June 27, 2024

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

**RE: File No. 10-242; Application of 24X National Exchange LLC for Registration as a National Securities Exchange**

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] respectfully submits this comment letter to the U.S. Securities and Exchange Commission (the "Commission") in response to the Commission's institution of proceedings to determine whether to grant or deny an application by 24X National Exchange LLC (the "24X Application") to register as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 (the "Exchange Act").[2] The 24X Application would extend the availability of on-exchange trading to 23 hours per day, seven days per week.[3] In connection with the Commission's review of the 24X Application, SIFMA urges the Commission to carefully consider the broad implications of expanding to what amounts to essentially 24x7 exchange trading.

Given the novel questions and issues raised by the 24X Application, we urge the Commission to engage in broad and thorough engagement with stakeholders before approving the application. The 24X Application cannot be considered in isolation, but instead with a view

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's one million employees, we advocate on legislation, regulation and business policy affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association ("GFMA").

[2] In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Order Instituting Proceedings to Determine Whether to Grant or Deny an Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934, Exchange Act Release No. 100254, File No. 10-242 (May 31, 2024), 89 Fed. Reg. 48466 (June 6, 2024).

[3] Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934, Exchange Act Release No. 99614, File No. 10-242 (Feb. 27, 2024), 89 Fed. Reg. 15621 (Mar. 4, 2024). In addition, the exchange will pause trading each Saturday from 8:00 a.m. Eastern Time (ET) until 11:00 a.m. ET. 24X Application, Exhibit E-1.

towards how the application will affect U.S. equity market structure. While SIFMA supports the Commission's longstanding practice of deferring to competition and market forces to drive market evolution, the Proposal presents a fundamental change to the U.S. equities markets. Approving the 24X Application would have significant effects on the overall market structure and the Commission should be thoughtful regarding those effects, the demand for 24x7 trading, and the public interests involved, beyond the scope of this application.

The Commission and different market constituents would benefit from robust discussion, such as through Commission-hosted roundtables, to fully understand the implications of approving the 24X Application.[4] There are SEC-regulated alternative trading systems ("ATSs") today that effectively offer 24x7 trading and nothing prevents 24X from similarly operating as an ATS, which would not raise the same questions and concerns as operating as an exchange. If the Commission moves forward with the 24X Application, it must also carefully consider the potential effects to exchange competition dynamics, including the likely scenario that other national securities exchanges will similarly transition to 24x7 trading, and clearly articulate the rules-of-the-road with respect to the regulatory implications of the 24X Application. Furthermore, the Commission must analyze how the 24X Application will interact with existing and proposed regulations and market infrastructure and whether a fair and orderly market is possible if there are potentially different rule sets for U.S. exchanges based on the hours they operate.

## Executive Summary

As set forth in more detail below, the expansion of exchange trading hours raises novel questions involving a variety of regulatory requirements and the operation of market infrastructure, including:

- What are the Commission's expectations regarding price transparency and order handling?
- Does the Commission view 24x7 exchange trading as compatible with the current market structure?
- How would industry-wide mechanisms, such as the Limit Up Limit Down ("LULD") Plan operate in connection with 24x7 exchange trading?
- How would an expansion to 24x7 exchange trading interact with the Commission's outstanding equity market structure proposals?
- Has the Commission considered the significant costs associated with expanding to 24x7 exchange trading?

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[4] SIFMA met with 24X to discuss the 24X Application and our members have raised questions regarding the application of Commission rules and NMS plans that should be considered by the Commission in connection with its review of the 24X Application.

## Discussion

As noted, expanding to 24x7 exchange trading deserves careful evaluation because it would represent a fundamental shift in the current structure and regulation of the national market system. Therefore, SIFMA urges the Commission to analyze and address the following interrelated issues in connection with its review of the 24X Application.

### Price Transparency and Order Handling

- The SIPs currently disseminate "core data" between the hours of 4:00 a.m. ET and 8:00 p.m. ET on days when the market is open. If the 24X Application were approved without extending SIP hours, quotations and transactions on 24X Exchange between 8:00 p.m. ET and 4:00 a.m. ET would not be publicly disseminated in real time.[5] Rather, 24X Exchange would report overnight quotations and transactions at or after SIP opening the following trading day. The time delay associated with this approach would appear to be inconsistent with the requirements of a national market system and would significantly reduce market transparency.[6] In addition, without operational SIP data, market participants likely would be forced to pay the costs associated with subscribing to 24X Exchange's direct data feeds if they want to meaningfully participate during the overnight session.
- On the other hand, if the Commission intends to extend the hours in which the SIPs disseminate "core data" to conform with the overnight market session (the "24X Market Session"), it also should extend the hours of the FINRA trade reporting and display facilities ("TRFs") to maintain balanced market transparency for both on- and off-exchange trading. Otherwise, broker-dealers that execute or facilitate transactions off-exchange overnight or on non-business days will submit trade reports (marked "as/of") to the TRFs by 8:15 a.m. ET either on trade date (for trades between midnight and 8:00 a.m.) or the next business day (for trades between 8:00 p.m. ET and midnight ET and trades on non-business days), while the SIPs are reporting transaction data in real-time.[7]
- As described above, the 24X Application could result in varying degrees of price transparency depending on (i) whether SIP hours are extended; (ii) whether TRF hours are

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[5] 24X Exchange's comment letter states that it "has been actively working with the SIPs to assist with the changes necessary to accommodate the 24X Market Session." However, if the SIPs could not accommodate 24-hour trading, 24X states that it would request "conditional exemptive relief" from reporting to the SIPs until the SIPs extended their operating hours. In the meantime, 24X states that it "would publish the same quotation and trade information that would be reported to the SIPs during the 24X Market Session on its website, and make it available in real time and available at no cost to investors, during the time in which any such exemption were in effect." Letter from David Sassoon, General Counsel, 24X Exchange to Vanessa Countryman, Secretary, SEC, at 2-3 (May 30, 2024).

[6] For example, 24X exchange trades on Friday night after 8:00 p.m. ET would not be reported to the SIPs until 4:00 a.m. ET on Monday, a delay of more than 48 hours.

[7] FINRA Trade Reporting FAQ 102.3 (https://www.finra.org/filing-reporting/market-transparency-reporting/trade-reporting-faq#102).

extended; or (iii) neither. In each case, the Commission should analyze how varying degrees of price transparency will interact with broker-dealer order handling obligations, including broker-dealer best execution obligations. The Commission must clearly state what regulatory requirements apply and how the SEC and FINRA expect to surveil customer order handling under these potential circumstances.

- Trading during core market hours offers investors greater liquidity, tighter spreads, lower volatility, and higher quality information compared to extended hours trading. Presumably, many of the risks associated with extended hours trading would be enhanced during an overnight session offered by a single exchange, and investors (particularly retail investors) trading overnight could experience poor execution quality based on low liquidity, wide spreads, and high volatility, and it is not evident that the existing disclosure regime would provide the necessary protection for investors given these heightened risks.[8]

**Rationalizing Market Structure Design**

- Currently, national securities exchanges offer three market sessions: a pre-market session (4 a.m. ET to 9:30 a.m. ET); a core market session (9:30 a.m. ET to 4 p.m. ET); and a post-market session (4 p.m. ET to 7 p.m. ET). If the Commission approves the 24X Application, what is the rationale for maintaining three (or four) separate market sessions? Moving to 24x7 exchange trading is incompatible with the current market structure, which includes pre-, core-, and post-market sessions.
- Certain rules under the Exchange Act apply during specified times of day and exclude weekends and federal holidays. 24x7 exchange trading could exacerbate a two-tiered system of regulation between core and extended trading hours.
  - For example, key aspects of Reg NMS apply only during "regular trading hours"[9] (between 9:30 a.m. ET and 4:00 p.m. ET). This includes the requirement in Rule 605 that trading centers publish certain order execution statistics for "covered orders."[10]
  - Rule 611 also only applies during core trading hours.[11] Before approving 24x7 exchange trading, the Commission should first determine whether and how this

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[8] See FINRA Rule 2265, Extended Hours Trading Risk Disclosure; FINRA Regulatory Notice 14-54, "FINRA Reminds Firms of Extended Hours Trading Disclosures" (Dec. 17, 2014); IEX Rule 3.290; NYSE American Rule 7.34E; and Cboe BYX Rule 3.21.

[9] 17 CFR § 242.600(b)(88) (Apr. 15, 2024).

[10] 17 CFR § 242.600(b)(27) (Apr. 15, 2024) (defining "covered order" as market or limit orders "received by a market center during regular trading hours at a time when a national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours . . .").

[11] 17 CFR § 242.600(b)(105) (Apr. 15, 2024) (defining "trade-through" as "the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer."). In connection with recent updates to Rule 605, the Commission modified the definition of

cornerstone of Reg NMS should be applied to a potentially considerable amount of retail trading that could occur outside of normal market hours. This determination should be informed by a robust analysis that takes into account feedback from a wide variety of market participants.

  - Additionally, Reg SHO Rule 201(b)(1)(ii) imposes circuit breaker requirements when a national best bid for a covered security is calculated on a current and continuing basis, which currently aligns with the hours the SIP disseminates the "core data" mentioned above.[12] It is unclear how these provisions would or should be interpreted if the 24X Application is approved.

- Similarly, extending exchange trading to non-business days could introduce delays in closing out fails to deliver stemming from long or short sales, as required by Rule 204 of Reg SHO.

- Taking different regulatory approaches depending on the trading session would have practical effects. For example, without access to execution quality statistics, it could be more challenging for broker-dealers to determine whether they have satisfied their best execution obligations due to the potential complexity in assessing the nature of overnight liquidity, especially where such liquidity only includes certain issuers. If the national market system is moving to 24x7 exchange trading, the Commission should address whether it remains appropriate to implement different approaches to regulating trading activity based on the time of day or the day of the week. If Reg NMS and other requirements do not apply consistently throughout the trading day, what is the rationale for providing reduced protections during trading hours that are outside of core trading hours as defined today? This is a particularly important area where robust feedback from market participants is needed.

- While some of these concerns exist to a limited extent in the pre- and post-market sessions today, the 24X Application represents a sea-change in how investors, and in particular retail investors, currently understand trading in the U.S. equity markets. If approved, 24x7 exchange trading could significantly alter the dynamics of how and when investors engage with the markets. Yet without broader Commission study outside the scope of an exchange application, the range of potential changes to market dynamics is unknown.

**Industry-Wide Mechanisms**

- Regarding application of limit-up limit-down ("LULD"), during regular market hours, 24X would participate in the traditional LULD Plan. During the 24X Market Session, 24X would operate its own LULD price bands, which would apply wider percentage parameters than the current market-wide LULD plan. The exchange would calculate its own "24X Price Bands"

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covered order to include any non-marketable limit order received outside regular trading hours that is executed during regular trading hours. See 17 CFR § 242.600(b)(27) (Apr. 15, 2024).

[12] 17 CFR § 242.201(b)(1)(ii) (Apr. 15, 2024).

during the overnight session and would not allow any trades outside of these price bands.[13] This approach raises several questions, including but not limited to:

  - Why are the 24X Market Session Price Bands different from the bands used under the current LULD Plan?
  - The 24X Market Session Price Bands are different from price bands used by ATSs that operate outside of core trading hours. Are market participants capable of managing the complexity of multiple price bands at different venues? What if a new or current securities exchange adopts 24x7 trading and takes a different approach to after-hours LULD? Shouldn't there be a consistent, market-wide standard for all trading in this new session?
  - Will the 24X Market Session Price Bands include OTC trades in its calculations or only its own book?
  - There have been many amendments to the LULD plan, with another amendment currently pending. How do we know the 24x Price Bands are reasonably designed? Before approving the 24X Application, should the LULD Plan similarly be extended to cover 24X Market Hours?

- Would price and volume information from the 24X Market Session be included in daily market data statistics (e.g., high, low, close, volume)?

**Interaction with Outstanding Commission Market Structure Proposals**

- The Commission must consider how the 24X Application would interact with its outstanding equity market structure proposals. For example:
  - The Commission is proposing to reduce the minimum quoting increment for certain securities. In determining whether securities are tick constrained, will the SEC factor in quoted spread during the 24X Market Session?
  - The Commission's proposal to reduce the minimum quoting increment would decrease both displayed liquidity and aggregate quoted depth. Will the Commission's tick size proposal harm investors during the 24X Market Session?
  - In connection with reducing the minimum quoting increment, the Commission is proposing to reduce the cap on access fees exchanges may charge. If the Commission were to take the position that Rule 611 applies during 24X's Market Session, it could

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[13] The Reference Prices used to calculate the 24X Price Bands would be updated every 30 seconds during the 24X Market Session to calculate the average price over the preceding five minutes. The 24X percentage parameters during the 24X Market Session would be 20% (for reference prices between $0 and $25), 10% (for reference prices between $25 and $50), and 6% (for reference prices greater than $50). The traditional LULD plan applies percentage parameters of 20%, 10%, and 5% depending on the stock's "tier," price, and the time of day. 24X also would allow a new reference price (i.e., not based on the five-minute average price calculations) if it received orders from three separate members that are displayed for at least 100 shares for 30 seconds.

be possible that the 24X Market Session would be the only venue with protected quotations during that time, and thus the exchange's access fees would be constrained by regulation but not by competitive forces. Is this consistent with the Commission's proposed access fee cap proposal?

- How would the Commission's best execution proposal apply during the 24X Market Session? To the extent 24X offers rebates, how would a broker-dealer be expected to comply with the best execution proposal's "conflicted transaction" requirements?
- How would the Commission's proposal to require retail investor orders to be sent to certain "qualified auctions" be applied during the 24X Market Session?

**Costs**

- The Commission must evaluate and address the anticipated costs full-time exchange trading will impose on market participants, investors, regulators, clearing firms and agencies, and the public.[14]
  - The costs of expanding SIP and TRF operational hours should not be borne by the industry.
  - Overnight on-exchange trading will require additional staffing at regulators, firms, and third-party service providers to monitor systems and trading activity and respond to customers and constituents at all times. Who pays for these increased costs?
  - Exchange trading on a 24x7 basis also could strain technology systems and lead to outages, for example if all reports of transactions during an overnight session are submitted to the SIPs as soon as they open the next morning.
  - Is there a plan to fairly allocate the costs associated with expanding to 24x7 exchange trading?

**Other Considerations**

- The 24X Application could introduce delays in clearance and settlement for trades that take place on non-business days. As of May 28, 2024, the settlement cycle for most securities transactions was shortened to one business day after the trade date (T+1).[15] Implementing 24x7 exchange trading could cause transactions on Fridays and non-business days (e.g., Saturdays, Sundays, and federal holidays) to experience lengthy settlement delays. The Commission should address whether these delays would be acceptable, considering the move to T+1, and whether market participants should expect that eventually clearance and settlement would be required to take place on non-business days, which would result in additional costs and potentially unintended effects.

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[14] See 15 U.S.C. § 78f(b)(5).

[15] Shortening the Securities Transaction Settlement Cycle, Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023).

- The 24X Application also could introduce comparative delays in clearance and settlement for trades that take place minutes apart. For example, a trade executed at 11:59 p.m. would settle the next day, whereas a second trade executed two minutes later, at 12:01 a.m., would not settle until the following day (assuming these days are consecutive settlement dates). The Commission should address whether these outcomes would be acceptable.
- The application raises additional operational and risk management questions regarding the clearing and settlement processes undertaken by the Depository Trust and Clearing Corporation ("DTCC") for trades overnight and on non-business days. For example:
    - Will DTCC require an additional deposit to support overnight activity?
    - When will trades executed on Saturday be margined by DTCC? Will the process date be Monday for Tuesday?
    - Does the DTCC plan to make stock loan delivery or margin calls on Monday morning based on weekend trading?
    - Will clearing firms have the ability to opt-out of clearing extended hours (pre-, post-, and overnight) activity?
- Why are market orders not permitted during the 24X Market Session? Doesn't that fundamentally change typical trading on-exchange?
- 24X has not provided adequate justification for restricting the securities eligible for trading during the 24X Market Session. If the markets are open, shouldn't all securities be available to trade? Moreover, to the extent the 24X Market Session remains limited to eligible securities, 24X should adopt more robust notification requirements for designating new securities for trading.
- Regulation SCI requires, among other things, that registered national securities exchanges have policies and procedures that include, "[p]eriodic capacity stress tests of [SCI systems] to determine their ability to process transactions in an accurate, timely, and efficient manner" and "[t]esting of all SCI systems and any changes to SCI systems prior to implementation."[16] How will exchanges that are operating SCI systems in production mode at all hours be able to comply with Regulation SCI?
- Similarly, expanding to 24x7 exchange trading hours could impact the ability of the SIPs to perform periodic testing and maintenance, which currently occur at times when the exchanges are closed. Following a move to 24x7 exchange trading and SIP operation, alterations to that schedule for testing and maintenance could be disruptive or cause investor confusion.
- Exchanges that list stocks require issuers to notify their primary listing market before releasing material news and information during market hours, which may result in the primary listing market halting the issuer's stock. Issuers may also release material news and

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[16] 17 C.F.R. § 242.1001(a)(2)(ii) and (b)(2)(i).

information outside of normal market hours. To accommodate a move to 24x7 exchange trading, primary listing markets could be required to update issuer disclosure rules or have staff available full-time to coordinate temporary trading halts based on material news, in addition to unanticipated or unintended effects on issuers and primary listing markets.

We believe these issues deserve robust discussion and industry engagement. SIFMA welcomes the opportunity to engage with the Commission, 24X, and other stakeholders constructively on these issues.

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SIFMA appreciates the opportunity to submit this letter to the Commission regarding the 24X Application. If you have any questions or need any additional information, please contact Ellen Greene at (212) 313-1287.

Sincerely,

Ellen Greene

Ellen Greene
Managing Director
Equities & Options Market Structure