangko Sentral ng Pilipinas on derivatives and foreign exchange transactions in pursuance of the provisions of its Charter and other banking laws.

RULES AND REGULATIONS ON ALTERNATIVE TRADING SYSTEM

PREAMBLE

WHEREAS, the continuous advancement of information and communication technology and the globalization of financial markets is expected to facilitate the development of innovative securities trading and other trading markets in the local financial industry, which include alternative trading systems, among others;

WHEREAS, alternative trading systems have become integral to the modern securities markets, providing investors with enhanced flexibility, security, transparency, and reduced trading costs, as well as competition to the established securities exchanges;

WHEREAS, the operation of alternative trading systems would work towards the realization of the objectives of the E-Commerce Act of 2000;

WHEREAS, pursuant to the mandate of the Commission under the Securities Regulation Code, to encourage competitiveness in the market, promote the development of capital market and to ensure the protection of the investors, the Commission hereby promulgates the following rules governing alternative trading systems for the information and guidance of all concerned:

SECTION I. DEFINITIONS

For purposes of these rules, the following definition of terms shall apply unless the context otherwise requires:

- A. **Alternative trading system (ATS)** refers to any organization, association, person, or group of persons, or system:
1. That constitutes, operates, maintains, or provides an electronic market place or facility for bringing together:
 - i. Primary market issuers of securities of SEC-registered small, medium, growth, venture enterprises, and technology-based ventures, and the investors who wish to purchase those securities;
 - ii. Primary market issuers of innovative registered securities of any kind of SEC-registered enterprise and the buyers of those securities;
 - iii. Secondary market sellers and buyers of securities of SEC-registered small, medium, growth, venture enterprises, and technology-based ventures;
 - iv. Secondary market sellers and buyers of innovative registered securities of any kind of SEC-registered enterprise;

- v. Primary issuers and buyers, and secondary sellers and buyers of other securities as may be approved by the Commission;

or for otherwise performing, with respect to securities, the functions commonly performed by a recognized exchange or clearing house; and

2. That does not:

- i. Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or
- ii. Discipline subscribers other than by exclusion from trading.

B. **Affiliate** of a subscriber means any person that, directly or indirectly, controls, is under common control with, or is controlled by, the subscriber, including any employee.

C. **ATS FORM 1** refers to the prescribed ATS Registration Form.

D. **ATS FORM 2** refers to the prescribed ATS Operational Report Form.

E. **ATS FORM 2-A** refers to the prescribed ATS Operational Report Amendment Form.

F. **ATS FORM 3** refers to the prescribed annual report with audited financial statements.

G. **ATS FORM 4** refers to the prescribed ATS Form for filing a cessation of operations report.

H. **ATS FORM 5** refers to the prescribed ATS Form for reporting proposed changes on the System.

I. **ATS FORM 6** refers to the prescribed report on material system errors/upgrades.

J. **Commission** means the Securities and Exchange Commission (SEC).

K. **Qualified Investor** refers to an investor defined under Sec. 10.1 (I) of the SRC and SRC Rule 52.1-6 of the Implementing Rules and Regulations (IRR) of the SRC or such other person whose net worth or financial background would allow him to bear the risk that may arise from participating in an ATS.

L. **SRC** means the Securities Regulation Code.

M. **Subscriber** means any person, organization or association apart from a recognized exchange company or clearing house that has entered into a contractual agreement with an ATS to access the latter for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders on such ATS, including a customer, member, user or participant therein.

SECTION II. REQUIREMENTS FOR ALTERNATIVE TRADING SYSTEM

A. REGISTRATION REQUIREMENTS

No ATS shall be registered/licensed unless it complies with the following requirements:

1. The applicant shall register as a broker-dealer in accordance with the SRC;
2. The applicant shall submit ATS Form 1, together with the following certified documents, to the Commission:
 - i. Acceptance procedure for and the description of the type of security that will be offered and/or traded in the system;
 - ii. Trading and disclosure rules;
 - iii. Business conduct rules;
 - iv. A continuing authorization for the Commission's duly authorized representative to verify the applicant's bank accounts;
 - v. A written description of the software system or program which shall include a flowchart showing an actual primary and secondary market transaction, and a diagram or matrix showing its applications and functions;
 - vi. A written description of the hardware component and the communication facility of the system which shall include configuration, capacity, interconnection with other ATS or other trading markets and extent of communication ability;
 - vii. Description of the custodian or registrar of the proposed financial products to be traded in the system and the related systems to be used;
 - viii. Copy of the Board Resolution approving and authorizing the company's registration as an ATS;
 - ix. Curriculum vitae of all the management and information technology personnel in charge or directly responsible for the system;
 - x. Copy of any agreement executed or license granted pertaining to the operation of the system and to the product/s proposed to be traded. The copy of all other contracts, MOUs entered into with any party by the ATS and any amendment shall be submitted to the Commission for approval;
 - xi. Risk Disclosure Statement discussing the risk factors involved in the operation of the market and the corresponding risks for each specific

product that shall be traded in its market. The statement shall discuss the following:

- a. Process of Identification of the Risks;
 - b. Description of the Risks Involved;
 - c. Assessment and Valuing of Risks; and
 - d. Risk Management.
- xii. A description of an independent risk control unit that will be responsible for the design and implementation of the company's risk management system;
- xiii. Business plan which shall include marketing strategies and financial plan for the next twelve months or such longer period as the Commission may prescribe; and
- xiv. An undertaking that the board of directors and senior management shall be actively involved in the risk control process and must regard the control as an essential aspect of the business to which significant resources must be devoted.
3. The applicant shall cause the publication of a Notice of the fact of filing of its application for registration, once in a newspaper of general circulation.
 4. The applicant shall submit the procedure on the clearing/settlement of the trades undertaken under the ATS including an undertaking that all obligations arising from such trading shall be met. Consequently, should there be a need for a separate clearing agency, the same shall be duly registered in accordance with the SRC.
 5. The registration of an ATS shall include the recognition of the said system by the Commission.
 6. The system shall be limited to the trading of the products described in the application of the ATS unless a request for inclusion of changes thereto is filed to and approved by the Commission.
 7. The Commission may impose other requirements and/or conditions for the registration of the ATS, as may be deemed necessary to protect the investing public.

B. REGISTRATION EXEMPTION

The Commission, by an order after an application for exemption from ATS registration has been filed, may grant such exemption after determining that said order is consistent with the public interest and the protection of investors.

C. OPERATIONAL REQUIREMENTS

During the effectivity of the registration as an ATS, the following requirements shall be complied with:

1. Fair access

- i. An ATS shall:
 - a. Establish written standards for granting or denying access to trading on its system;
 - b. Not unreasonably prohibit or limit any person in respect to access to services offered by such ATS by applying the standards established under paragraph (C)(1)(i)(a) of this section in an unfair or discriminatory manner; and
 - c. Make and keep records of:
 - 1) All grants of access including, for all subscribers, the reasons for granting such access;
 - 2) All denials or limitations of access and reasons, for each applicant, for denying or limiting access.
 - d. Report the information required on ATS Form 3 regarding grants, denials and limitations of access.
- ii. An ATS shall not be required to comply with the requirements in paragraph (C)(1)(i) herein, if such ATS meets the following conditions:
 - a. ATS matches customer orders for a security with other customer orders;
 - b. Such customer's orders are not displayed to any person, other than employees of the ATS; and
 - c. Such orders are executed at a price, which is disseminated/available in another registered market.

2. Capacity, integrity, and security of automated systems

- i. With respect to those systems that support order entry, order routing, order execution, transaction reporting, and trade comparison, the ATS shall:
 - a. Establish and locate the data center of the ATS in the Philippines in order to make clear the jurisdictional and regulatory control of the SEC over the ATS, its operations, and personnel.

- b. Establish reasonable current and future capacity estimates;
 - c. Set up and maintain a comprehensive set of online market monitoring system and make the same accessible to the designated department of the Commission. At no time shall the ATS represent to the subscribers and investors that the Commission's market monitoring activities reduce the risks described in the filing of the Risk Disclosure Statement.
 - d. Conduct periodic capacity stress tests of critical systems to determine such system's ability to process transactions in an accurate, timely, and efficient manner;
 - e. Develop and implement reasonable procedures to review and keep current its system development and testing methodology;
 - f. Review the vulnerability of its systems and data center computer operations to internal and external threats, physical hazards, and natural disasters;
 - g. Establish adequate contingency, disaster recovery, and back up disaster recovery plans;
 - h. On an annual basis, allow an independent review, in accordance with established audit procedures and standards, of such ATS's controls to ensure that paragraphs (C)(2)(i)(a) through (e) of this section are met, the report of which containing its recommendations and conclusions, shall be reviewed by senior management; and
- ii. An ATS shall not be required to comply with the requirements in paragraph (C)(2)(i), if such ATS meets the same conditions stated under paragraph (C)(1)(ii).
- 3. Full Disclosure of Available Information over the Products.** The ATS shall ensure that all available information from reputable or credible sources pertaining to the product/s being traded in the system are provided to the investors.
- 4. Examinations, inspections, and investigations.** The ATS shall permit the examination and inspection of its premises, systems, and records, and cooperate with the examination, inspection, or investigation of subscribers, whether such examination is conducted by the Commission or by a self-regulatory organization of which such subscriber is a member.
- 5. Procedures to ensure the confidential treatment of trading information**
- i. The ATS shall establish adequate safeguards and procedures to protect subscribers' confidential trading information. Such safeguards and procedures shall include:

- a. Limiting access to the confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with these or any other applicable rules; and
 - b. Implementing standards for controlling affiliates of the ATS trading for their own accounts.
- ii. The ATS shall adopt and implement adequate oversight procedures to ensure that the safeguards and procedures established pursuant to paragraph (C)(5)(i) of this section are followed.
6. **Name.** The ATS shall not use in its name the word "exchange," or derivations of the word "exchange," such as the term "stock market" or "bourse" without prejudice to the applicability of tax and other pertinent laws.

D. REGISTRATION OF SECURITIES

1. All securities proposed to be offered and/or traded on the ATS must be first registered by the issuer with the Commission, unless exempt under the SRC and its IRR.
2. The registration process for securities offered or traded on a licensed ATS must follow existing Commission registration procedures for equivalent securities except in cases of shelf registration, which shall be subject to applicable policies set by the Commission. Thus, the registration process for equity and equity-like securities must follow the existing Commission process for registering equity securities. The registration of debt and debt-like securities must follow the existing Commission registration process for debt securities.

E. INITIAL OFFERING

1. The ATS must codify initial offering procedures for all securities. These initial offering procedures must conform to generally accepted procedures of offering similar securities. The Commission shall review and approve these procedures before operations begin.

F. SECONDARY TRADING

1. The ATS must codify secondary trading procedures for all market participants. The Commission shall review and approve these procedures before operations begin.
2. Brokers and dealers who are subscribers must either currently possess, or apply for and receive the appropriate licenses from the Commission before they transact in the ATS for themselves or on behalf of customers.

3. The ATS shall not allow a broker-subscriber to effect any transaction on the ATS for its own account unless it complies with the "Customer First Policy" prescribed in its Trading Rules duly approved by the Commission.
4. Any broker or dealer that engages in prohibited market practices (such as front running or submitting false bids on behalf of customers) shall be subject to investigation and after due process, penalized accordingly if found to have violated the current rules or any other pertinent provisions of the SRC and its implementing rules.

G. CLEARING AND SETTLEMENT

1. The ATS must submit for approval the procedure on the clearing and settlement of the primary offering, and the secondary trades.
2. The issuer must sign an undertaking that all obligations arising from its issuance will be met.
3. The ATS must name an independent custodian institution, and an independent registry institution, free of any conflicts of interest vis-à-vis the ATS and any and all of its stakeholders.
4. The security must be dematerialized and digitized.
5. The custody and registry must reflect the beneficial ownership of the same.

H. REPORTORIAL AND OTHER REQUIREMENTS

1. Operational Report (ATS Form 2)

- i. The ATS shall make and keep current the following records:
 - a. A record of subscribers (identifying any affiliations between and among subscribers to the ATS, including directors, officers, or stockholders);
 - b. Daily trading summaries, in electronic form, including:
 1. Securities for which transactions have been executed;
 2. Transaction volume, expressed with respect to equity securities in:
 - i) Number of trades;
 - ii) Number of shares traded; and
 - iii) Total settlement value;
 3. Transaction volume, expressed with respect to debt securities in:
 - i) Number of trades; and
 - ii) Total value;
 - c. Time-sequenced records of order information in the ATS, including:

1. Date and time (expressed in terms of hours, minutes, and seconds) the order was received;
 2. Security code;
 3. The number of shares or contracts, or the principal amount of fixed-income instruments to which the order applies;
 4. The designation of the order as a buy or sell order;
 5. If a sell order, the designation as a sell long or a sell short order.
 6. The designation of the order as a short sale order;
 7. The designation of the order as a market order, limit order, or other type of order;
 8. The limit or stop price prescribed by the order;
 9. The date on which the order expires and, if the time in force is less than one (1) day, the time when the order expires;
 10. The time limit during which the order is in force;
 11. Any instruction to modify or cancel the order;
 12. The type of account, i.e., retail, wholesale, affiliate, proprietary, or any other type of account designated by the ATS, for which the order is submitted;
 13. Date and time (expressed in terms of hours, minutes, and seconds) that the order was executed;
 14. Price at which the order was executed;
 15. Size of the order executed (expressed in number of shares or units or principal amount); and
 16. Identity of the parties to the transaction.
- ii. The ATS shall file an initial operation report on ATS Form 2, in accordance with the instructions therein, at least twenty (20) days prior to commencing operations as such.
 - iii. It shall file an amendment on ATS Form 2-A at least twenty (20) days prior to implementing a material change to its operation.
 - iv. It shall promptly file a cessation of operations report on ATS Form 4 in accordance with the instructions therein within ten (10) days before such cessation.

2. Other Continuing Reportorial Requirements

- i. Report on Proposed Changes on the System (**ATS Form 5**) which shall be due ten (10) business days before such change;
- ii. Annual Report (**ATS Form 3**) with Audited Financial Statements which shall be due within one hundred twenty (120) days after the end of the fiscal year;
- iii. Report on Material System Errors/Upgrades (**ATS Form 6**) which shall be due within twenty four (24) hours after such error or upgrade; and
- iv. Such other report as may be required by the Commission.

3. Record Preservation Requirements for ATS

- i. An ATS shall preserve the following records:
 - a. For a period of not less than five years, in an easily accessible place, an ATS shall preserve:
 1. All records required to be made pursuant to paragraph (D)(1) of this rule;
 2. All notices provided by such ATS to subscribers generally, whether written or communicated through automated means, including, but not limited to, notices addressing hours of system operations, system malfunctions, changes to system procedures, maintenance of hardware and software, instructions pertaining to access to market and denials of, or limitations on, access to the ATS;
 3. If subject to paragraph (C)(1)(i), at least one copy of such ATS' standards for access to trading, all documents relevant to the ATS decision to grant, deny, or limit access to any person, and all other documents made or received by the ATS in the course of complying with paragraph (C)(1); and
 4. At least one copy of all documents made or received by the ATS in the course of complying with paragraph (C)(2), including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records.
 - b. During the life of an ATS, it shall preserve:
 1. All articles of incorporation, by-laws and their amendments, minutes of meetings, stock and transfer book, and all other corporate records; and
 2. Copies of reports filed pursuant to paragraph (D)(2) and records made pursuant to paragraph (C)(1).
- ii. The records required to be maintained and preserved pursuant to paragraph (D)(3)(i) must be produced, reproduced, and maintained in paper form or in any of the forms permitted under the SRC; and
- iii. Every ATS shall furnish the Commission promptly upon request, legible, true and complete copies of those records that are required to be preserved under this section.

4. Taxes

The ATS shall be responsible for entering into an appropriate arrangement with ATS subscribers, brokers, customers, clearing and settlement agents, and other relevant parties to ensure the proper and timely collection of taxes.

The same shall be endorsed to the Bureau of Internal Revenue (BIR) for its consideration.

5. Corporate Governance

A Manual on Corporate Governance shall be prepared and submitted to the Commission in accordance with the Code on Corporate Governance issued by the Commission or any amendment thereto.

The level of compliance and deviations with the said Manual shall be declared in the company's annual report or in an equivalent report of the ATS or corporate participants, which shall be submitted to the Commission.

SECTION III. QUALIFIED INVESTORS/TRADERS

- A. Unless the Commission deems otherwise, the ATS shall be required to submit to the Commission for approval, an effective screening mechanism that would ensure that only qualified investors/traders are allowed to buy or sell securities thru the system.
- B. An ATS shall comply with the Know Your Customer Rule under the IRR of the SRC, the requirements of the Anti-Money Laundering Law and its implementing rules and regulations, and such other pertinent laws.

SECTION IV. SUSPENSION/REVOCAION OF LICENSE

- A. If, at any time, the information contained in any of the ATS Forms filed is or has become misleading, incorrect, inadequate or incomplete in any material respect, or the ATS may work or tend to work a fraud, the Commission may require from the ATS such further information as may in its judgment be necessary to enable the Commission to ascertain whether the registration of such ATS should be revoked on any ground specified under these Rules. The Commission may also suspend the privilege to operate the ATS, including the trading of registered securities, pending further investigation, by issuing an order specifying the grounds for such action.
- B. The refusal to furnish information required by the Commission may be a ground for the issuance of an order of suspension pursuant to the preceding paragraph. Upon the issuance of any such order and notification to the ATS, no further transactions shall be made by the ATS until the same is lifted or set aside by the Commission.
- C. Upon issuance of an order of suspension, the Commission within five (5) days shall conduct a hearing. Thereafter, if the Commission determines that the registration should be revoked, it shall issue an order revoking the same. Pending the issuance of a final order, the suspension of an ATS shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice. If, however, the Commission finds no

basis for such suspension, it shall forthwith issue an order lifting the order of suspension.

- D. In the interest of the public and for the protection of investors, the Commission, whenever it has reason to believe so, may direct an ATS to take such action as it considers necessary to maintain or restore orderly trading in, or liquidation of, any contract or any class of security contracts including but not limited to:
1. taking over the business of the ATS or designating a person to undertake the same;
 2. terminating or suspending trading on an ATS;
 3. confining trading to liquidation of contracts;
 4. ordering the liquidation of all positions or part thereof or the reduction in such positions;
 5. limiting trading to a specific price range;
 6. modifying trading days or hours;
 7. fixing the settlement price at which contracts are to be liquidated;
 8. requiring any person to act in a specified manner in relation to trading in the ATS;
 9. requiring additional margins for any contracts; and
 10. modifying or suspending any of the business rules of the ATS.

SECTION V. PROHIBITED ACTS

It shall be unlawful for any person:

- A. To act as an ATS without being duly authorized by the Commission. Transactions entered into by unlicensed ATS are null and void.
- B. To enter into transactions through an unregistered/unlicensed ATS. Such transactions shall be null and void.
- C. To establish any office or place of business anywhere in the Philippines for the purpose of conducting the business of an ATS unless registered with the Commission.
- D. To represent himself falsely to be a subscriber, operator or provider of an ATS, or an affiliate thereof in soliciting or handling any transaction, or to represent falsely in connection with any transaction.
- E. To receive checks in behalf of clients.

SECTION VI. FEES AND PENALTIES

A. FILING AND OTHER FEES

The filing and license fees to be paid to the Commission, exclusive of registration fees on securities and as broker-dealers, shall be as follows:

1. Application for registration and licensing of the system or renewal thereof as:

- | | | |
|---|----|-------------|
| i. ATS | -- | P 50,000.00 |
| ii. Semestral Transaction Fee | | |
| - For first 2 billion of the aggregate amount of the sales of securities transacted on such ATS during the preceding semester | -- | 1/300 of 1% |
| - For the next 2 billion | -- | 1/200 of 1% |
| - Onwards | -- | 1/100 of 1% |

2. Application for Exemption -- 5,000.00

3. Certifications -- 300.00

The foregoing fees may be revised as deemed necessary by the Commission by way of Circular.

B. PENALTIES/FINES

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|--|----|---|
| 1. For late filing or non-filing of the following reports | -- | P 10,000.00 basic fine plus 500.00 / day of delay |
| i. ATS Form 2 | | |
| ii. ATS Form 2-A | | |
| iii. ATS Form 3 | | |
| iv. ATS Form 4 | | |
| v. ATS Form 5 | | |
| vi. ATS Form 6 | | |
| 2. For late amendment or non-amendment of Registration Statement | -- | P 10,000.00 basic fine plus 1,000.00 / day of delay |
| 3. For late or non-approval of investors' training program | -- | P 10,000.00 basic fine plus 1,000.00 / day of delay |
| 4. For violation of any other provisions of this Rule: | | |
| i. For first violation | -- | P 50,000.00 per violation |
| ii. For second violation | -- | 100,000.00 |
| iii. For third violation and onwards | -- | 200,000.00 per violation and cancellation of registration |

This is without prejudice to the applicability of pertinent provisions of the SRC.

SECTION IX. OTHER PROVISIONS

- A. Exceptions.** Upon application by an interested party, the Commission may grant exception to these Rules in accordance with Sec. 72 of the SRC on a case-to-case basis for meritorious and justifiable reasons established by the applicant and under such terms and conditions as the Commission may impose.
- B. Repealing Clause.** All rules and regulations or any part or provisions thereof, inconsistent with these Rules or any part or provision thereof are hereby repealed or modified accordingly.
- C. Effectivity.** These rules shall take effect fifteen (15) days after the date of last publication in two (2) newspapers of general circulation in the Philippines.


Mandaluyong City, Metro Manila. 04 March 2004.


LILIA R. BAUTISTA
Chairman


FE ELOISA C. GLORIA
Commissioner


JOSELIA J. POBLADOR
Commissioner


MA. JUANITA E. CUETO
Commissioner


JESUS ENRIQUE G. MARTINEZ
Commissioner