

VIA EMAIL (rule-comments@sec.gov)

August 21, 2024

Ms. Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. 10-242  
24X National Exchange LLC: Notice of Filing of Application for Registration as a National Securities Exchange

Dear Ms. Countryman:

24X National Exchange LLC (“24X”) filed an application with the Securities and Exchange Commission (“Commission” or “SEC”) to register as a national securities exchange. On February 27, 2024, the Commission published the 24X Form 1 for public comment.<sup>1</sup> On May 31, 2024, the SEC instituted proceedings to determine whether to grant or deny the 24X application for registration as a national securities exchange (“OIP”).<sup>2</sup> Commenters have submitted six comment letters in response to the OIP.<sup>3</sup> As discussed below, 24X submits this letter to respond to the topics raised in the OIP and comment letters submitted in response to the OIP. 24X urges the Commission to approve its Form 1 expeditiously.

#### **A. Support for the 24X Exchange Application**

24X has received support for its application to register as a national securities exchange from two commenters on its Form 1.<sup>4</sup> These commenters have recommended that the SEC approve 24X’s exchange application. For example, DriveWealth, a global business-to-business financial technology platform, submitted a comment letter in support of the 24X exchange application.<sup>5</sup> DriveWealth emphasized that “[t]rading 24 hours a day, on-exchange, represents an opportunity to strengthen U.S. leadership in capital markets.”<sup>6</sup> DriveWealth further stated that 24 hour trading would bring a variety of benefits to the markets, including, for example, enhancing investor participation, both for international investors and self-directed domestic retail

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<sup>1</sup> Securities Exchange Act Rel. No. 99614 (Feb. 27, 2014), 89 Fed. Reg. 15621 (Mar. 4, 2024) (“24X Exchange Application Notice”).

<sup>2</sup> Securities Exchange Act Rel. No. 100254 (May 31, 2024), 89 Fed. Reg. 48466 (June 6, 2024) (“OIP”).

<sup>3</sup> See Letters to Vanessa Countryman, Secretary, SEC, from Richard Montone, JD/MBA Class of 2025 (June 26, 2024) (“Montone Letter”); Ellen Greene, Managing Director, Equities and Options Market Structure, SIFMA (June 27, 2024) (“SIFMA Letter”); Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc. (June 27, 2024) (“Better Markets Letter”); Chris Nagy, Research Director, and Tyler Gellasch, President and CEO, Healthy Markets Association (June 28, 2024) (“Healthy Markets Letter”); Jeffrey Pasquerella, Chief Legal Officer, DriveWealth, LLC (June 28, 2024) (“DriveWealth Letter”); and Joanna Mallers, Secretary, FIA Principal Traders Group (July 26, 2024) (“FIA PTG Letter”). The comment letters submitted in response to the 24X Form 1 are available at <https://www.sec.gov/comments/10-242/10-242.htm>.

<sup>4</sup> DriveWealth Letter and Montone Letter.

<sup>5</sup> DriveWealth Letter at 1,

<sup>6</sup> *Id.* at 1.

investors, and encouraging more high-quality international companies to list their shares for trading in the U.S., either as a primary issuance or secondary listing.<sup>7</sup> Another commenter supports 24X's exchange application, noting that 24X's proposal "evolves our markets into the modern day."<sup>8</sup>

## **B. 24X Trading Session**

### **1. Investor Disclosures for the 24X Market Session**

The Commission stated in its OIP that it is considering "whether 24X's proposed investor disclosures are sufficient to highlight what appear to be the unique risks associated with continuous trading, subject to certain trading pauses, during the 24X Market Session. Specifically, the Commission is evaluating whether these disclosures are sufficient to inform investors of the potentially greater risks associated with what would constitute a significant expansion of after-hours trading during the proposed 24X Market Session."<sup>9</sup> Commenters also questioned whether the existing disclosures would provide the necessary protection for investors given the heightened risks related to trading in the 24X Market Session.<sup>10</sup> One commenter, however, stated that the proposed "disclosures are sufficient to highlight the unique risks posed to investors during the 24X Market Session."<sup>11</sup>

24X agrees that requiring disclosure to investors regarding the heightened risks of after-hours trading provides investors with appropriate protections, and is in line with the protections provided to investors in connection with prior expansions of trading hours.<sup>12</sup> Accordingly, in its Form 1, 24X proposed the inclusion of Proposed 24X Rule 3.21, which requires its Members to disclose to their customers the risks of trading during Extended Trading Hours. To further enhance investor protection related to the 24X Market Session, 24X proposes to amend its Form 1 to expand the disclosures set forth in proposed 24X Rule 3.21 by adding a new paragraph that addresses additional potential risks related to the 24X Market Session. Specifically, the new paragraph would highlight the following additional potential risks related to trading during the 24X Market Session because (1) the primary listing markets may not be open; (2) consolidated market data may not be available; (3) there may be limited or different regulatory protections during the 24X Market Session; (4) there may be limited trading alternatives during the 24X Market Session; (5) with near continuous trading, there may be greater risk related to system maintenance, testing and pauses and resumption in trading; and (6) the 24X Market Session is novel and may present additional unforeseen risks in addition to those discussed above.

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<sup>7</sup> *Id.*

<sup>8</sup> Montone Letter at 2.

<sup>9</sup> OIP at 48470-1.

<sup>10</sup> SIFMA Letter at 4; Healthy Markets Letter at 9.

<sup>11</sup> Montone Letter at 6.

<sup>12</sup> *See, e.g.*, Part III, After Hours Trading, Special Study: Electronic Communication Networks and After-Hours Trading, Division of Market Regulation, SEC (June 2000) (<https://www.sec.gov/news/studies/ecnafter.htm#pt3i>); Extended Hours Trading: Investor Bulletin (June 6, 2022) (disclosing extended hours trading risks) (<https://www.sec.gov/oiea/investor-alerts-and-bulletins/extended-hours-trading-investor-bulletin>).

## 2. Trading Pauses, Halts, and Suspensions

The Commission stated in its OIP that it is evaluating 24X's proposed rules on trading pauses and resumptions of trading during the 24X Market Session, including their effect on trading as well as on system maintenance and participation in industry-wide testing.<sup>13</sup> One commenter specifically questioned how the testing required under Regulation SCI and the periodic testing and maintenance required for the SIPs would take place with near-continuous trading.<sup>14</sup> Another commenter raises concerns regarding the limited trading downtime and its effect, not only on the exchange, but other market participants.<sup>15</sup>

Although 24X contemplates the expansion of exchange trading hours via the 24X Market Session, 24X's proposed rules specifically address trading pauses, halts and suspensions for testing and other purposes, how trading will stop and how trading will resume, and notices to be provided to investors regarding such trading pauses. Indeed, one commenter supported 24X's proposed trading pauses, halts and suspensions, noting that "[o]ne of the most impressive and well-thought-out pieces of 24X's proposal is the key halts in trading it proposes during the 24X Market Sessions."<sup>16</sup>

Proposed 24X Rule 11.15 provides 24X with the authority to implement a variety of trading pauses, which taken together would allow for any type of trading pause that may be necessary for regulatory, technological or other purposes.

- Under Proposed 24X Rule 11.15(c)(1), 24X would pause trading for three hours each Saturday morning. Specifically, this paragraph would state that 24X "will pause trading at 8:00 a.m. ET each Saturday and resume trading at 11 a.m. ET each Saturday, in accordance with Rule 11.15(b). Orders outstanding in the System at 7:59:59 a.m. ET each Saturday shall be automatically cancelled."
- Under Proposed 24X Rule 11.15(c)(2), 24X would pause trading each day for an hour at 7:00 p.m. Specifically, 24X "will pause trading at 7:00 p.m. ET every day and resume trading at 8:00 p.m. ET every day, in accordance with Rule 11.15(b). Orders outstanding in the System at 6:59:59 p.m. ET every day shall be automatically cancelled."
- Under Proposed 24X Rule 11.15(c)(3), 24X would pause trading for industry-wide testing. Specifically, 24X "will pause trading for industry-wide testing conducted on Saturdays, and resume trading, in accordance with Rule 11.15(b). The Exchange shall announce in advance when trading will pause and when it will resume."
- Under Proposed 24X Rule 11.15(c)(4), 24X would pause trading for technological or other purposes. Specifically, 24X "may pause trading during the 24X Market Session at

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<sup>13</sup> OIP at 48471.

<sup>14</sup> SIFMA Letter at 8.

<sup>15</sup> Healthy Markets Letter at 7.

<sup>16</sup> Montone Letter at 6.

such other times as the Exchange may determine is necessary for technological or other purposes. The Exchange shall announce in advance when such trading will pause and when it will resume.”

- Each of the primary listing markets have rules requiring their listed companies to notify them of certain material corporate developments, including material corporate developments disclosed outside of trading hours on their markets, and rules regarding the implementation of trading halts related to such developments.<sup>17</sup> 24X proposes to halt trading or delay trading on 24X in a security when the primary listing market for such security halts or delays trading. 24X proposes to revise Proposed 24X Rule 11.15(c)(5) to clarify its interactions with the primary listing markets with regard to such trading halts. Specifically, 24X proposes to revise Proposed 24X Rule 11.15(c)(5) to state the following:

If the primary listing market determines to halt trading, or delay commencement of trading, in one of its listed securities in accordance with such primary listing market’s rules (*e.g.*, with regard to material corporate actions with respect to a particular security (*i.e.*, corporate actions that may affect a stock price, stock additions and subtractions, and similar actions) or material news announcements), the Exchange will halt trading, or delay the commencement of, trading (as applicable), in such security until trading resumes on the primary listing market for the security. For the avoidance of doubt, if trading in a security is halted by the primary listing market before the 24X Market Session and continuing into the 24X Market Session, or during the 24X Market Session, the Exchange will halt trading in the security until trading resumes on the primary listing market for the security.

24X will halt or delay trading upon notification by the primary listing markets of the primary listing markets decision to halt or delay trading via the SIPs or via communication with the primary listing markets (as applicable).

Proposed 24X Rule 11.15(b) explains the process for stopping and resuming trading in the event of a trading halt, suspension or pause in trade. Specifically, Proposed Rule 11.15(b) states that “[o]n the occurrence of any trading halt, suspension or pause in trading pursuant to this Rule all outstanding orders in the System will be cancelled. While a security is subject to a halt, suspension, or pause in trading, the Exchange will not accept orders.” The Rule further states that “[a]t the end of the halt, suspension, or pause in trading, the Exchange shall re-open the security and again begin accepting orders.” When a halt, suspension or pause in trading ends, the Exchange will begin accepting orders, and such orders will be processed in accordance with the requirements of Chapter 11 of the 24X Rulebook and the terms of the order (*e.g.*, ranked, executed, routed, cancelled) as trading resumes.

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<sup>17</sup> See, *e.g.*, Nasdaq Rule IM-5250-1.

**a. Reg SCI Testing**

In its comment letter, SIFMA questions how exchanges operating near-continuously will comply with Regulation SCI requirements 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.”<sup>18</sup> 24X will adopt policies and procedures in accordance with Regulation SCI regarding, among other things, testing of SCI systems, including periodic capacity stress tests of SCI systems and testing of changes to SCI systems prior to implementation. 24X expects that the periodic capacity stress testing, testing of system changes and testing in conjunction with the annual SCI review will be coordinated by 24X technology operations with MEMX Technologies personnel. 24X expects that vulnerability and threat testing will be coordinated by 24X with an outside vendor who will perform the tests, and with MEMX Technologies personnel as necessary. 24X expects this testing to take place during the Saturday trading pauses on dates on which no industry-wide testing is scheduled. To the extent that any additional trading pauses are required for testing, they will be announced in advance in accordance with Proposed 24X Rule 11.15(c)(4).

**b. SIP Testing**

SIFMA also notes in its comment letter that “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.”<sup>19</sup> As discussed above, the proposed 24X Rules provide the exchange with the authority to pause trading to address testing and for other purposes. To avoid disruptions to trading or investor confusion regarding trading pauses, 24X would announce in advance when trading will pause and when it will resume. Also, 24X has revised its proposed rules to clarify that trading will not occur during the 24X Market Session until such time as the SIPs are able to accept and process quotation and transaction information, or the Commission determines to issue an exemption from such requirements. The SIPs have formed a working group to address 24-hour trading and 24X understands that part of that process involves ensuring that the SIPs are able to perform periodic testing and maintenance.

**3. 24X Price Bands**

In its Form 1, 24X proposed to implement “24X Price Bands” to moderate risk and volatility during the 24X Market Session.<sup>20</sup> In its OIP, the Commission stated that it is considering whether the proposed use of 24X Price Bands only on the 24X and in place of the clearly erroneous execution rules are consistent with the requirements of the Exchange Act.<sup>21</sup> Commenters raised various questions regarding the use of the 24X Price Bands during the 24X

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<sup>18</sup> SIFMA Letter at 8.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> Proposed 24X Rule 11.15.

<sup>21</sup> OIP at 48471.

Market Session.<sup>22</sup> Another commenter, however, approved of the use of the 24X Price Bands to provide additional investor protection during the 24X Market Session.<sup>23</sup>

Although 24X continues to believe that the 24X Price Bands would be a beneficial way to address potential volatility during the 24X Market Session, based on discussions with the Commission staff, 24X understands that the application of the price bands solely to 24X rather than to the market for overnight trading more broadly could raise concerns. 24X also recognizes that the use of the standard clearly erroneous rules during the 24X Market Session would also serve to address potential volatility during the 24X Market Session. Accordingly, 24X proposes to revise its rules to remove the rules related to the 24X Price Bands.<sup>24</sup> With that change, 24X would rely upon its clearly erroneous rule, Proposed 24X Rule 11.14, to address volatility and risk during the 24X Market Session. Proposed 24X Rule 11.14 is the same clearly erroneous rule that has been approved by the Commission for other exchanges to address potential volatility in both regular and extended hours trading.<sup>25</sup>

In addition to its clearly erroneous rule, 24X would provide other additional protections to investors to address potential volatility and risk during the 24X Market Session. For example, under Proposed 24X Rule 11.7(a)(4), 24X would not allow the use of market orders during the 24X Market Session. In addition, as described in paragraph .01 of Proposed 24X Rule 11.9, 24X would offer certain risk settings applicable to a User's activities on the Exchange (*e.g.*, controls related to the size of the order, or price of the order). Furthermore, as set forth in Proposed Rule 11.9(g), 24X would provide limit order price protection. Under Rule 11.9(g), as proposed to be revised, a Limit Order to buy (sell) would be rejected if it is priced at or above (below) the greater of \$0.15 or a specified percentage away from the following: (i) the NBO for Limit Orders to buy, the NBB for Limit Orders to sell; (ii) if (i) is unavailable, the latest available of the consolidated last sale price disseminated during the Post-Market Session on trade date or the consolidated last sale price disseminated during Regular Trading Hours on trade date; or (iii) if neither (i) or (ii) are available, the prior day's official closing price identified as such by the primary listing exchange, adjusted to account for events such as corporate actions and news events. This enhanced version of the Limit Order Protection Rule that references not only the NBO/NBB but the consolidated last price and official closing price of the primary listing exchange would provide investors with additional protection against potential volatility on the Exchange.

#### **4. Equity Data Plans and Consolidated Market Data**

In its exchange application, 24X proposes to implement the 24X Market Session, which would allow trading overnight, on weekends and on holidays, on the Exchange.<sup>26</sup> However, the operation of the current national market system plans for reporting quotation and transaction data

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<sup>22</sup> SIFMA Letter at 5-6; Healthy Markets Letter at 8; and FIA PTG Letter at 2.

<sup>23</sup> Montone Letter at 7 (stating that the 24X Price Bands were "well thought out and calculated to address Section 6(b)(5)").

<sup>24</sup> See Proposed 24X Rule 11.15(a).

<sup>25</sup> See, *e.g.*, MEMX Rule 11.15.

<sup>26</sup> See Proposed 24X Rule (definition of "24 Market Session").

- the Consolidated Quotation Plan (“CQ Plan”), the Consolidated Tape Association Plan (“CTA Plan”), and the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”) (collectively, the “Equity Data Plans”) – would prevent 24X from providing this expanded trading opportunity, as they currently limit the reporting of quoting and transaction information to more traditional, limited trading hours. The Commission is considering whether 24X’s application to operate as an exchange during the 24X Market Session is consistent with the Exchange Act, in light of the fact that the Equity Data Plans currently do not operate during this time.<sup>27</sup> Some commenters also have raised issues regarding the commencement of trading during the 24X Market Session given the current inability of the Equity Data Plans to support such trading.<sup>28</sup>

24X is very much in favor of transparency for the quoting and trading activity in the 24X Market Session. Accordingly, 24X has been actively working with the Equity Data Plans to assist with the changes necessary to accommodate the 24X Market Session. 24X, like certain commenters, strongly encourages the Equity Data Plans to work expeditiously to modernize their infrastructure to accommodate the 24X Market Session.<sup>29</sup> However, to the extent that the SIPs are not ready to accommodate the 24X Market Session in time for a launch of 24X, 24X has requested temporary conditional exemptive relief with regard to the reporting of certain quoting and transaction activity during the 24X Market Session until the Equity Data Plans are ready. Such relief would facilitate competition by allowing a new entrant to the market to commence operation in a timely fashion without adversely affecting the regulatory goals of Rule 601 and 602. In that regard, to ensure transparency and the protection of investors, 24X would publish the same quotation and trade information that would be reported to the Equity Data Plans during the 24X Market Session on its website and direct data feeds, and make it available in real time and available for no cost to investors, during the time in which any such exemption were in effect. Any such exemption would terminate once the Equity Data Plans were ready to accept 24X’s data during the 24X Market Session. 24X continues to believe that such limited exemptive relief appropriately weighs the competitive and regulatory considerations.

However, in light of concerns raised and to facilitate prompt approval of its Form 1, 24X proposes to revise its rulebook to clarify that it would not commence trading during the 24X Market Session unless the Equity Data Plans were operational during the 24X Market Session, or the SEC had provided exemptive or other relief related to the proposed quoting and transaction activity during the 24X Market Session. Such additional language would clarify how 24X would operate the 24X Market Session in light of the current capabilities of the Equity Data Plans. Such clarity addresses comments regarding the need for greater specificity regarding the implementation of the 24X Market Session without the infrastructure in place for disseminating

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<sup>27</sup> OIP at 48471.

<sup>28</sup> SIFMA Letter at 3-4; Healthy Markets Letter at 10-11; and FIA PTG Letter at 2.

<sup>29</sup> DriveWealth Letter at 2.

consolidated market data.<sup>30</sup> It also addresses a central issue related to 24X's Form 1 and should allow the Commission to approve 24X's Form 1 more expeditiously.

SIFMA also raises the question as to whether, if the Commission extends the hours in which the SIPs disseminate "core data" during 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." SIFMA states that "[o]therwise, 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."<sup>31</sup> Trade reporting in the over-the-counter market is a separate question from trade reporting on an exchange. According, 24X does not believe that questions related to OTC trade reporting should impede or delay the introduction of overnight trading on exchanges. The determination of how and when a TRF is open for extended hours would be made by the participants and the operator of the TRF platform and in accordance with relevant legal requirements, not by 24X.

## 5. Market Surveillance

The Commission stated in its OIP that it is considering one commenter's questions regarding the impact that the proposal may have on market surveillance, including (1) how 24X will manage real-time surveillance during the 24X Market Session, (2) how the existing surveillance, trading halt and trade review infrastructure will work in the context of the 24X Market Session, including how 24X will coordinate with self-regulatory organizations ("SROs"), and (3) the impact such extended trading would have on investors, listed companies, and other market participants.<sup>32</sup> "The commenter also raised concerns in connection with market-wide surveillance more broadly, including how 24X would propose to integrate itself into the national market system and coordinate with primary listing exchanges to perform its regulatory surveillance obligations during the 24X Market Session."<sup>33</sup>

As a preliminary matter, 24X expects that listed companies will continue to follow the applicable requirements of the primary listing market, including those related to disclosures of significant events. 24X will coordinate with the primary listing markets with regard to their regulatory roles related to their listed companies (*e.g.*, trading halts). For example, as discussed above, in recognition of the primary listing market's role, 24X proposes to halt or delay trading upon notification by the primary listing markets of the primary listing markets decision to halt or delay trading. Furthermore, 24X will surveil the trading in the 24X Market Session as it does with the other 24X trading sessions.

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<sup>30</sup> Montone Letter at 7-8 (noting that, although this issue should not preclude the approval of 24X's exchange application, more should be done to clarify a specific timeframe for addressing consolidated data issues).

<sup>31</sup> SIFMA Letter at 3.

<sup>32</sup> OIP at 48472.

<sup>33</sup> *Id.*



## 6. Issuer Disclosures

In the OIP, the SEC noted that “[a] commenter stated that listed companies disclose material information outside of Regular Trading Hours and questioned how the 24X Market Session would affect the current processes for listed companies to disclose, and for investors to consider, material information”,<sup>34</sup> and that “the proposed 24X rules did not provide details on how material corporate actions announced during the 24X Market Session would be handled.”<sup>35</sup> In its comment letter, SIFMA raised similar issues regarding issuer disclosures in the 24X Market Session. SIFMA noted the following:

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 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.<sup>36</sup>

As discussed above, 24X proposes to halt trading on 24X in a security when the primary listing market for such security halts trading. 24X proposes to revise Proposed 24X Rule 11.15(c)(5) to clarify its interactions with the primary listing markets with regard to such trading halts. Specifically, 24X proposes to revise Proposed 24X Rule 11.15(c)(5) to state the following:

If the primary listing market determines to halt trading, or delay commencement of trading, in one of its listed securities in accordance with such primary listing market’s rules (*e.g.*, with regard to material corporate actions with respect to a particular security (*i.e.*, corporate actions that may affect a stock price, stock additions and subtractions, and similar actions) or material news announcements), the Exchange will halt trading, or delay the commencement of, trading (as applicable), in such security until trading resumes on the primary listing market for the security. For the avoidance of doubt, if trading in a security is halted by the primary listing market before the 24X Market Session and continuing into the 24X Market Session, or during the 24X Market Session, the Exchange will halt trading in the security until trading resumes on the primary listing market for the security, whenever such resumption of trading occurs on the primary listing market for the security.

24X will halt or delay trading upon notification by the primary listing markets of the primary listing markets decision to halt or delay trading via the SIPs or via communication with the primary listing markets (as applicable). Finally, 24X notes that the SIFMA’s comment regarding

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> SIFMA Letter at 8-9.

the impact of overnight trading on primary listing market issuer disclosure rules and staffing already exists because overnight trading is currently conducted in the over-the-counter market on alternative trading systems. 24X's proposed rules are designed to address these issues in a clear and transparent manner.

## 7. Market Orders

SIFMA questioned why market orders are not permitted during the 24X Market Session, and whether such a prohibition changes typical trading on-exchange.<sup>37</sup> 24X's proposed prohibition on the use of market orders during the 24X Market Session is fully in line with the common exchange practice of only allowing the use of market orders during the regular trading hours of 9:30 a.m. to 4:00 p.m. Such a prohibition is regularly employed by exchanges to provide additional investor protection during extended trading hours.

Under Proposed 24X Rule 11.7(a)(4), "[a] Market Order is eligible for execution by the System during the Core Market Session only. A Market Order is not eligible for execution by the System during the Pre-Market Session, the Post-Market Session or the 24X Market Session." Like the Proposed 24X Rule, it is common practice in today's exchange markets to limit the use of market orders to regular trading hours of 9:30 a.m. to 4:00 p.m. For example, MEMX's rules state that "[a] Market Order is only eligible for execution by the System during the Market Session,"<sup>38</sup> where the Market Session means "the time between 9:30 a.m. and 4:00 p.m. Eastern."<sup>39</sup> Market orders are not eligible for MEMX's Pre-Market Session or Post-Market Session.<sup>40</sup> LTSE takes the same approach in its rules. Market orders may only be submitted during the Regular Market Session, not the Pre-Market Session or Post-Market Session.<sup>41</sup> As a result, the 24X's proposed restrictions regarding the use of market orders would not "change typical trading on-exchange."

## 8. Securities Eligible for Trading in 24X Market Session

SIFMA also stated in its comment letter that "24X has not provided adequate justification for restricting the securities eligible for trading during the 24X Market Session," and recommended that such restrictions not apply in the 24X Market Session.<sup>42</sup> In addition, SIFMA state that, "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."<sup>43</sup> Similarly, Healthy Markets questions the restrictions on the securities eligible for

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<sup>37</sup> *Id.* at 8.

<sup>38</sup> MEMX Rule 11.8(a)(4).

<sup>39</sup> MEMX Rule 1.5(o).

<sup>40</sup> MEMX Rule 1.5(w) and (x).

<sup>41</sup> LTSE Rule 11.190(a)(2)(E).

<sup>42</sup> SIFMA Letter at 8.

<sup>43</sup> *Id.* at 8.

trading in the 24X Market Session.<sup>44</sup> 24X proposes to remove these restrictions, and permit all securities eligible to trade on 24X to be traded in the 24X Market Session.<sup>45</sup>

As set forth in the 24X Form 1, Proposed 24X Rule 11.2(a)(1) stated that “[a]ny class of securities listed or admitted to unlisted trading privileges on the Exchange pursuant to Chapter 14 of these Rules shall be eligible to become designated for trading on the Exchange during the Pre-Market Session, Core Market Session and/or Post-Market Session.” Proposed 24X Rule 11.2(a)(2), however, limited trading in the 24X Market Session to “[a]ny security in the Nasdaq-100® Index, S&P 500® Index, Russell 2000® Index and the top 50 exchange-traded funds by average daily volume during a given month.” Proposed 24X Rule 11.2(a)(2) and (f) – (g) provided additional detail regarding the process and timing for informing 24X’s Members and investors of the securities that will be eligible to trade in the 24X Market Session. 24X proposes to expand the securities eligible to trade in the 24X Market Session to include all securities eligible to trade in the Pre-Market Session, Core Market Session and/or Post-Market Session. Accordingly, 24X proposes to amend its Form 1 to remove Proposed Rule 11.2(a)(2) and (f) – (g).

24X believes that expanding the securities eligible for trading would provide a variety of benefits to the market. Such an approach would allow 24X members and their customers to manage their symbol lists, rather than the Exchange; broker-dealers have indicated a preference for the flexibility provided by this approach. Moreover, such an approach would ensure continuity of the securities eligible to trade on 24X throughout all of the trading sessions, thereby reducing potential trading complexities and customer service inquiries about security eligibility during the 24X Market Session. In addition, expanding the securities eligible to trade during the 24X Market Session would also allow the Exchange to compete with alternative trading systems and other markets that operate during the overnight hours, which offer trading in all NMS stocks. Finally, 24X believes that limiting the securities eligible to trade during the 24X Market Session may exclude securities that may be particularly appropriate for the 24X Market Session, such as international ETFs. Expanding the securities eligible for the 24X Market Session would allow such securities to trade during the 24X Market Session.

## **9. Retail Investor Participation in 24X Market Session**

In their comment letter, Better Markets raises concerns about retail investor participation in the overnight hours due to the potential for increased trading risk.<sup>46</sup> 24X and other commenters disagree with the Better Markets’s view that retail investors should not have the opportunity to participate in such expanded trading hours. The SEC’s traditional approach to retail participation in expanded trading hours has been to provide investors with appropriate disclosure regarding the risks of trading during the expanded hours and to let them determine whether to participate in such trading sessions. It has not been to preclude investors from considering whether such trading is appropriate for them based on their individual

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<sup>44</sup> Healthy Markets Letter at 10.

<sup>45</sup> We understand that the Blue Ocean ATS offers trading in all NMS stocks during its overnight trading sessions.

<sup>46</sup> Better Markets Letter.

circumstances. As discussed above, 24X proposes to provide enhanced disclosure in its Rules regarding the potential risks of trading in the 24X Market Session.

Retail trading in equities outside of regular market hours in the U.S. is not a new phenomenon. Indeed, retail investors have been regularly trading outside of regular market hours since 1999,<sup>47</sup> and have had access to overnight trading via their broker-dealers on alternative trading systems since 2021. In response to those developments, the SEC stated that it “supports investor choice in trading hours provided that essential protections for investors and the markets are not compromised.”<sup>48</sup> Specifically, with the increase in retail investor participation in after-hours trading, the SEC’s regulatory initiatives focused on providing adequate disclosure to retail investors regarding the potential risks of trading during those hours.<sup>49</sup> In line with this approach, 24X proposes to include an enhanced version of Proposed 24X Rule 3.21, which requires its Members to disclose to its customers the risks of trading during Extended Trading Hours. As discussed above, 24X proposes to set forth additional detailed disclosures regarding the potential trading risks during the 24X Market Session. 24X believes that the disclosure approach provides investors with the benefit of increased flexibility in the timing of their trades while providing appropriate protection for investors.

In contrast to the Better Markets Letter, other commenters fully support retail investor participation in the 24X Market Session.<sup>50</sup> For example, the DriveWealth Letter states the following:

Trading 24 hours a day, on-exchange, represents an opportunity to strengthen U.S. leadership in capital markets. Expanding operating hours will enhance investor participation, allowing real-time trading for both international investors and self-directed domestic retail investors, such as working parents and others whose busy schedules overlap with the core or extended market Sessions.”<sup>51</sup>

Furthermore, as noted above, retail investors currently trade in the overnight hours, but do not have the benefit of trading overnight on a U.S. regulated national securities exchange. Trading on a registered national securities exchange provides additional protections to investors that are not available in other trading venues. As noted by one commenter, “customers of our partners based both in the U.S. and outside the U.S. would benefit significantly from the ability to trade on a regulated U.S. exchange at times other than the currently available market sessions.”<sup>52</sup> Accordingly, the SEC’s approval of 24X as an exchange operating the 24X Market Session would provide additional protections to investors trading outside the current trading hours of the U.S. exchanges.

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<sup>47</sup> See Part III, After Hours Trading, Special Study: Electronic Communication Networks and After-Hours Trading, Division of Market Regulation, SEC (June 2000) (<https://www.sec.gov/news/studies/ecnafter.htm#pt3i>).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* See also Extended Hours Trading: Investor Bulletin (June 6, 2022) (disclosing extended hours trading risks) (<https://www.sec.gov/oiea/investor-alerts-and-bulletins/extended-hours-trading-investor-bulletin>).

<sup>50</sup> See DriveWealth Letter at 1.

<sup>51</sup> DriveWealth Letter at 1.

<sup>52</sup> *Id.* at 1.

In addition, 24X's proposal would benefit retail investors in other ways. Retail investors, especially those with busy schedules, like working parents, would have greater flexibility to trade at times convenient for them. Expanding operating hours will enhance investor participation, allowing real-time trading for international investors and domestic retail investors. This democratization of access can empower more individuals to participate actively in the market.

Moreover, retail investors would benefit from increased price discovery and greater liquidity in the markets. Continuous trading can enhance market efficiency by allowing continuous price discovery and trading opportunities across different time zones. This can potentially reduce volatility and improve liquidity as markets respond to news and events around the clock. Extended trading hours also can deepen market liquidity by facilitating continuous trading, which benefits both issuers and investors. Improved liquidity can enhance price discovery and reduce transaction costs, thereby fostering more efficient capital allocation.

## 10. Broader Market Structure Considerations

Commenters have raised various broader market structure considerations in response to the Exchange's Form 1, including the fact that certain Commission requirements only apply during certain trading windows, such as regular trading hours between 9:30 a.m. and 4:00 p.m. ET), and, as a result, different regulatory protections apply to different trading sessions.<sup>53</sup>

As discussed below, in each case, the Exchange's proposed operations would comply with each of the existing regulatory requirements, and would therefore satisfy the requirements of the Exchange Act. 24X welcomes broader discussions about potential improvements to market structure. However, such discussions should not be used as a reason to impede 24X's registration as an exchange when the application would comply with the requirements of the Exchange Act.

- Rule 605. Commenters noted that the requirements in Rule 605 that trading centers publish certain order statistics only during regular trading hours.<sup>54</sup> 24X would comply with this requirement.
- Rule 611. Commenters also noted that Rule 611 only applies during core trading hours.<sup>55</sup> 24X would comply with this requirement.
- Reg SHO: Circuit Breaker Requirement. One commenter also noted that "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. It is

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<sup>53</sup> See SIFMA Letter at 4-5; Healthy Markets Letter at 11.

<sup>54</sup> SIFMA Letter at 4; Healthy Markets Letter at 11.

<sup>55</sup> SIFMA Letter at 4-5; Healthy Markets Letter at 11.

unclear how these provisions would or should be interpreted if the 24X Application is approved.”<sup>56</sup> 24X will comply with Rule 201 whenever it is deemed to apply.

- Reg SHO: Closing Out Fails. One commenter noted that “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.”<sup>57</sup> 24X will comply with Rule 201 whenever it is deemed to apply
- Limit Up Limit Down Plan (“LULD Plan”). One commenter noted that the Limit Up/Limit Down price bands would not apply during overnight trading.<sup>58</sup> Again, 24X would comply with the current requirements related to LULD Plan.
- Market Wide Circuit Breakers. In its OIP, the Commission noted that market wide circuit breakers are not available during after-hours trading.<sup>59</sup> 24X will comply with market wide circuit breaker requirement during the hours in which they apply.

As discussed above, in today’s market, the regulatory requirements vary depending on the trading session. More regulatory protections exist for the regular trading hours versus trading the in the pre-market and post-market sessions. Indeed, SIFMA recognizes this point.<sup>60</sup> Despite these differences, the Commission did not prevent the extension of trading beyond regular trading hours. 24X does not believe that the expansion of trading to the 24X Market Session raises new issues in this regard that should affect the approval of its exchange application.

### **C. Technology Services Agreement with MEMX Technologies, LLC**

24X proposes to enter into a technology services agreement with MEMX Technologies, to license the technology underlying 24X. The Commission stated in the OIP that it is “evaluating whether the proposed technical services agreement between 24X and MEMX Technologies would raise concerns under Section 6(b)(1) of the Act, including Regulation SCI thereunder.”<sup>61</sup> Specifically, the Commission is considering “whether 24X would be capable of exercising sufficient control over the operation of 24X, and be sufficiently independent from MEMX Technologies, to enable 24X to comply with requirements under the Act and applicable rules, including, among other things, Regulation SCI, which requires an SCI entity to have written policies and procedures reasonably designed to ensure that its SCI systems have levels of capacity, integrity, resilience, availability and security adequate to maintain the SCI entity’s operation capability.”<sup>62</sup> Commenters have raised similar issues with regard to the proposed technology services agreement with MEMX Technologies.<sup>63</sup>

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<sup>56</sup> SIFMA Letter at 5.

<sup>57</sup> *Id.*

<sup>58</sup> Healthy Markets Letter at 8.

<sup>59</sup> OIP at 48471, n.104.

<sup>60</sup> SIFMA Letter at 5.

<sup>61</sup> OIP at 48472.

<sup>62</sup> *Id.*

<sup>63</sup> Montone Letter at 4-5; Healthy Markets Letter at 9-10.

24X believes that its agreement with MEMX Technologies complies with the requirements of the Exchange Act and is in line with other examples of exchanges using third-party technology. 24X plans to amend Exhibit E of its Form 1 to further describe the proposed agreement between MEMX Technologies and 24X. The revised description will provide greater detail around the role of MEMX Technologies with regard to the Exchange, including 24X's status as an SCI entity, the allocation of Regulation SCI-related functions between 24X and MEMX, disaster recovery and business continuity, Regulation SCI events, oversight and reporting, and recordkeeping related to compliance with Regulation SCI. 24X believes that this detailed description addresses how the relationship between 24X and MEMX Technologies would operate, and how 24X's exchange regulatory responsibilities would be satisfied.

#### **D. Fees**

One commenter requested additional information regarding the fees that 24X would charge, as such fees would be determined upon approval of the exchange application.<sup>64</sup> 24X's approach to fees that the Exchange may charge as an exchange is typical for exchange applications. In its Form 1, 24X proposed to include Chapter 15 in its Rulebook, which describes the Exchange's authority to prescribe dues, fees, assessments and other charges.<sup>65</sup> Furthermore, as stated in Exhibit E of its Form 1, "[t]he Exchange intends to establish a Fee Schedule setting forth all applicable transaction and other fees. Actual fee amounts and types will not be determined until close to launch of Exchange because they will need to reflect the competitive landscape at that time. The Exchange will file with the Commission any proposed fees as well as any changes thereto pursuant to Section 19 of the Exchange Act and Rule 19b-4 thereunder."

#### **E. Costs**

In its comment letter, SIFMA urges the Commission to "evaluate and address the anticipated costs full-time exchange trading will impose on market participants, investors, regulators, clearing firms and agencies, and the public," including the costs related to expanding the SIP and TRF operational hours and costs related to 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.<sup>66</sup> Healthy Markets also inquired who would be responsible for paying for the changes to the SIPs.<sup>67</sup>

24X recognizes that innovations in the marketplace, such as the introduction of the 24X Market Session, will lead to changes in how market participants operate, and such changes may involve additional costs. However, 24X does not believe that costs related to innovation should be the basis for the Commission to determine that an exchange application does not comply with

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<sup>64</sup> Montone Letter at 9.

<sup>65</sup> Other exchanges have this same rule. *See, e.g.*, Chapter 15 of the MEMX Rulebook.

<sup>66</sup> SIFMA Letter at 7. *See also* FIA PTG Letter at 2.

<sup>67</sup> Healthy Markets Letter at 10-11.

the Exchange Act. The Commission did not prevent the expansion of trading from regular trading hours to the pre-market and post-market trading sessions based on the exact same type of increased costs that would be related to the 24X Market Session. In addition, many market participants are already trading overnight on ATSS or otherwise and, therefore, the introduction of overnight trading on an exchange would involve incremental, new costs. Furthermore, broker-dealers have the ability to choose whether or not they participate in the 24X Market Session – and many already have chosen to participate in overnight trading. However, a broker-dealer does not need to participate in the 24X Market Session if it does not believe it is cost-effective. Finally, with regard to the expansion of the SIPs' hours of operation, the national market system plans approved by the Commission have a process for determining the cost for new Participants to join the plans and for determining the cost for changes to the Plans.

#### **F. Exchange Ownership Restrictions**

Healthy Markets asserts that 24X's governance structure fails to comply with ownership requirements applicable to exchanges. Although the Exchange Act does not set forth any specific ownership and voting limitations applicable to exchanges, the Commission typically has expected exchanges to include in their governing documents certain limitations on ownership and voting. 24X's application includes each of these typical limitations on ownership and voting. The only exception to such limitations is a request for a very brief, temporary exemption from certain ownership and voting limitation for nine months for Dmitri Galinov and his Related Persons. Such a temporary exemption would provide a new exchange with a brief period to bring its ownership and voting structure in line with the ownership and voting restrictions upon SEC approval of the exchange. The SEC has approved prior exchange applications with such limited exceptions to the ownership and voting restrictions.<sup>68</sup>

#### **G. Audited Financial Statements**

Healthy Markets asserts that 24X has failed to satisfy the requirements of Exhibit I of Form 1 related to audited financial statements of the exchange applicant.<sup>69</sup> 24X believes that it has complied with the requirements of Exhibit I of Form 1 regarding financial statements given that it has been formed but has not commenced operations and does not yet have audited financial statements for any fiscal year. Indeed, the approach taken by 24X with regard to Exhibit I is the same as the approach taken by prior exchange applicants that have been approved by the SEC based on the same provided information.<sup>70</sup>

#### **H. Governance Disclosure**

Healthy Markets questions whether 24X has satisfied the requirements of Form 1 because directors and committee members have not been provided on Exhibit J of Form 1.<sup>71</sup> 24X has

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<sup>68</sup> See, e.g., Securities Exchange Act Rel. 42455 (Feb. 24, 2000).

<sup>69</sup> Healthy Markets Letter at 2-3.

<sup>70</sup> See, e.g., Exhibit I of MEMX Form 1.

<sup>71</sup> Healthy Markets Letter at 3-6.



complied with the requirements of Exhibit J of Form 1. Because a national securities exchange may not operate until it has received approval from the SEC, it is common practice to finalize corporate governing documents upon SEC approval and then to determine the directors and committee members of the exchange in accordance with the SEC-approved corporate governing documents.<sup>72</sup> Once the directors and committee members are determined, then 24X will update its Form 1 in accordance with the requirements of Rule 6a-2 under the Exchange Act.

## **I. Location of Exchange**

Healthy Markets asserts that 24X has failed to describe the location of the proposed exchange.<sup>73</sup> 24X disagrees with this assertion as it has provided such information in its Form 1. The execution page of the 24X Form 1 clearly states that the applicant's primary street address is One Landmark Square, Suite 1815, Stamford, CT. In addition, Exhibit E of the 24X Form 1 further elaborates regarding the location of exchange operations by stating that "[t]he Exchange plans to be primarily operated out of a third-party data center in New Jersey (the "Primary Data Center"). The Exchange plans to have its secondary site (the "Secondary Data Center") located in a third-party data center in Illinois." 24X proposes to amend Exhibit E of its Form 1 to recognize that 24X exchange personnel will operate out of its New York office, as well as its Connecticut office.

## **J. Clearance and Settlement**

### **1. Settlement Cycle of Trades During 24X Market Session**

In its comment letter, SIFMA noted that the settlement cycle for most securities transactions was shortened to one business day after the trade date (T+1).<sup>74</sup> SIFMA further noted that, with the introduction of the 24X Market Session, however, certain transactions on Fridays, Saturdays, Sundays, and holidays may experience a longer settlement period as the next business day after the trade would not be the next day. This commenter questioned whether such a longer settlement period would be acceptable. 24X does not believe that the 24X Market Session introduces a new question with regard to settlement in this regard. The concerns raised by SIFMA with respect to the impact of holidays and weekends on trade clearance and settlement have long existed and are contemplated within existing NSCC/DTCC rules.

### **2. Trade Day Cut-Off for Settlement Purposes**

SIFMA also noted that, with the introduction of the 24X Market Session, "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

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<sup>72</sup> See, e.g., Exhibit J of MEMX Form 1.

<sup>73</sup> Healthy Markets Letter at 6.

<sup>74</sup> SIFMA Letter at 7.

settlement dates), and requested that the Commission address whether such outcomes would be acceptable.”<sup>75</sup>

24X does not believe that the 24X Market Session introduces a new question with regard to settlement in this regard. The settlement scenario noted by SIFMA is a natural outgrowth of basing the settlement cycle on T+1, with a definition of T based on a trading day. With such an approach, there must be a designated time for delineating between one trading day and the next, which is currently 8 p.m.<sup>76</sup> In light of this basic fact, the markets currently experience the exact same issue – that is, as of trades that are executed in similar timeframes settling on different days – and it does not raise concerns for the Commission or market participants. For example, with the operation of the current pre-market and post-market trading sessions by the existing exchanges, a trade executed at 7:59:59 p.m. on Monday would have a Monday trade date and would be settled on Tuesday (T+1), whereas a trade executed a few hours later at 4:00 a.m. would have a Tuesday trade date and would be settled on Wednesday (T+1).

### **3. Settlement Process at DTCC**

SIFMA comments that the 24X Market Session “raises additional operational and risk management questions regarding the clearance and settlement processes undertaken by the Depository Trust and Clearing Corporation (“DTCC”) for trades overnight and on non-business days.”<sup>77</sup> For example, SIFMA poses the following questions: (1) will DTCC require an additional deposit to support overnight activity; (2) when will trades executed on Saturday be margined by DTCC; (3) will the process date be Monday for Tuesday; (4) does DTCC plan to make stock loan delivery or margin calls on Monday morning based on weekend trading; and (5) will clearing firms have the ability to opt-out of clearing extended hours (pre-, post-, and overnight) activity.<sup>78</sup>

As an initial matter, the Exchange notes that the questions raised by SIFMA are more appropriately directed to DTCC and its participant clearing firms. However, it is the Exchange’s understanding from DTCC that the operational and clearance and settlement risks related to overnight and weekend trading are manageable using DTCC’s existing risk management rules and protocols. Broker-dealers concerned about potential operational and clearance and settlement risks related to such trading are not required to trade in the 24X Market Session.

### **K. Interaction with Outstanding Commission Market Structure Proposals**

SIFMA requests that the Commission consider how 24X’s exchange application would interact with its outstanding equity market structure proposals, including the Commission’s proposals related to reducing the minimum quoting increment for certain securities, reducing the cap on access fees exchanges may charge, best execution, and requiring retail investor orders be

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<sup>75</sup> SIFMA Letter at 8.

<sup>76</sup> 24X also notes that 8 p.m., not midnight, is the cut-off time each day for clearance and settlement purposes.

<sup>77</sup> SIFMA Letter at 8.

<sup>78</sup> *Id.* at 8.

sent to certain “qualified auctions.”<sup>79</sup> Such efforts by the Commission are currently only proposals, and as such may or may not be approved or approved in their current form. Accordingly, 24X believes that addressing how such proposals may relate to 24X’s exchange application are outside the scope of consideration of whether 24X’s exchange application complies with the requirements of the Exchange Act.

#### **L. Pricing of Mutual Funds**

One commenter raises the question as to whether mutual funds would continue to be priced at the end of regular trading hours, or whether the introduction of the 24X Market Session would dictate that mutual funds be priced at a different time.<sup>80</sup> 24X notes that the determination of how and when pricing decisions for mutual funds would be made by the mutual funds in accordance with relevant legal requirements, not by 24X. 24X further notes that, because trading already takes place on exchanges today during pre-market sessions and post-market sessions (including overnight in the OTC market), not just during regular trading hours, mutual funds have already faced such timing decisions. The 24X Market Session does not present new issues regarding the timing of the pricing of mutual funds.

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We appreciate your attention to this matter. Please contact me at [david@24exchange.com](mailto:david@24exchange.com) if you have any questions or comments.

Respectfully submitted,

*/s/ David Sassoon*

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<sup>79</sup> *Id.* at 7.  
<sup>80</sup> Montone Letter at 8.