

Via Email

Ms. Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549

Re: 24X National Exchange LLC Notice of Filing of Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934 (Release No. 34- 95007; File No. 10-239) (May 31, 2022), 87 FR 34333 (June 6, 2022) (the "24X Form 1")

Dear Ms. Countryman:

NYSE Group, Inc. ("NYSE"), on behalf of the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc. and NYSE National Inc., appreciates the opportunity to comment on the Form 1 that 24X National Exchange ("24X") has filed with the Securities and Exchange Commission (the "Commission") for registration as a national securities exchange, pursuant to Section 6 of the Securities Exchange Act of 1934 ("Act").

Background

In the Notice for the 24X Form 1, the Commission noted that "[o]ne novel feature of 24X's proposed trading rules is that 24X intends to allow equities trading 24 hours a day, 7 days per week, 365 days a year." 24X proposes to define its after-hours trading as its "24X Market Session," which would operate between 8:00 p.m. and 4:00 a.m. Eastern Time, any time that falls on a Saturday or Sunday Eastern Time, U.S. holidays, and any other times published by 24X.¹ 24X further proposes that all the proposed rules and requirements relating to trading would apply to trading activity during the 24X Market Session.²

The Commission's Notice also provided that "[a]nother notable feature in 24X's Form 1 application is that it contemplates allowing market participants to trade fractional shares." 24X proposes that the unit of trading in stocks would be one thousandth (0.001) of a share, which would be considered an Odd Lot under 24X's proposed rules.³

24X's proposal to introduce on a U.S. registered exchange features currently available for trading in off-exchange venues and for other asset classes is worthy of public debate. However,

¹ See proposed 24X Rule 11.1(a)(1). The proposed rules of 24X are set forth in Exhibit B-1 to the 24X Form 1, available here: <https://www.sec.gov/rules/other/2022/24x/24x-form-1-exhibit-b-1.pdf>.

² See proposed 24X Rule 11.16(a).

³ See proposed 24X Rules 11.6(q) and (q)(2).

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with this comment letter, NYSE is not opining on whether after-hours trading or trading in fractional shares should or should not be offered on a registered national securities exchange.

Rather, this comment letter focuses on the deficiencies of the 24X Form 1. Specifically, the application falls short in providing sufficient information upon which to assess how such innovations could function consistent with either the Act and its related rules governing trading of cash equities securities on registered national securities exchanges or 24X's own proposed rules. NYSE does not believe it would be consistent with the Act to approve 24X as a registered national securities exchange while there remain unresolved questions of how the proposed 24X innovations would function within the entire trading ecosystem and post-trade infrastructure for cash equities.

Inability to Clear and Settle Trades

The 24X Form 1 lacks detail of how trades executed during its proposed 24X Market Session or in fractional shares would be settled and cleared, as required by the Act.⁴

Currently, all trades executed on national securities exchanges settle and clear through the National Securities Clearing Corporation ("NSCC"), which is a registered clearing agency. NSCC operates the CNS System, which is a continuous net settlement system that acts as the central counterparty for clearing and settlement for virtually all broker-to-broker equity trading in the United States, including all trades from U.S. registered securities exchanges.

24X does not describe, and NYSE is not aware of, any procedures or processes for NSCC to accept in CNS for clearing and settlement any trades executed during the proposed 24X Market Session. In addition, 24X does not describe, and NYSE is not aware of, any procedures or processes for NSCC to accept for clearing and settlement any trades in fractional shares. Accordingly, it is not clear how 24X would be able to coordinate with any registered clearing agencies (which currently for cash equities trading, is NSCC) to provide clearing and settlement services for trades executed either during the proposed 24X Market Session or in fractional shares, as required by Section 6(b)(5) of the Act.

Moreover, the rules that 24X has proposed for clearing and settlement are inconsistent with its proposal to offer after-hours trading and trading in fractional shares. The 24X proposed rules provide that all transactions would be cleared and settled through a registered clearing agency using a continuous net settlement system and that each transaction would also be automatically processed for clearing settlement.⁵

⁴ Section 6(b)(5) of the Act provides, in part, that the rules of an exchange must be designed "to foster cooperation and coordination with persons regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities." 15 USC 78(f)(b)(5).

⁵ See proposed 24X Rule 11.12(a) (Clearing and Settlement; Anonymity) ("All transactions through the facilities of the Exchange shall be cleared and settled through a registered clearing agency *using a continuous net settlement system*" (emphasis added)) and proposed 24X Rule 11.12(c) ("Each transaction executed within the System is executed on a locked-in basis and shall be *automatically processed for clearing and settlement.*" (emphasis added)). These proposed rules are not novel. See, e.g., Cboe BZX Exchange, Inc. ("BZX") Rule 11.15.

Because NSCC's CNS System is not available for either after-hours trading or trading in fractional shares, 24X would not be able to offer either of those functions and be able to comply with its own proposed rules.⁶ Accordingly, if 24X were approved as a national securities exchange, it would immediately be in violation of Section 19(g) of the Act.⁷

Inability to Report Quotations and Transactions to the SIP

Another key piece missing from the 24X Form 1 is how quotation and transaction information for after-hours trading or trading in fractional shares would be reported to the Securities Information Processor ("SIP"). 24X has proposed the following rules relating to quotation and trade reporting:

- Proposed 24X Rule 11.8(b) provides that the best-ranked order(s) to buy and the best-ranked order(s) to sell that are displayed in the 24X Book would be collected and made available to quotation vendors for dissemination pursuant to the requirements of Rule 602 of Regulation NMS. This proposed rule is not novel.⁸ Unlike proposed 24X rules relating to clearing and settlement, in its proposed rulebook, 24X acknowledges that it is "TBD whether the Rule 602 obligation continues to apply even when a SIP is closed/not able to receive such information, during the 24X Market Session."
- Proposed 24X Rule 11.11 provides that "[e]xecutions occurring as a result of orders matched against the 24X Book shall be reported by the Exchange to an appropriate consolidated transaction reporting system to the extent required by the Act and the rules and regulations thereunder" and proposed 24X Rule 12.12(a) provides that 24X would disseminate for publication on the Consolidated Tape all last sale price reports of transactions executed through the facilities of 24X, and pursuant to the requirements of an effective transaction reporting plan approved by the Commission. These proposed rules are not novel either.⁹

With respect to the proposed 24X Market Session, NYSE agrees that it is an unresolved question whether the Rule 602 obligation continues to apply even when a SIP is closed. But that question is also applicable to transaction reporting. Currently, the SIPs are not open to collect and disseminate either quotations or transaction reports during the proposed 24X Market Session. It is unclear how 24X could offer such after-hours trading in the absence of any ability to report real-time quotation or transaction information to a SIP. Accordingly, NYSE does not believe that the 24X proposal to offer after-hours trading would be consistent either with its own proposed rules or the current transaction reporting plans, as required by Rule 601 of Reg NMS.

⁶ Proposed 24X Rule 13.1(c), which provides that the 24X Board "may extend or postpone the time of the delivery of an Exchange transaction," would not cure this defect because such proposed relief would be available only if "called for by the public interest, by just and equitable principles of trade or by the need to meet unusual conditions." This proposed rule is not novel (see, e.g., BZX Rule 13.1(c)), and NYSE does not believe that the relief available in such rule is intended for everyday operations of an exchange.

⁷ 15 U.S.C. 78s(g).

⁸ See, e.g., BZX Rule 11.12(b).

⁹ See, e.g., BZX Rules 11.14 and 12.12.

With respect to trading in fractional shares, 24X is silent on whether it intends to report such transactions to a SIP in actual fractional quantities or if it would round up/truncate fractional share quantities to a whole share. If 24X intends to report transactions to a SIP in fractional shares, that is currently not feasible. For this reason alone, the 24X Form 1 should not be approved.

But if 24X plans to report transactions in whole shares to a SIP, that raises different questions and causes potential market data distortions. For example, the Financial Industry Regulatory Authority (“FINRA”) has issued guidance that when broker-dealers report a trade for a fractional number of shares to a trade reporting facility, the fraction should be deleted and a whole number reported, unless the whole number would be zero, in which case the trade report should be rounded up to one share.¹⁰ But some studies have indicated that rounding up fractional share quantities to a whole share can distort volumes, particularly for higher-priced securities.¹¹

There are also open questions about how odd-lot quotations in fractional shares would need to be reported. Currently, odd-lot quotations are not reported to a SIP. However, once the Market Data Infrastructure Rule is implemented, odd-lot quotations will be considered core data that must be made available to competing consolidators and self-aggregators. It is unclear how fractional share quotations would be incorporated into such odd-lot quotation reporting.

Conclusion

NYSE supports leveling the playing field so public investors can engage with innovations on par with those available off-exchange. But any such innovation must be consistent with the unique regulatory obligations applicable to registered national securities exchanges, including requirements to have rules consistent with Section 6(b)(5) of the Act and Rules 601 and 602 of Regulation NMS. Moreover, any assessment of innovations in the registered national securities exchange space cannot be assessed in a vacuum.

The 24X Form 1 fails because the regulatory infrastructure necessary to support its proposed after-hours trading session and trading in fractional shares does not yet exist. Unless and until there is a holistic review of all aspects of the applicable trading ecosystem - including clearance and settlement and reporting quotation or transaction information to the consolidated tape - NYSE does not believe that it would be consistent with the Act to approve the 24X Form 1.

Respectfully submitted,



cc: Haoxiang Zhu, Director, Division of Trading and Markets

¹⁰ See Q101.14 of FINRA, Trade Reporting Frequently Asked Questions, available here: <https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq#10.1>

¹¹ See, e.g., Osipovich, Alexander, “Robinhood Was Behind Phantom Surge in Berkshire Hathaway Trade Volume, Study Finds,” Wall Street Journal (July 20, 2022).