

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101777; File No. 10-242)

In the Matter of the Application of
24X National Exchange LLC
for Registration as a National Securities Exchange

Findings, Opinion, and Order of the Commission

November 27, 2024

I. Introduction and Procedural History

On February 6, 2024, 24X National Exchange LLC (“24X” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a Form 1 application under the Securities Exchange Act of 1934 (“Exchange Act”) seeking registration as a national securities exchange under Section 6 of the Exchange Act.¹ Notice of the application was published for comment in the Federal Register on March 4, 2024.² The Commission received five comments on the Notice³ and a letter responding to the comments from 24X.⁴ On May 31, 2024, the Commission instituted proceedings pursuant to Section 19(a)(1)(B) of the Exchange Act⁵ to determine whether to grant or deny 24X’s application for registration as a national securities exchange under Section 6 of the Exchange Act (the “OIP”).⁶ After issuance of the OIP, the Commission

¹ 15 U.S.C. 78f. The Form 1 is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/24x-form-1>.

² See Securities Exchange Act Release No. 99614 (Feb. 27, 2024), 89 FR 15621 (Mar. 4, 2024) (“Notice”).

³ See letters from James J. Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated Apr. 5, 2024 (“Angel Letter I”) and dated May 13, 2024 (“Angel Letter II”); Stan Sater, Senior Legal Counsel, Polygon.io, Inc., dated Apr. 25, 2024 (“Polygon Letter”); Andrew Glover, University of Washington and Ed deHaan, Professor of Accounting, Stanford University, dated Apr. 22, 2024 (“Glover and deHaan Letter”); Eun Ah Choi, Senior Vice President, Nasdaq, Inc., dated Apr. 25, 2024 (“Nasdaq Letter”). The public comment file for 24X’s Form 1 (File No. 10-242) is available on the Commission’s website at: <https://www.sec.gov/comments/10-242/10-242.htm>.

⁴ See letter from David Sassoon, General Counsel, 24X, dated May 30, 2024 (“24X Letter”).

⁵ 15 U.S.C. 78s(a)(1)(B).

⁶ See Securities Exchange Act Release No. 100254 (May 31, 2024), 89 FR 48466 (June 6, 2024).

received six comment letters⁷ and a letter responding to the comments from 24X.⁸ On August 21, 2024, 24X filed an amendment to its Form 1 application (“Amendment No. 1”),⁹ which was published for comment in the Federal Register on September 3, 2024.¹⁰ On August 30, 2024, the Commission extended, pursuant to Section 19(a)(1)(B) of the Exchange Act,¹¹ the time period for granting or denying 24X’s Form 1 application for an additional 90 days, until November 29, 2024.¹² After issuance of Amendment No. 1, the Commission received three comment letters¹³ and a letter responding to the comments from 24X.¹⁴ On October 23, 2024, 24X filed a second amendment to its Form 1 application (“Amendment No. 2”),¹⁵ which was published for comment

⁷ See letters from Richard Montone, JD/MBA student, Hofstra University, dated June 26, 2024 (“Montone Letter”); Ellen Greene, Managing Director, Equity and Options Market Structure, Securities Industry and Financial Markets Association (“SIFMA”), dated June 27, 2024 (“SIFMA Letter”); Benjamin L. Schiffrin, Director of Securities Policy, Better Markets, Inc., dated June 27, 2024 (“Better Markets Letter”); Chris Nagy, Research Director, and Tyler Gellasch, President and Chief Executive Officer, Healthy Markets Association, dated June 28, 2024 (“Healthy Markets Letter”); Jeffrey M. Pasquerella, Chief Legal Officer, DriveWealth, LLC., dated June 28, 2024 (“DriveWealth Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, dated July 26, 2024 (“FIA PTG Letter”).

⁸ See letter from David Sassoon, General Counsel, 24X, dated Aug. 21, 2024 (“24X Letter II”).

⁹ Amendment No. 1 is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/24x-form-1>. In Amendment No. 1, 24X amended Exhibits B, B-1, C, C-2, D, D-1, D-2, D-3, D-4, E, E-1 and N. For purposes of this Order, references to Exhibits C, C-2, D, D-1, D-3, and N will be to the amended Exhibits filed with Amendment No. 1. See infra note 15 (describing references to Exhibits B, B-1, E and E-1 for purposes of this Order).

¹⁰ See Securities Exchange Act Release No. 100839 (Aug. 27, 2024), 89 FR 71471 (Sept. 3, 2024).

¹¹ 15 U.S.C. 78s(a)(1)(B).

¹² See Securities Exchange Act Release No. 100884 (Aug. 30, 2024), 89 FR 72917 (Sept. 6, 2024).

¹³ See letters from Patrick Blonien, Instructor of Finance, Carnegie Mellon University, and Alexander Ober, Ph.D. Candidate in Finance, Rice University, undated (“Blonien and Ober Letter”); John Ramsay, Chief Market Policy Officer, Investors’ Exchange LLC (“IEX”), dated Oct. 9, 2024 (“IEX Letter”); Joanna Mallers, Secretary, FIA Principal Traders Group, dated Oct. 11, 2024 (“FIA PTG Letter II”).

¹⁴ See letter from David Sassoon, General Counsel, 24X, dated Nov. 1, 2024 (“24X Letter III”).

¹⁵ Amendment No. 2 is available on the Commission’s website at: <https://www.sec.gov/rules-regulations/other-commission-orders-notices-information/24x-form-1>. In Amendment No. 2, 24X amended Exhibits B, B-1, E, and E-1. For purposes of this Order, references to these listed Exhibits will be to the amended Exhibits filed with Amendment No. 2.

in the Federal Register on October 30, 2024.¹⁶ After issuance of Amendment No. 2, the Commission received two comment letters¹⁷ and a letter responding to the comments from 24X.¹⁸

The Commission has reviewed 24X's Form 1 application, as amended, together with the comment letters received, in order to make a determination whether to grant such registration. For the reasons set forth below and based on the representations set forth in 24X's Form 1 application, as amended, this order grants 24X's Form 1 application, as amended, for registration as a national securities exchange.

II. Statutory Standards

Pursuant to Sections 6(b) and 19(a) of the Exchange Act,¹⁹ the Commission shall by order grant an application for registration as a national securities exchange if the Commission finds, among other things, that the proposed exchange is so organized and has the capacity to carry out the purposes of the Exchange Act and can comply, and can enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange.²⁰

As discussed in greater detail below, the Commission finds that 24X's application, as amended, for registration as a national securities exchange meets the requirements of the

¹⁶ See Securities Exchange Act Release No. 101431 (Oct. 24, 2024), 89 FR 86400 (Oct. 30, 2024).

¹⁷ See letters from Ellen Green, Managing Director, Equities and Options Market Structure, SIFMA, dated Oct. 29, 2024 ("SIFMA Letter II"); Adrian Griffiths, Head of Market Structure, MEMX LLC ("MEMX Letter"), dated Oct. 29, 2024.

¹⁸ See letter from David Sassoon, General Counsel, 24X, dated Nov. 18, 2024 ("24X Letter IV").

¹⁹ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(a), respectively.

²⁰ 15 U.S.C. 78f(b)(1).

Exchange Act and the rules and regulations thereunder. Further, the Commission finds that the proposed rules of 24X are consistent with Section 6 of the Exchange Act in that, among other things, they are designed to: (1) assure fair representation of the exchange's members in the selection of its directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer;²¹ (2) prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system;²² (3) not permit unfair discrimination between customers, issuers, or dealers;²³ and (4) protect investors and the public interest.²⁴ The Commission also finds that the proposed rules of 24X are consistent with Section 11A of the Exchange Act.²⁵ Finally, the Commission finds that 24X's proposed rules do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁶

²¹ See U.S.C. 78f(b)(3).

²² See U.S.C. 78f(b)(5).

²³ See id.

²⁴ See id.

²⁵ See 15 U.S.C. 78k-1.

²⁶ See 15 U.S.C. 78f(b)(8).

III. Discussion

A. Ownership and Governance of 24X

24X is a Delaware limited liability company,²⁷ which is wholly-owned by its sole member, 24X US Holdings LLC (“24X US”), which also is a Delaware limited liability company.²⁸ 24X US, in turn, is wholly-owned by 24X Bermuda Holdings LLC (“24X Bermuda”), which is a limited liability company formed under the laws of Bermuda.²⁹ 24X US will be managed by, and all decisions regarding 24X US will be made by, 24X Bermuda.³⁰ Generally, the members of 24X Bermuda include holders of “Preferred Units,”³¹ “Common Units”³² and “Non-Voting Units.”³³ Common Units and Preferred Units except Series Seed-2 Units have general voting power, and are defined as “Voting Units.”³⁴ Each Voting Unit has one vote.³⁵

²⁷ See Certificate of Formation of 24X National Exchange LLC.

²⁸ See Certificate of Formation of 24X US Holdings LLC.

²⁹ See Certificate of Formation of 24X Bermuda Holdings LLC.

³⁰ See Second Amended and Restated Limited Liability Company Agreement of 24X US Holdings LLC (“24X US LLC Agreement”), Section VI(a).

³¹ “Preferred Units” means “Series A Units and the Series Seed Units.” See Third Amended and Restated Limited Liability Company Agreement of 24X Bermuda LLC (“24X Bermuda LLC Agreement”), Article 1, 1.45. See also *id.* at Article 1, 1.55 and 1.60 defining Series A Units and Series Seed Units.

³² “Common Units” means “[u]nits of common membership interests of the Company, or any other ownership interests of the Company into which such units are reclassified, reconstituted or exchanged.” See *id.* at Article 1, 1.16.

³³ “Non-Voting Units” means “units of non-voting membership interests of the Company, or any other ownership interests of the Company into which such units are reclassified, reconstituted or exchanged.” See *id.* at Article 1, 1.38. A description of the members of 24X Bermuda and their respective ownership levels is set forth in Exhibit K. See also *infra* section III.B.1.

³⁴ See 24X Bermuda LLC Agreement, Article 1, 1.75. See also *id.* at Article 1, Section 1.64 defining Series Seed-2 Units.

³⁵ See 24X Bermuda LLC Agreement, Article 1, 1.75.

1. 24X Board of Directors

24X proposed that its business and affairs as a national securities exchange will be managed by a Board³⁶ comprised of a minimum of seven Directors³⁷ (“24X Board”).³⁸ The 24X Board will consist of:

(A) one Director who is the Chief Executive Officer of the Exchange and who shall be deemed to be an Industry Director;³⁹

(B) Non-Industry Directors,⁴⁰ including at least one (1) Independent Director,⁴¹ the number of which shall equal or exceed the sum of the number of Industry Directors and Member Representative Directors;⁴²

(C) Member Representative Directors, the number of which must be at least twenty percent of the 24X Board;⁴³ and

(D) at least one of the Non-Industry Directors shall be representative of issuers and investors and not associated with an Exchange Member, a broker, or a dealer.⁴⁴

³⁶ See Amended and Restated Limited Liability Company Agreement of 24X National Exchange LLC (“24X LLC Agreement”), Article I, (d).

³⁷ See id., at Article I, (l).

³⁸ See id., at Article VI, Section 6.1(b).

³⁹ See id., at Article VI, Section 6.1(c)(i)(A). See also id. at Article I, (w).

⁴⁰ See id., at Article VI, Section 6.1(c)(i)(B)(1). See also id. at Article I, (ee).

⁴¹ See id., at Article I, (v).

⁴² See id., at Article VI, Section 6.1(c)(i)(B)(1). See also id. at Article I, (bb).

⁴³ See id., at Article VI, Section 6.1(c)(1)(B)(2). If twenty percent of the Directors then serving on the 24X Board is not a whole number, such minimum number of Member Representative Directors shall be rounded up to the next whole number. Id.

⁴⁴ See id., at Article VI, Section 6.1(c)(1)(B)(3).

The first annual meeting of 24X will be held within 90 days after the Commission grants 24X's exchange registration.⁴⁵

In addition, 24X US will appoint the initial Nominating Committee and Member Nominating Committee, consistent with each committee's compositional requirements, to nominate candidates for election to the 24X Board.⁴⁶ The Nominating Committee and Member Nominating Committee, after completion of their respective duties for nominating directors for election to the 24X Board for that year, will recommend candidates to serve on the succeeding year's Nominating Committee or Member Nominating Committee, as applicable.⁴⁷ Exchange Members⁴⁸ will have rights to nominate and elect additional candidates for the Member Nominating Committee pursuant to a petition process.⁴⁹

The Nominating Committee will nominate candidates for election to the 24X Board.⁵⁰ For the Member Representative Director positions, the Member Nominating Committee, composed solely of Member Representative Committee or Panel Members,⁵¹ shall consult with the Nominating Committee and the Chairman of the 24X Board and solicit comments from

⁴⁵ See 24X LLC Agreement, Article III, Section 3.4(a).

⁴⁶ See 24X LLC Agreement, Article VI, Section 6.2(g)(ii).

⁴⁷ Id.

⁴⁸ "Exchange Member" means "any registered broker or dealer that has been admitted to membership in the national securities exchange operated by the Company. An Exchange Member is not a member of the Company by reason of being an Exchange Member. An Exchange Member will have the status of a 'member' of the Exchange as that term is defined in Section 3(a)(3) of the Exchange Act." See 24X LLC Agreement, Article I, (o).

⁴⁹ See 24X LLC Agreement, Article VI, Section 6.1(d)(iii).

⁵⁰ See 24X LLC Agreement, Article VI, Section 6.1(d)(i).

⁵¹ "Member Representative Committee or Panel Members" means a member of any Committee or hearing panel who is an officer, director, employee or agent of an Exchange Member that does not own, directly or indirectly, any Units. See 24X LLC Agreement, Article I (aa).

Exchange Members for the purpose of approving and submitting names of candidates for election to the position of Member Representative Director.⁵² If no candidates are nominated pursuant to a petition process, then the initial nominees approved and submitted by the Member Nominating Committee will be nominated as Member Representative Directors by the Nominating Committee.⁵³ If a petition process produces additional candidates, then the candidates nominated pursuant to the petition process, together with those nominated by the Member Nominating Committee, will be presented to Exchange Members for election to determine the final designees for any open Member Representative Director positions.⁵⁴ In the event of a contested election, the candidates who receive the most votes will be selected as the Member Representative Director designees by the Member Nominating Committee.⁵⁵

The 24X governance provisions are consistent with the Exchange Act. In particular, the requirement that the number of Member Representative Directors must be at least 20% of the 24X Board and the means by which they will be chosen by Exchange Members provides for the fair representation of members in the selection of directors and the administration of 24X and therefore are consistent with Section 6(b)(3) of the Exchange Act.⁵⁶ This requirement helps to ensure that members of an exchange have a voice in an exchange's self-regulatory program, and

⁵² See 24X LLC Agreement, Article VI, Section 6.1(d)(ii).

⁵³ See 24X LLC Agreement, Article VI, Section 6.1(d)(v).

⁵⁴ Id.

⁵⁵ See 24X LLC Agreement, Article VI, Section 6.1(d)(vi).

⁵⁶ 15 U.S.C. 78f(b)(3).

that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.⁵⁷

In addition, the requirements that the number of Non-Industry Directors equal or exceed the sum of the number of Industry Directors and Member Representative Directors, that at least one Non-Industry Director shall also qualify as an Independent Director, and that at least one of the Non-Industry Directors shall be representative of issuers and investors and not associated with an Exchange Member, a broker, or a dealer on the 24X Board satisfy the requirements in Section 6(b)(3) of the Exchange Act,⁵⁸ which requires in part that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer. The Commission previously has stated that the inclusion of public, non-industry representatives on exchange oversight bodies is an important mechanism to support an exchange's ability to protect the public interest.⁵⁹ Further, the presence of public, non-industry representatives can help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process.

⁵⁷ See, e.g., Securities Exchange Act Release Nos. 100539 (July 15, 2024), 89 FR 58848 (July 19, 2024) (File No. 10-240) (order granting registration of MIAx Sapphire, LLC) ("Sapphire Order"); 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (File No. 10-237) (order granting registration of MEMX LLC ("MEMX Exchange")) ("MEMX Order"); 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10-234) (order granting registration of Long Term Stock Exchange, Inc. ("LTSE Exchange")) ("LTSE Order"); 79543 (Dec. 13, 2016), 81 FR 92901, 92903 (Dec. 20, 2016) (File No. 10-227) (order granting registration of MIAx PEARL, LLC) ("MIAx PEARL Order"); 68341 (Dec. 3, 2012), 77 FR 73065, 73067 (Dec. 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC ("MIAx Exchange")) ("MIAx Order"); 58375 (Aug. 18, 2008), 73 FR 49498, 49501 (Aug. 21, 2008) (File No. 10-182) (order granting the registration of BATS Exchange, Inc.) ("BATS Order"); 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (File No. 10-131) (granting the exchange registration of Nasdaq Stock Market, Inc.) ("Nasdaq Order").

⁵⁸ 15 U.S.C. 78f(b)(3).

⁵⁹ See, e.g., Sapphire Order, supra note 57, at 58850; MEMX Order, supra note 57, at 27452; LTSE Order, supra note 57, at 21843; MIAx PEARL Order, supra note 57, at 92903; MIAx Order, supra note 57, at 73067; BATS Order, supra note 57, at 49501; Nasdaq Order, supra note 57, at 3553.

Public directors can provide unbiased perspectives, which may enhance the ability of the 24X Board to address issues in a non-discriminatory fashion and foster the integrity of the Exchange.

2. Exchange Committees

24X has proposed to establish several named committees of the 24X Board, including an Appeals Committee⁶⁰ and a Regulatory Oversight Committee,⁶¹ as well as the Nominating Committee and Member Nominating Committee, discussed above.⁶² The Appeals Committee will consist of two Independent Directors and one Member Representative Director.⁶³ Each member of the Regulatory Oversight Committee must be an Independent Director.⁶⁴

The named committees that 24X proposed, which are similar to the named committees maintained by other exchanges,⁶⁵ are designed to help enable the Exchange to carry out its responsibilities under the Exchange Act and are consistent with the Exchange Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act.⁶⁶

⁶⁰ See 24X LLC Agreement, Article VI, Section 6.2(f). The Appeals Committee will preside over all appeals related to disciplinary and adverse action determinations in accordance with 24X rules. Id.

⁶¹ See 24X LLC Agreement, Article VI, Section 6.2(h). The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities, assessing the Exchange's regulatory performance, and assisting the 24X Board and Committees in reviewing the regulatory plan and the overall effectiveness of the Exchange's regulatory functions. Id. See also infra section III.B.3.

⁶² The 24X Board could also establish additional committees. See 24X LLC Agreement, Article VI, Section 6.2(a). All committees of the 24X Board will be subject to the control and supervision of the 24X Board. Id.

⁶³ See 24X LLC Agreement, Article VI, Section 6.2(f).

⁶⁴ See 24X LLC Agreement Article VI, Section 6.2(h)(v).

⁶⁵ See, e.g., Securities Exchange Act Release No. 78101 (June 17, 2016), 81 FR 41142 (June 23, 2016) (File No. 10-222) (order granting the registration of IEX ("IEX Order")); Article IV, Section 4.1 of the Eleventh Amended and Restated Bylaws of Cboe Exchange, Inc.

⁶⁶ 15 U.S.C. 78f(b)(1).

The Commission received one comment on Exhibit J of 24X's Form 1.⁶⁷ Regarding the proposed 24X Board and committees, this commenter stated that filling in the charts set forth in Exhibit J of 24X's Form 1 with "TBD" and "TO BE PROVIDED" "does not provide the Commission with sufficient information with which to assess compliance with the law or Commission Rules."⁶⁸ The commenter further stated that "[t]he Exchange failed to provide the names, classifications, terms, and types of businesses of the persons to fill the required roles. The point of the chart is to have those boxes filled in. They are 'to be provided' now – not in the future. What would be the basis for the Commission's approval?"⁶⁹ 24X stated that it has not commenced operations and that "[o]nce directors and committee members are determined," 24X will update its Form 1 as required under Rule 6a-2 under the Exchange Act.⁷⁰

Exhibit J requires certain information for officers, governors, members of all standing committees, or persons performing similar functions, who "presently hold or have held their offices or positions during the previous year."⁷¹ Exhibit J of 24X's Form 1 application indicates that Dmitri Galinov will be the "Industry/Chief Executive Officer" of 24X. Exhibit J also lists Dmitri Galinov as the Head of Equities for 24X, and other officers of 24X including David Sassoon as General Counsel; Jeremy Sanchez as Chief Regulatory Officer; and Jason Woerz as Chief Operating Officer.

⁶⁷ See Healthy Markets Letter at 2-6.

⁶⁸ Id. at 5.

⁶⁹ Id. at 5.

⁷⁰ See 24X Letter II at 16-17.

⁷¹ For any individual that presently holds or has held their offices or positions during the previous year, Exhibit J requires their name, title, dates of commencement and termination of term of office or position, and type of business in which each is primarily engaged (e.g., floor broker, specialist, odd lot dealer, etc.).

24X has not yet commenced operations, and therefore, the nomination and election processes to fill the rest of 24X's Board and committees, as set forth in the 24X LLC Agreement, have not been initiated. Upon approval of 24X's Form 1 application, however, 24X US, as the sole owner of 24X, is required to elect only those persons to the 24X Board and committees that meet the stated compositional requirements set forth in the 24X LLC Agreement, and pursuant to Rule 6a-2 of the Exchange Act, 24X must file an amendment to its Form 1 providing the name, classification, term, and type of business of each person who will be on the 24X Board and 24X committees within 10 days after 24X US elects such persons to the 24X Board, or the Chairman of the 24X Board appoints individuals to the various 24X committees.⁷² The information provided by 24X in Exhibit J is consistent with the requirements of the form and the Exchange Act.

B. 24X Bermuda and Regulation of the Exchange

When 24X commences operations as a national securities exchange, it will have all of the attendant regulatory obligations under the Exchange Act. In particular, 24X will be responsible for the operation and regulation of its trading system and the regulation of its members. Certain provisions in both the 24X and 24X Bermuda governing documents are designed to facilitate the ability of 24X to fulfill its regulatory obligations and to help facilitate Commission oversight of 24X. The discussion below summarizes some of these key provisions.⁷³

⁷² See 17 CFR 240.6a-2. See also 24X LLC Agreement, Article VI, Section 6.2(b)(i).

⁷³ Because 24X US is the sole member of 24X (see 24X LLC Agreement), and 24X Bermuda is the sole member of 24X US (see 24X US LLC Agreement) and thus indirectly wholly owns and controls 24X, for purposes of this Order, the Commission bases its findings on provisions in the 24X Bermuda LLC Agreement, as the ultimate owner of 24X.

1. Ownership Structure; Ownership and Voting Limitations

As stated above, 24X will be owned indirectly by 24X Bermuda. The 24X Bermuda LLC Agreement includes restrictions on the ability to own and vote units representing a fractional part of the interest in 24X Bermuda (“Units”).⁷⁴ These limitations are designed to prevent any party to the 24X Bermuda LLC Agreement from exercising undue control over the operation of the Exchange and to ensure that the Exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act.⁷⁵

In particular, for so long as 24X Bermuda shall control, directly or indirectly, 24X, no Person,⁷⁶ either alone or together with its Related Persons,⁷⁷ will be permitted to own, directly

⁷⁴ “Unit” means “(i) any Common Units (including Profits Units), Non-Voting Units or Preferred Units purchased or otherwise acquired by any Member; (ii) any equity securities issued or issuable directly or indirectly with respect to any of the foregoing Units by way of Unit distribution or split or in connection with a combination of Units, recapitalization, merger, consolidation or other reorganization; and (iii) any other units of any class or series of ownership interests of the Company held by a Member, including with respect to Convertible Securities or Options.” See 24X Bermuda LLC Agreement, Article 1, 1.72

⁷⁵ These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., Sapphire Order, MEMX Order, LTSE Order, MIAX PEARL Order, MIAX Order, and BATS Order supra note 57; IEX Order, supra note 65, see also Securities Exchange Release Nos. 6068 (Feb. 4, 2016) (File No. 10-221) (order granting exchange registration of ISE Mercury, LLC) (“ISE Mercury Order”); 70050 (July 26, 2013), 78 FR 46622, 46624 (Aug. 1, 2013) (File No. 10-209) (order granting the exchange registration of ISE Gemini, LLC) (“ISE Gemini Order”); 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE-2008-88) (Cboe demutualization order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) (NSX demutualization order); 51149 (Feb. 8, 2005), 70 FR 7531 (Feb. 14, 2005) (SR-CHX-2004-26) (CHX demutualization order); 49098 (Jan. 16, 2004), 69 FR 3974 (Jan. 27, 2004) (SR-Phlx-2003-73) (Phlx demutualization order).

⁷⁶ “Person” means “any individual, partnership, joint venture, company, limited liability company, trust, or other association or entity.” See 24X Bermuda LLC Agreement, Article 1, 1.41.

⁷⁷ “Related Persons” means “[with] respect to any Person: (a) any ‘affiliate’ of such Person (as such term is defined in Rule 12b-2 under the Exchange Act); (b) any other Person with which such first Person has any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of Units; (c) in the case of a Person that is a company, corporation or similar entity, any executive officer (as defined under Rule 3b-7 under the Exchange Act) or director of such Person and, in the case of a Person that is a partnership or limited liability company, any general partner, managing member or manager of such Person, as applicable; (d) in the case of any Person that is a registered broker or dealer that has been admitted to membership in the national securities exchange known as 24X National Exchange, any Person that is associated with such member (as determined using the definition of ‘person associated with a member’ as defined under Section 3(a)(21) of the Exchange Act);

or indirectly, of record or beneficially, more than 40% of the then issued and outstanding Units.⁷⁸ A more restrictive condition will apply to Exchange Members, who either alone or together with their Related Persons, will be prohibited from owning, directly or indirectly, of record or beneficially, more than 20% of the then issued and outstanding Units.⁷⁹ If any party to the 24X Bermuda LLC Agreement purports to transfer⁸⁰ any Units in violation of these ownership limits, 24X Bermuda will be required (to the extent funds are legally available) to redeem the Units in excess of the applicable ownership limit.⁸¹

(e) in the case of a Person that is a natural person and member of 24X National Exchange, any broker or dealer that is also a member of 24X National Exchange with which such Person is associated; (f) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse who has the same home as such Person or who is a manager or officer of the Company, any subsidiary of the Company, or any of the Company's parent companies; (g) in the case of a Person that is an executive officer (as defined under Rule 3b-7 under the Exchange Act) or a director of a company, corporation or similar entity, such company, corporation or entity, as applicable; or (h) in the case of a Person that is a general partner, managing member or manager of a partnership or limited liability company, such partnership or limited liability company, as applicable." See 24X Bermuda LLC Agreement, Article 1, 1.49.

⁷⁸ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(i). There are limited exceptions to these prohibitions. See infra notes 84-85 and accompanying text.

⁷⁹ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(ii). This restriction on ownership by Exchange Members cannot be waived. See id. at Article 9, Section 9.2(b)(ii).

⁸⁰ "Transfer" means "any sale, transfer, conveyance, exchange, pledge, gift, donation, assignment, or other disposition of Units, whether voluntary or involuntary, and whether during the lifetime of the Person involved or upon or after his death, including, but not limited to, any disposition by operation of law, by court order, by judicial process, or by foreclosure, levy, or attachment. 'Transfer' when used as a verb shall have a correlative meaning. 'Transferor' and 'Transferee' mean a Person who makes or receives a Transfer, respectively." See 24X Bermuda LLC Agreement, Article 1, Section 1.71. See also id. at Article 9, Section 9.2(f)(i).

⁸¹ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(f)(iii). The price of the redeemed Units or Unit Equivalents is also prescribed in the 24X Bermuda LLC Agreement. See id. The number of Units or Unit Equivalents to be redeemed is to be calculated after taking into account that the redeemed Units or Unit Equivalents will become treasury shares and will no longer be deemed to be outstanding. See id. It is further provided in the 24X Bermuda LLC Agreement that any Units or Unit Equivalents that have been called for redemption may not be deemed outstanding Units or Unit Equivalents if a sum sufficient to redeem the Units or Unit Equivalents has been irrevocably deposited or set aside to pay the redemption price. From and after the redemption date (unless 24X Bermuda defaults in providing funds for the payment of the redemption price), the redeemed Units or Unit Equivalents that have been redeemed will become treasury shares, and all rights of the holder of the redeemed Units or Unit Equivalents in 24X Bermuda (except the right to receive from 24X Bermuda the redemption price against delivery to 24X

In addition, no Person, alone or together with its Related Persons, may, directly, indirectly, or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of Units or give any consent or proxy with respect to Units representing more than 20% of the voting power of the then issued and outstanding Units (“Voting Limitation”).⁸² Further, no Person, either alone or together with its Related Persons, under circumstances that would result in the Units that are subject to such agreement, plan, or other arrangement not being voted on any matter or matters or any proxy relating thereto being withheld, where the effect of such agreement, plan, or other arrangement would be to enable any Person, either alone or together with its Related Persons, to vote, possess the right to vote, or cause the voting of Units that would represent more than 20% of such voting power.⁸³

The 24X Bermuda Board of Managers will be permitted to waive the 40% ownership limitation and the 20% Voting Limitation pursuant to a resolution duly adopted by the 24X

Bermuda of evidence of ownership of the shares) will cease. See id. In addition, in the event that any redemption has resulted in any person owning such number of Units or Unit Equivalents that is in violation of the ownership limits, 24X Bermuda will be required to redeem those Units or Unit Equivalents pursuant to the limitation provisions. See id.

⁸² See 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(iii).

⁸³ See id.

Bermuda Board of Managers if it makes certain determinations.⁸⁴ Any such waiver will not be effective unless and until approved by the Commission.⁸⁵

Any Person that proposes to own Units in excess of the 40% ownership limitation, or to vote or grant any proxies or consents with respect to Units constituting more than 20% of the voting power of the then outstanding Units, will be required to deliver written notice to the 24X Bermuda Board of Managers of its intention.⁸⁶ The notice must be delivered to the 24X Bermuda Board of Managers not less than 45 days (or any shorter period to which the Board of Managers expressly consents) before the proposed ownership of such Units or the proposed vote.⁸⁷

The 24X Bermuda LLC Agreement also contains provisions that are designed to further safeguard the ownership limitation and Voting Limitation described above or are otherwise related to direct and indirect changes in control. Specifically, any Person that, either alone or together with its Related Persons beneficially owns, directly or indirectly (whether by acquisition

⁸⁴ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(b)(ii). See also *supra* note 79 (concerning the inability to waive restrictions for Exchange Members). The required determinations are that such waiver will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules and regulations promulgated thereunder; that such waiver is otherwise in the best interests of 24X Bermuda, its members, and the Exchange; that such waiver will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; and that such Person and its Related Persons are not subject to any applicable “statutory disqualification” within the meaning of Section 3(a)(39) of the Exchange Act. See *id.* See also 24X US LLC Agreement, Section III(b)(ii)(B). These provisions are consistent with ownership and voting limits approved by the Commission for other SROs. See, e.g., Sapphire Order, MEMX Order, LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order, *supra* note 57, IEX Order, *supra* note 65, ISE Mercury Order and ISE Gemini Order, *supra* note 75; and Securities Exchange Act Release No. 61698 (Mar. 12, 2010), 75 FR 13151 (Mar. 18, 2010) (File Nos. 10-194 and 10-196) (order approving DirectEdge exchanges) (“DirectEdge Exchanges Order”).

⁸⁵ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(b)(ii).

⁸⁶ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(d).

⁸⁷ See *id.*

or a change in the number of Units outstanding), of record or beneficially 5% or more of the then outstanding Units will be required to notify the 24X Bermuda Board of Managers in writing of such ownership.⁸⁸ Thereafter, such persons will be required to update 24X Bermuda of any increase or decrease of 1% or more in their previously reported ownership percentage.⁸⁹

The 24X LLC Agreement does not include change of control provisions that are similar to those in the 24X Bermuda LLC Agreement and the 24X US LLC Agreement because the 24X LLC Agreement instead explicitly identifies its sole owner as 24X US, and in turn the 24X US LLC Agreement explicitly identifies 24X Bermuda as its sole owner.⁹⁰ Thus, any changes in the ownership of 24X would require the 24X LLC Agreement to be amended. Any amendment to the 24X LLC Agreement, including to ownership of 24X, would constitute a proposed rule change under Section 19(b) of the Exchange Act⁹¹ and Rule 19b-4⁹² thereunder that will be required to be filed with, or filed with and approved by, the Commission.⁹³ Moreover, pursuant to the 24X LLC Agreement, any transfer of limited liability company interests of 24X will be

⁸⁸ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(e)(i). The notice will require the Person's full legal name; the Person's title or status and the date on which such title or status was acquired; the Person's and its Related Person's) approximate ownership interest in 24X Bermuda; and whether the person has power, directly or indirectly, to direct the management or policies of 24X Bermuda, whether through ownership of securities, by contract or otherwise. See id.

⁸⁹ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(e)(ii). Changes of less than 1% must also be reported to 24X Bermuda if they result in such Person crossing a 20% or 40% ownership threshold. See id. In addition, the Exchange's rules also impose limits on affiliation between the Exchange and a Member of the Exchange. See 24X Rule 2.10 (No Affiliation between Exchange and any Member).

⁹⁰ See 24X LLC Agreement (introductory text) and Second Amended and Restated Limited Liability Company Agreement of 24X US (introductory text).

⁹¹ 15 U.S.C. 78s(b).

⁹² 17 CFR 240.19b-4.

⁹³ See 24X LLC Agreement, Article X, Section 10.3.

subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Exchange Act.⁹⁴

Although 24X Bermuda is not directly responsible for regulation, its activities with respect to the operation of 24X must be consistent with, and must not interfere with, the self-regulatory obligations of 24X.⁹⁵ As described above, the provisions applicable to changes in control of 24X Bermuda (through changes in ownership of Units in 24X Bermuda) as well as the Voting Limitation imposed on owners of 24X Bermuda who also are Exchange Members, are designed to help prevent any owner of 24X Bermuda from exercising undue influence or control, either direct or indirect, over the operation of the Exchange and to help ensure that the Exchange retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Exchange Act.

In addition, these limitations are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange. As the Commission has stated in the past, an exchange member's ownership interest in an entity that controls an exchange could become so large as to cast doubt on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.⁹⁶ An exchange member that is a controlling shareholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently monitor and conduct surveillance of the member's conduct or diligently enforce the

⁹⁴ See 24X LLC Agreement, Article V, Section 5.2(a).

⁹⁵ See, e.g., Sapphire Order, supra note 57, IEX Order, supra note 65.

⁹⁶ See, e.g., Sapphire Order, MEMX Order, LTSE Order, MIAx PEARL Order, MIAx Order, and BATS Order, supra note 57, ISE Mercury Order, supra note 75, IEX Order, supra note 65; and DirectEdge Exchanges Order, supra note 84.

exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these requirements are designed to minimize the potential that a person or entity can improperly interfere with or restrict the ability of the Exchange to effectively carry out its regulatory oversight responsibilities under the Exchange Act.

The Commission received one comment addressing the governance structure proposed by 24X.⁹⁷ This commenter stated 24X's ownership and voting structure "facially violate Commission Rules and the law."⁹⁸ According to this commenter "[24X] asserts that if the Commission approves its application, it has internal company documents that promise (to itself) that it will come into compliance with the law and Commission Rules within nine months of the approval. It is unclear whether or how this promise for future compliance would be enforceable, much less by whom."⁹⁹

In response to the commenter's concern about 24X's ownership and voting structure, 24X explained that "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."¹⁰⁰ 24X stated that "[t]he only exception to such limitations is a request for a very brief, temporary exemption from certain ownership and voting limitation[s]."¹⁰¹

⁹⁷ See Healthy Markets Letter at 2-6.

⁹⁸ Id. at 2.

⁹⁹ Id.

¹⁰⁰ 24X Letter II at 16.

¹⁰¹ Id. See also infra section III.B.1.a.

24X's and 24X Bermuda's proposed governance provisions are consistent with the Exchange Act, including Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act.¹⁰² In particular, these requirements are designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or 24X to effectively carry out their regulatory oversight responsibilities under the Exchange Act.

24X has proposed ownership and voting limitations in Article 9, Section 9.2 of the 24X Bermuda LLC Agreement that are consistent with the ownership and voting limitations in place across all other national securities exchanges,¹⁰³ and thus are designed to enable 24X to meet its obligations under the Exchange Act.

a. Temporary Exemption

24X proposes that Dmitri Galinov and his Related Persons¹⁰⁴ have a temporary exemption from the ownership limitation set forth in Section 9.2 of the 24X Bermuda LLC Agreement until nine (9) months after the Commission grants 24X's application for registration as a national securities exchange or until 24X commences operation, if later than nine (9) months.¹⁰⁵ Further, 24X proposes in the 24X Bermuda LLC Agreement that if Dmitri Galinov and his Related Persons do not comply with the ownership limitation in Section 9.2 of the 24X

¹⁰² 15 U.S.C. 78f(b)(1).

¹⁰³ See supra note 75.

¹⁰⁴ See infra notes 108 - 110 and accompanying text for a description of the Related Persons of Dmitri Galinov.

¹⁰⁵ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(g)(i). While 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(ii) sets forth an ownership restriction that applies to 24X Exchange Members, this provision does not apply to Mr. Galinov; the ownership limitation that does apply to Dmitri Galinov and his Related Persons is set forth in 24X Bermuda LLC Agreement, Article 9, Section 9.2(a)(i).

Bermuda LLC Agreement within the applicable time period, then 24X Bermuda shall redeem all of the Units the holding of which by Dmitri Galinov and/or his Related Persons results in a violation of Section 9.2 for a price per Unit, as applicable, equal to the lesser of (a) book value or (b) Fair Market Value of such Units.¹⁰⁶ 24X also proposes that Dmitri Galinov and his Related Persons shall have a temporary exemption from the Voting Limitation set forth in Section 9.2 of the 24X Bermuda LLC Agreement until nine (9) months after the Commission grants 24X's application for registration as a national securities exchange or until 24X commences operation, if later than nine (9) months, but only with respect to any vote regarding any merger, consolidation or dissolution of the 24X Bermuda or any sale of all or substantially all of the assets of the 24X Bermuda.¹⁰⁷

Exhibit K of 24X's Form 1 application provides that "Dmitri Galinov owns 7,000,000 Common Units and 179,215 Seed-3 Preferred Units, for a total of 7,179,215 Units for all classes outstanding,"¹⁰⁸ and that "Dmitri Galinov is a Related Person of KNG CAPITAL LLC, Tanya Nazarov-Kenneally, and Vladimir Nazarov. KNG CAPITAL LLC owns 320,616 Seed-1 Preferred Units, which represents 1.85% of all classes of outstanding Units. Tanya Nazarov-Kenneally owns 1794 Seed-3 Preferred Units, which represents 0.01% of all classes of outstanding Units. Vladimir Nazarov owns 7176 Seed-3 Preferred Units, which represents 0.04% of all classes of outstanding Units."¹⁰⁹ Accordingly, Exhibit K states that "on an

¹⁰⁶ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(g)(i).

¹⁰⁷ See 24X Bermuda LLC Agreement, Article 9, Section 9.2(g)(ii).

¹⁰⁸ See Exhibit K, footnote 2.

¹⁰⁹ Id.

aggregate basis, Dmitri Galinov, together with his Related Persons, owns 43.29% of the Units of all classes of outstanding Units.”¹¹⁰

In a letter, 24X stated that the temporary exemption would provide it with a brief period to bring its ownership and voting structure in line with the ownership and voting restrictions upon SEC approval.¹¹¹ 24X also stated that the Commission had granted “prior exchange applications with such limited exceptions to the ownership and voting restrictions.”¹¹²

The Commission finds that the limited temporary exemption in Article 9, Section 9.2(g) of the 24X Bermuda LLC Agreement from the ownership limitation and Voting Limitation set forth in Article 9, Section 9.2 of the 24X Bermuda LLC Agreement for Dmitri Galinov and his Related Persons is consistent with the Exchange Act. As discussed above, the ownership limitation and Voting limitation are designed to prevent any party from exercising undue control over the operation of the 24X and ensure that 24X is able to carry out its regulatory obligations under the Exchange Act. The exemption is designed to prevent Dmitri Galinov and his Related Persons from exercising undue control over 24X and minimize the possibility that 24X’s ability to carry out its self-regulatory responsibilities under the Exchange Act could be impaired. Specifically, the exemption is for a defined period of time that is based on 24X’s approval as a national securities exchange or commencement of its exchange operations. Thus, the exemption is designed to ensure that once 24X is a self-regulatory organization (“SRO”), the exemption will terminate within a specified period of time. In addition, the exemption from the Voting Limitation applies

¹¹⁰ Id.

¹¹¹ See 24X Letter II at 16.

¹¹² Id. 24X cited Securities Exchange Act Release No. 42455 (Feb. 24, 2000) as support for its statement.

only with respect to the limited situations involving any merger, consolidation or dissolution of the 24X Bermuda or any sale of all or substantially all of the assets of the 24X Bermuda that will not permit undue control over 24X or impair the regulatory responsibilities of 24X. The temporary exemption is designed to afford Dmitri Galinov and his Related Persons the ability to protect the investment they have already made in the establishment of 24X that is over the current ownership limitation, represented by 24X to be 3.29% of the Units of all outstanding Units.¹¹³

As part of its Form 1 application, 24X also has included in the 24X Bermuda LLC Agreement a representation that 24X Bermuda will redeem all of the Units the holding of which by Dmitri Galinov and/or his Related Persons results in a violation of the applicable 40% ownership limitation for a price per Unit, as applicable, equal to the lesser of (a) book value or (b) Fair Market Value of such Units. The 24X Bermuda LLC Agreement further provides that such redemption shall occur nine (9) months after the date of approval by the Commission of 24X's Form 1 application or until commencement of the operation of 24X, if later than nine (9) months. Thus, in response to the commenter, 24X has established a mechanism to ensure compliance with the ownership limitation and Voting Limitation set forth in the 24X Bermuda LLC Agreement upon expiration of the stated time period. 24X Bermuda's Managers and

¹¹³ See Exhibit K, footnote 2. The Commission has approved other temporary exemptions from the ownership or voting limitations included in the governance documents of owners of a national securities exchange. See Securities Exchange Act Release No. 49067 (Jan. 13, 2004), 69 FR 2761 (Jan. 20, 2004)(order granting approval to a proposed rule change by the Boston Stock Exchange Inc. Relating to the LLC Operating Agreement of the Proposed New Exchange Facility to be Operated by the Boston Options Exchange Group LLC)(approval of an exemption from a voting limitation for a period of 10 years for an owner of the BOX facility). See also Securities Exchange Act Release No. 42455 (Feb. 24, 2000), 65 FR 11388 (Mar. 2, 2000) (File No. 10-127) (order granting registration of the International Securities Exchange LLC)(approval of an exemption from an ownership limitation for period of 10 years for certain founders of the exchange).

officers must comply with the federal securities laws and the rules and regulations promulgated thereunder and are deemed to agree to cooperate with the Commission and 24X in respect of the Commission's oversight responsibilities regarding 24X and the self-regulatory functions and responsibilities of 24X.¹¹⁴ Therefore, should there be a need to pursue enforcement of the redemption requirement required of 24X Bermuda, 24X Bermuda's Managers and officers must comply with the obligation and must cooperate with those efforts by the Commission and 24X to ensure that such redemption occurs. Finally, should 24X Bermuda not redeem the Units owned by Dmitri Galinov and his Related Persons within the specified time period, the Commission may take action against 24X under Section 19(h) of the Exchange Act.¹¹⁵

2. Regulatory Independence and Oversight

Although 24X Bermuda will not itself carry out regulatory functions, its activities with respect to the operation of 24X must be consistent with, and must not interfere with, 24X's self-regulatory obligations. In this regard, 24X and 24X Bermuda propose to adopt certain provisions in their respective governing documents that are designed to help maintain the independence of the regulatory functions of 24X. These proposed provisions are substantially similar to those included in the governing documents of other exchanges that recently have been granted registration.¹¹⁶ Specifically:

- the managers, officers, employees, and agents of 24X Bermuda must give due regard to the preservation of the independence of the self-regulatory function of

¹¹⁴ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(b).

¹¹⁵ See infra Section III.B.2.

¹¹⁶ See, e.g., Sapphire Order, MEMX Order, LTSE Order, MIAAX Order, supra note 57, IEX Order, supra note 65; and DirectEdge Exchanges Order, supra note 84.

24X and to its obligations to investors and the general public and must not take actions which would interfere with the effectuation of decisions by the Exchange Board relating to its regulatory functions (including disciplinary matters) or which would interfere with 24X's ability to carry out its responsibilities under the Exchange Act.¹¹⁷

- 24X Bermuda must comply with the federal securities laws and the rules and regulations promulgated thereunder, and must cooperate with the Commission, 24X, Financial Industry Regulatory Authority, Inc. ("FINRA"), and any other SRO of which any routing broker for 24X is a member, pursuant to and to the extent of their respective regulatory authority.¹¹⁸ In addition, 24X Bermuda's managers, officers, employees, and agents must comply with the federal securities laws and the rules and regulations promulgated thereunder and are deemed to agree to cooperate with: (1) the Commission and 24X in respect of the Commission's oversight responsibilities regarding 24X and the self-regulatory functions and responsibilities of 24X; and (2) FINRA, any other SROs of which

¹¹⁷ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(a). Similarly, Article VI, Section 6.1(a)(ii) of the 24X LLC Agreement requires the Exchange Board and each Director, when managing the business and affairs of 24X, to consider the requirements of Section 6(b) of the Exchange Act and requires each Director, officer, or employee of 24X to comply with the federal securities laws and regulations thereunder and cooperate with the Commission, and 24X pursuant to its regulatory authority. Article VI, Section 6.1(a)(iii) of the 24X LLC Agreement also requires the Exchange Board, when evaluating any proposal to take into account all factors that the Exchange Board deems relevant, including, without limitation, to the extent deemed relevant: the potential impact on the integrity, continuity and stability of the national securities exchange operated by 24X and the other operations of 24X, on the ability to prevent fraudulent and manipulative acts and practices, and on investors and the public, and whether such proposal would promote just and equitable principles of trade, foster cooperation and coordination with Persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

¹¹⁸ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(b).

any routing broker of 24X is a member, and any routing broker of 24X in respect of FINRA's and any such other SRO's oversight responsibilities regarding any routing broker of 24X, as applicable.¹¹⁹ 24X Bermuda shall take reasonable steps necessary to cause its managers, officers, employees and agents to so cooperate.¹²⁰

- 24X Bermuda, and its managers, officers, employees, and agents must submit to the jurisdiction of the U.S. federal courts, the Commission, and 24X, for purposes of any suit, action or proceeding pursuant to the U.S. federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, 24X activities.¹²¹
- All books and records of 24X reflecting confidential information pertaining to the self-regulatory function of 24X (including but not limited to disciplinary matters, trading data, trading practices, and audit information) must be retained in confidence by 24X and its personnel, including its Directors, officers, employees, and agents, and will not be used by 24X for any non-regulatory purposes and shall not be made available to any person (including, without limitation, any Exchange Member) other than personnel of the SEC, and those personnel of 24X, members of Committees, members of the 24X Board, hearing officers and other agents of 24X to the extent necessary or appropriate to properly discharge the self-

¹¹⁹ See id.

¹²⁰ See id.

¹²¹ See 24X Bermuda LLC Agreement, Article 3, Section 3.4(c).

regulatory responsibilities of 24X.¹²² Similar provisions apply to 24X Bermuda and its personnel, managers, officers, employees, and agents.¹²³

- The books and records of 24X and 24X Bermuda must be maintained in the United States¹²⁴ and, to the extent they are related to the operation or administration of 24X, 24X Bermuda's books and records will be subject at all times to inspection and copying by the Commission and 24X.¹²⁵
- Furthermore, to the extent 24X Bermuda's corporate, financial and similar records, reports and documents, including all financial statements, books and records and minutes of proceedings, are related to the activities of 24X, such corporate, financial and similar records, reports and documents, including all financial statements, books and records and minutes of proceedings, as well as premises, managers, officers, employees and agents of 24X Bermuda shall be deemed to be the corporate, financial and similar records, reports and documents, including all financial statements, books and records and minutes of proceedings,

¹²² See 24X LLC Agreement, Article IX, Section 9.2.

¹²³ The 24X Bermuda LLC Agreement provides that all books and records of 24X reflecting confidential information pertaining to the self-regulatory function of 24X that come into the possession of 24X Bermuda, and the information contained in those books and records, will be subject to confidentiality restrictions and will not be used for any non-regulatory purposes. See 24X Bermuda LLC Agreement, Article 12, Section 12.2(c). The 24X and 24X Bermuda governing documents acknowledge that requirements to keep such information confidential shall not limit or impede the rights of the Commission to access and examine such information or limit the ability of Directors, Officers, employees, or agents of 24X to disclose such information to the Commission, or the manager, officers, employees or agents of 24X Bermuda to disclose such information to the Commission or 24X. See 24X LLC Agreement, Article IX, Section 9.2 and 24X Bermuda LLC Agreement, Article 12, Section 12.2(c).

¹²⁴ See 24X LLC Agreement, Article IX, Section 9.2; and 24X Bermuda LLC Agreement, Article 12, Section 12.2(b).

¹²⁵ See 24X Bermuda LLC Agreement, Article 12, Section 12.2(b).

as well as premises, managers, officers, employees or agents, as applicable, of 24X for the purposes of, and subject to oversight pursuant to, the Exchange Act.¹²⁶

- 24X Bermuda will take reasonable steps necessary to cause its manager, officers, employees, and agents, prior to accepting a position as a manager, officer, employee or agent (as applicable) with 24X Bermuda to consent in writing to the applicability of provisions regarding non-interference, confidentiality, books and records, compliance and cooperation, jurisdiction, and regulatory obligations, with respect to their activities related to 24X.¹²⁷
- The 24X Bermuda LLC Agreement requires that, so long as 24X Bermuda controls 24X, any changes to that document must be submitted to the Exchange Board for approval, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the Exchange Act and the rules and regulations thereunder, such change shall not be effective until filed with and effective by operation of law, or filed with, and approved by, the Commission.¹²⁸

The provisions discussed in this section, which are designed to help ensure the independence of 24X's regulatory function and facilitate the ability of 24X to carry out its regulatory responsibilities under, and operate in a manner consistent with, the Exchange Act, are appropriate and consistent with the requirements of the Exchange Act, particularly with

¹²⁶ See 24X Bermuda LLC Agreement, Article 12, Section 12.2(a).

¹²⁷ See 24X Bermuda LLC Agreement, Article 3, Section 3.2.

¹²⁸ See 24X Bermuda LLC Agreement, Article 12, Section 12.10(b).

Section 6(b)(1), which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act.¹²⁹

Further, Section 19(h)(1) of the Exchange Act¹³⁰ provides the Commission with the authority “to suspend for a period not exceeding twelve months or revoke the registration of [an SRO], or to censure or impose limitations upon the activities, functions, and operations of [an SRO], if [the Commission] finds, on the record after notice and opportunity for hearing, that [the SRO] has violated or is unable to comply with any provision of the Exchange Act, the rules or regulations thereunder, or its own rules or without reasonable justification or excuse has failed to enforce compliance . . . ” with any such provision by its members (including associated persons thereof). If the Commission were to find, or become aware of, through staff review and inspection or otherwise, facts indicating any violations of the Exchange Act, including without limitation Sections 6(b)(1) and 19(g)(1),¹³¹ these matters could provide the basis for a disciplinary proceeding under Section 19(h)(1) of the Exchange Act.¹³²

Even in the absence of the governance provisions described above, under Section 20(a) of the Exchange Act,¹³³ any person with a controlling interest in 24X would be jointly and severally liable with and to the same extent that 24X is liable under any provision of the Exchange Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Exchange

¹²⁹ 15 U.S.C. 78f(b)(1).

¹³⁰ See 15 U.S.C. 78s(h)(1).

¹³¹ 15 U.S.C. 78f(b)(1); 15 U.S.C. 78s(g)(1).

¹³² 15 U.S.C. 78s(h)(1).

¹³³ 15 U.S.C. 78t(a).

Act¹³⁴ creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Exchange Act or rule thereunder. Further, Section 21C of the Exchange Act¹³⁵ authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Exchange Act through an act or omission that the person knew or should have known would contribute to the violation. These provisions are applicable to 24X Bermuda.

3. Regulatory Oversight Committee

The regulatory operations of 24X will be monitored by the Regulatory Oversight Committee of the Exchange Board. As mentioned above, the Regulatory Oversight Committee will consist only of Independent Directors.¹³⁶ The Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of 24X’s regulatory and SRO responsibilities, assessing 24X’s regulatory performance, and assisting the 24X Board (and committees of the 24X Board) in reviewing 24X’s regulatory plan and the overall effectiveness of 24X’s regulatory functions.¹³⁷

Further, the Chief Regulatory Officer (“CRO”) of 24X will have general supervision over 24X’s regulatory operations, including responsibility for overseeing 24X’s surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which 24X is a party.¹³⁸ The Regulatory Oversight Committee,

¹³⁴ 15 U.S.C. 78t(e).

¹³⁵ 15 U.S.C. 78u-3.

¹³⁶ See supra note 61 and accompanying text.

¹³⁷ See 24X LLC Agreement, Article VI, Section 6.2(h)(i).

¹³⁸ See 24X LLC Agreement, Article VIII, Section 8.5.

in consultation with the Chief Executive Officer of 24X, will be responsible for establishing the goals, assessing the performance, and fixing the compensation of the CRO and for recommending personnel actions involving the CRO and senior regulatory personnel.¹³⁹

C. Regulatory Funding and Services

As a prerequisite for the Commission's granting of an exchange's application for registration, an exchange must be organized and have the capacity to carry out the purposes of the Exchange Act.¹⁴⁰ Specifically, an exchange must be able to enforce compliance by its members, and persons associated with its members, with the federal securities laws and rules thereunder and the rules of the exchange.¹⁴¹ The discussion below summarizes how 24X proposes to conduct and structure its regulatory operations.

1. Regulatory Funding

To help ensure that 24X has and will continue to have adequate funding to be able to meet its responsibilities under the Exchange Act, 24X stated that, if the Commission approves 24X's application for registration as a national securities exchange, 24X Bermuda, through 24X US, will allocate sufficient assets to 24X to enable the Exchange's operation.¹⁴² Specifically, 24X stated that 24X Bermuda shall make prior to the launch of the Exchange a cash contribution

¹³⁹ See 24X LLC Agreement, Article VI, Section 6.2(h)(iii). To the extent that the Chief Executive Officer of 24X has any indirect supervisory responsibility for the role or function of the CRO, including implementation of the budget for the regulatory function or regulatory personnel matters, the Regulatory Oversight Committee shall take all steps reasonably necessary to ensure that the Chief Executive Officer does not compromise the regulatory autonomy and independence of the Chief Regulatory Officer or the regulatory function. See 24X LLC Agreement, Article VI, Section 6.2(h)(4).

¹⁴⁰ See 15 U.S.C. 78f(b)(1).

¹⁴¹ See *id.* See also Section 19(g) of the Exchange Act, 15 U.S.C. 78s(g).

¹⁴² See Form 1, Exhibit I.

of \$5 million (in addition to any previously provided in-kind contributions, such as legal, regulatory, and infrastructure-related services) to 24X US. In turn, 24X US will make a corresponding cash contribution of \$5 million (in addition to any previously provided in-kind contributions, such as legal, regulatory, and infrastructure-related services) to the Exchange. The Exchange represented that such cash and in-kind contributions will be adequate to operate the Exchange, including the regulation of the Exchange.¹⁴³

24X also represented that there will be a written agreement among 24X Bermuda, 24X US and 24X that requires 24X Bermuda and 24X US to provide adequate funding for the Exchange's operations, including the regulation of the Exchange.¹⁴⁴ Further, 24X stated that the agreement will provide that 24X will receive all fees, including regulatory fees and trading fees payable by the Exchange's members as well as any funds received from any market data fees and tape revenue. In addition, the agreement will provide that 24X Bermuda and 24X US will reimburse 24X for its costs and expenses to the extent that 24X's assets are insufficient to meet its costs and expenses.

Further, the 24X LLC Agreement requires that any Regulatory Funds received by 24X shall not be used for non-regulatory purposes or distributed, advanced or allocated to any Company Member,¹⁴⁵ but rather, shall be applied to fund regulatory operations of the 24X (including surveillance and enforcement activities), or, as the case may be, shall be used to pay

¹⁴³ See id.

¹⁴⁴ See id.

¹⁴⁵ Under the 24X LLC Agreement, the Company Member is 24X US.

restitution and disgorgement of funds intended for customers.¹⁴⁶ Excess non-regulatory funds, as solely determined by the 24X, will be remitted to 24X US in accordance with the 24X LLC Agreement.¹⁴⁷

One commenter stated that 24X did not provide audited financial statements.¹⁴⁸ 24X stated that it believed that it complied with the requirements of Exhibit I regarding financial statements because while 24X has been formed it has not commenced operations and does not have audited financial statements for any fiscal year.¹⁴⁹ 24X also stated that the approach it has taken with regard to Exhibit I is consistent with prior exchange applications that have been approved by the SEC based on the same provided information.¹⁵⁰

The 24X Form 1 provides the Commission with information necessary to make a finding that 24X will operate consistent with its obligations under the Exchange Act.¹⁵¹ 24X has filed financial information about how it intends to fund its operations and has filed financial information in Exhibit D about its owners, 24X Bermuda and 24X US. Exhibit I of Form 1 requires that the applicant submit “[f]or the latest fiscal year of the applicant, audited financial statements which are prepared in accordance with, or in the case of a foreign applicant,

¹⁴⁶ See 24X LLC Agreement, Article XI, Section 11.4(b). “Regulatory Funds” in the 24X LLC Agreement means “fees, fines or penalties derived from the regulatory operations of the Company. “Regulatory Funds” shall not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of the Company, even if a portion of such revenues are used to pay costs associated with the regulatory operations of the Company.” Article I, II of the 24X LLC Agreement. This definition is consistent with the rules of other SROs. See, e.g., LTSE Bylaws, Article I(bb); Amended and Restated By-Laws of MIAX Exchange, Article I(II); By-Laws of NASDAQ PHLX LLC, Article I(ii); By-Laws of NASDAQ BX, Inc., Article I(ii). See also 24X Rule 15.2.

¹⁴⁷ See Form 1, Exhibit I.

¹⁴⁸ See Healthy Markets Letter at 2.

¹⁴⁹ See 24X Letter II at 16.

¹⁵⁰ Id.

¹⁵¹ 15 U.S.C. 78f(b)(1).

reconciled with, United States generally accepted accounting principles, and are covered by a report prepared by an independent public accountant.”¹⁵² 24X has not provided audited financial statements nor the report prepared by an independent public accountant because, as it stated in the Form 1, the “Exchange has been formed but has not commenced operations and does not yet have audited financial statements for any fiscal year.”¹⁵³ As stated in the instructions for Form 1, “Form 1 is designed to enable the Commission to determine whether an exchange applying for registration is in compliance with the provisions of Sections 6¹⁵⁴ and 19¹⁵⁵ of the Exchange Act.”¹⁵⁶ In this case, the applicant exchange has no past operations or activity. Moreover, the Commission has approved prior Form 1 applications with similar circumstances.¹⁵⁷ In addition, pursuant to Rule 6a-2(b)(1) of the Exchange Act,¹⁵⁸ as a registered national securities exchange, 24X must file an amendment to its Form 1 application. Exhibits D and I must be filed on or before June 30 of each year and include audited financial information as of the end of the latest

¹⁵² 17 CFR 249.1.

¹⁵³ See Form 1, Exhibit I.

¹⁵⁴ 15 U.S.C. 78f.

¹⁵⁵ 15 U.S.C. 78s.

¹⁵⁶ 17 CFR 249.1.

¹⁵⁷ See e.g., Exhibit I for MIAx Sapphire, LLC Form 1 Application and Exhibits, [available at https://www.sec.gov/files/rules/other/2023/exhibit-i.pdf](https://www.sec.gov/files/rules/other/2023/exhibit-i.pdf) (stating that applicant MIAx Sapphire, LLC has been formed but has not commenced operations and does not yet have audited financial statements for any fiscal year); Exhibit I for MEMX LLC Form 1 Application and Exhibits, [available at https://www.sec.gov/files/rules/other/2019/memx/exhibit-i.pdf](https://www.sec.gov/files/rules/other/2019/memx/exhibit-i.pdf) (stating that applicant MEMX LLC has been formed but has not commenced operations and so does not yet have audited financial statements for any fiscal year).

¹⁵⁸ 17 CFR 240.6a-2(b)(1).

fiscal year of the Exchange; thus, the Commission and the public will be informed of 24X’s financial activity going forward.¹⁵⁹

2. Regulatory Contract with FINRA

Although 24X will be an SRO with all of the attendant regulatory obligations under the Exchange Act, it has represented to the Commission that it intends to enter into a regulatory services agreement (“RSA”) with FINRA, under which FINRA as a regulatory services provider will perform certain regulatory functions on 24X’s behalf.¹⁶⁰ Specifically, 24X expects that such services will include the performance of investigation, disciplinary, and hearing services.¹⁶¹ Notwithstanding the RSA, 24X will retain legal responsibility for the regulation of its members and its market and the performance of FINRA as its regulatory services provider. Because 24X anticipates entering into an RSA with FINRA, it has not made provisions to fulfill the regulatory services that will be undertaken by FINRA. Accordingly, the Commission is conditioning the operation of 24X on a final RSA that specifies the services that will be provided to 24X.

It is consistent with the Exchange Act for 24X to contract with FINRA to perform certain examination, enforcement, and disciplinary functions.¹⁶² These functions are fundamental elements of a regulatory program and constitute core self-regulatory functions. FINRA has the

¹⁵⁹ Form 1 filings are made available to the public. See Securities Exchange Act Release No. 97182 (Mar. 22, 2023), 88 FR 23920, 23928 (Apr. 18, 2023).

¹⁶⁰ See Form 1, Exhibit L. See also 24X Rules 9.8 and 13.7.

¹⁶¹ See Form 1, Exhibit L.

¹⁶² For example, LTSE, MEMX Exchange, IEX, MIAX Exchange, MIAX PEARL, LLC, Nasdaq MRX, LLC, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc. (“Cboe EDGX”), and Cboe BZX Exchange, Inc. (“Cboe BZX”) have entered into RSAs with FINRA.

expertise and experience to perform these functions for 24X.¹⁶³ However, 24X, unless relieved by the Commission of its responsibility, bears the self-regulatory responsibilities and primary liability for self-regulatory failures, not the SRO retained to perform regulatory functions on 24X's behalf.¹⁶⁴ In performing these regulatory functions, however, FINRA may nonetheless bear liability for causing or aiding and abetting the failure of 24X to perform its regulatory functions.¹⁶⁵ Accordingly, although FINRA will not act on its own behalf under its SRO responsibilities in carrying out these regulatory services for 24X, FINRA may have secondary liability if, for example, the Commission finds that the contracted functions are being performed so inadequately as to cause a violation of the federal securities laws or rules thereunder by 24X.¹⁶⁶

3. Rule 17d-2 Agreements

Section 19(g)(1) of the Exchange Act,¹⁶⁷ among other things, requires every SRO registered as either a national securities exchange or national securities association to comply with the Exchange Act, the rules and regulations thereunder, and the SRO's own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons

¹⁶³ See, e.g., MEMX Order, supra note 57; LTSE Order, supra note 57; IEX Order, supra note 65; DirectEdge Exchanges Order, supra note 84; Nasdaq Order, supra note 57. The Commission is not approving the RSA or any of its specific terms.

¹⁶⁴ See 15 U.S.C. 78s(g)(1).

¹⁶⁵ For example, if failings by FINRA have the effect of leaving 24X in violation of any aspect of 24X's self-regulatory obligations, 24X would bear direct liability for the violation, while FINRA may bear liability for causing or aiding and abetting the violation. See, e.g., MEMX Order, supra note 57; LTSE Order, supra note 57; IEX Order, supra note 65; Nasdaq Order, supra note 57; BATS Order, supra note 57; DirectEdge Exchanges Order, supra note 84.

¹⁶⁶ See, e.g., MEMX Order, supra note 57; LTSE Order, supra note 57; IEX Order, supra note 65; and Nasdaq Order, supra note 57.

¹⁶⁷ 15 U.S.C. 78s(g)(1).

associated with its members.¹⁶⁸ Rule 17d-2 of the Exchange Act permits SROs to propose joint plans to allocate regulatory responsibilities amongst themselves for their common rules with respect to their common members.¹⁶⁹ These agreements, which must be filed with and declared effective by the Commission, generally cover areas where each SRO's rules substantively overlap, including such regulatory functions as personnel registration and sales practices. For example, the Commission declared effective a plan to allocate regulatory responsibilities between FINRA and LTSE pursuant to which FINRA assumes examination and enforcement responsibility for broker-dealers that are members of both FINRA and LTSE with respect to the rules of LTSE that are substantially similar to the applicable rules of FINRA, as well as certain specified provisions of the federal securities laws.¹⁷⁰

A Rule 17d-2 plan that is declared effective by the Commission relieves the specified SRO of those regulatory responsibilities allocated by the plan to another SRO.¹⁷¹ 24X has

¹⁶⁸ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

¹⁶⁹ See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Exchange Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO ("common members"). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Exchange Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

¹⁷⁰ See Securities Exchange Act Release No. 86587 (Aug. 7, 2019), 84 FR 39883 (Aug. 12, 2019) (File No. 4-747). See also, e.g., Securities Exchange Act Release Nos. 83696 (July 24, 2018), 83 FR 35682 (July 27, 2018) (FINRA/MIAX Exchange/MIAX PEARL); 77321 (Mar. 8, 2016), 81 FR 13434 (Mar. 14, 2016) (File No. 4-697) (FINRA/ISE Mercury, LLC); 73641 (Nov. 19, 2014), 79 FR 70230 (Nov. 25, 2014) (File No. 4-678) (FINRA/MIAX Exchange); 70053 (July 26, 2013), 78 FR 46656 (Aug. 1, 2013) (File No. 4-663) (FINRA/Topaz Exchange n/k/a ISE Gemini, LLC); 59218 (Jan. 8, 2009), 74 FR 2143 (Jan. 14, 2009) (File No. 4-575) (FINRA/Boston Stock Exchange, Inc. ("BSE")); 58818 (Oct. 20, 2008), 73 FR 63752 (Oct. 27, 2008) (File No. 4-569) (FINRA/BATS Exchange, Inc.); 55755 (May 14, 2007), 72 FR 28087 (May 18, 2007) (File No. 4-536) (National Association of Securities Dealers, Inc. ("NASD") n/k/a FINRA and Chicago Board of Options Exchange, Inc. concerning the CBOE Stock Exchange, LLC); 55367 (Feb. 27, 2007), 72 FR 9983 (Mar. 6, 2007) (File No. 4-529) (NASD/International Securities Exchange, LLC); 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006) (File No. 4-517) (NASD/Nasdaq).

¹⁷¹ See supra notes 169-170 and accompanying text.

represented to the Commission that it will join all applicable plans, including Rule 17d-2 plans for the allocation of regulatory responsibilities.¹⁷² Similar to other exchanges, the Commission understands from 24X that it will enter into a bilateral Rule 17d-2 agreement covering common members of 24X and FINRA. This agreement will allocate to FINRA regulatory responsibility, with respect to common members, for specified regulatory and enforcement matters arising out of specified common rules and specified provisions of the Exchange Act and the rules and regulations thereunder. In addition, the Commission is conditioning operation of 24X as an exchange on 24X first joining the applicable multilateral Rule 17d-2 plans, including the multi-party Rule 17d-2 plan for the allocation of regulatory responsibilities with respect to certain Regulation NMS and Consolidated Audit Trail Rules and the multi-party Rule 17d-2 plan for the surveillance, investigation, and enforcement of common insider trading rules.¹⁷³

Because 24X anticipates entering into these Rule 17d-2 agreements, it has not made provision to fulfill the regulatory obligations that will be undertaken by FINRA and other SROs under these agreements with respect to common members.¹⁷⁴ Accordingly, the Commission is conditioning the operation of 24X on approval by the Commission of a Rule 17d-2 agreement

¹⁷² See Form 1, Exhibit E.

¹⁷³ See Securities Exchange Act Release Nos. 88366 (Mar. 12, 2020), 85 FR 15238 (Mar. 17, 2020) (File No. 4-618) (order approving and declaring effective a proposed amendment to the multi-party Rule 17d-2 plan relating to covered Regulation NMS and Consolidated Audit Trail Rules); 86542 (Aug. 1, 2019), 84 FR 38679 (Aug. 7, 2019) (File No. 4-566) (notice of filing and order approving and declaring effective an amendment to the multi-party Rule 17d-2 plan relating to the surveillance, investigation, and enforcement of insider trading rules).

¹⁷⁴ For common members, the regulatory obligations will be covered by the Rule 17d-2 agreements, and for 24X Exchange Members that are not also members of FINRA, the regulatory obligations will be covered by the RSA.

that allocates the above specified matters to FINRA, and the approval of an amendment to the existing multi-party Rule 17d-2 plans specified above to add 24X as a party.

D. 24X Trading System

1. Overview of Trading System¹⁷⁵

24X proposes to operate a fully automated electronic trading platform¹⁷⁶ for the trading of listed NMS stocks¹⁷⁷ pursuant to unlisted trading privileges (“UTP”)¹⁷⁸ 23 hours per day,¹⁷⁹ five (5) days per week, subject to certain trading pauses, as provided in the 24X rules.¹⁸⁰ Similar to other U.S. national securities exchanges, 24X will operate three different trading sessions that span from 4 a.m. to 7 p.m. on each U.S. Business Day:¹⁸¹ (1) a “Core Market Session” between 9:30 a.m. and 4 p.m.,¹⁸² (2) a “Pre-Market Session” between 4 a.m. and 9:30 a.m.,¹⁸³ and (3) a

¹⁷⁵ A more detailed description of the manner of operation of 24X’s trading system can be found in Form 1, Exhibit E. The proposed rulebook for 24X can be found in Exhibit B to 24X’s Form 1, and the governing documents for 24X, 24X US and 24X Bermuda can be found in Form 1, Exhibit A and Exhibit C. A complete set of forms concerning membership and access can be found in Form 1, Exhibit F.

¹⁷⁶ See Form 1, Exhibit E. See also 24X Rule 11.9(b).

¹⁷⁷ See 17 CFR 242.600(b)(55) (defining “NMS Stock”).

¹⁷⁸ See 24X Rule 14.1.

¹⁷⁹ As discussed below, 24X will pause trading from 7 p.m. until 8 p.m. Monday, Tuesday, Wednesday, and Thursday nights. See 24X Rule 11.15(c)(2). Unless otherwise noted, all times referred to in this order are Eastern Time (“ET”).

¹⁸⁰ See, e.g., 24X Rule 11.15(c); Form 1, Exhibit E-1 at 4. See also *infra* notes 329-338 (discussing 24X’s trading pauses).

¹⁸¹ See 24X Rule 1.5(l) defining “U.S. Business Day.” In addition, 24X proposes, among others, the following terms: “24X Trading Day” (see 24X Rule (1.5(b))); “Exchange Trading Hours other than the 24X Market Session” (see 24X Rule 1.5(r)); “Extended Hours Trading” (see 24X Rule 1.5(s)); “Regular Trading Hours” (see 24X Rule 1.5(dd)). 24X Rule 1.5(s) defines “Extended Hours Trading” as “trading during the Pre-Market Session, Post-Market Session and 24X Market Session.”

¹⁸² See 24X Rule 1.5(l) defining the “Core Market Session.”

¹⁸³ See 24X Rule 1.5(z) defining the “Pre-Market Session.” See, e.g., NYSE Arca, Inc., Cboe EDGX Exchange, Inc., The Nasdaq Stock Market LLC.

“Post-Market Session” between 4 p.m. and 7 p.m.¹⁸⁴ 24X also will operate a fourth trading session, the 24X Market Session,¹⁸⁵ which, as discussed in greater detail below,¹⁸⁶ will operate between 8 p.m. and 4 a.m. Sunday, Monday, Tuesday, Wednesday, and Thursday nights that precede a U.S. Business Day.¹⁸⁷

24X will not maintain a physical trading floor.¹⁸⁸ One commenter stated that the Form 1 was unclear about 24X’s physical locations.¹⁸⁹ 24X responded that it “clearly” provided information on the Form 1 execution page as well as Exhibit E.¹⁹⁰ Specifically, 24X stated that its primary address is in Connecticut and that the Exchange will operate out of a third-party data center in New Jersey, with a secondary site located in Illinois.¹⁹¹ Further, 24X stated that 24X personnel will operate out of its New York office as well as its Connecticut office.¹⁹²

The Form 1 and exhibits provide information about the location of 24X Systems and personnel. The Form 1 Execution Page states that 24X’s primary address is in Stamford,

¹⁸⁴ See 24X Rule 1.5(y) defining the “Post-Market Session.” See, also e.g., NYSE Arca, Inc., NYSE American LLC, NYSE Chicago, Inc., NYSE National, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The Nasdaq Stock Market LLC. These national securities exchanges operate post-market sessions until 8 p.m. As discussed above, 24X will end its Post-Market Session at 7 p.m.

¹⁸⁵ See 24X Rule 1.5(c) defining the “24X Market Session.”

¹⁸⁶ See infra section III.D.2.

¹⁸⁷ See 24X Rule 1.5(c). 24X initially proposed to operate the 24X Market Session on weekends and holidays as well as overnight. In Amendment No. 2, 24X revised the 24X Rule 1.5(c) definition of 24X Market Session to include only overnight hours, as discussed above, and to remove its proposal to provide trading on weekends and holidays.

¹⁸⁸ See Form 1, Exhibit E-1 at 2.

¹⁸⁹ See Healthy Markets Letter at 6.

¹⁹⁰ See 24X Letter II at 17.

¹⁹¹ Id. See also Form 1, Execution Page (listing Stamford, Connecticut as its primary address); Form 1, Exhibit E (describing the locations of its Systems and personnel); Form 1, Exhibit E-1 (describing the locations of the trading Systems).

¹⁹² See 24X Letter II at 17; see also Form 1, Exhibit E.

Connecticut. Exhibit E states that 24X will operate out of data centers in New Jersey and Illinois and that its personnel will operate out of offices in Connecticut and New York. Exhibit E-1 states that 24X's trading platform will be located in the Equinix data center in New Jersey (NY4) and that its secondary back-up data center will be located in Chicago, Illinois (CH4).¹⁹³ 24X has provided information about the location of its platform and its personnel.

Only broker-dealer members of 24X and entities that enter into market access arrangements with members (collectively "Users"¹⁹⁴) will have access to the 24X System,¹⁹⁵ and only Authorized Traders¹⁹⁶ may obtain access to the 24X System on behalf of Users.¹⁹⁷ Liquidity will be derived from quotes and orders to buy and sell submitted to 24X electronically by Exchange Members.¹⁹⁸ 24X proposes to operate a fully automated electronic limit order book with a continuous matching function¹⁹⁹ and orders resting on the book would be ranked and executed in price/time priority.²⁰⁰

¹⁹³ See also Form 1, Exhibit E.

¹⁹⁴ See 24X Rule 1.5(mm) defining "User."

¹⁹⁵ To obtain authorized access to the 24X System, each User must enter into a User Agreement with 24X. See 24X Rule 11.3(a). See also 24X Rule 1.5(hh) defining "System."

¹⁹⁶ See 24X Rule 1.5(g).

¹⁹⁷ See 24X Rule 11.4.

¹⁹⁸ 24X proposes to have one class of membership open to registered broker-dealers. See 24X Rule 2.3 (stating, in part, that "any registered broker or dealer that is and remains a member of a national securities association registered under Section 15A(a) of the Exchange Act or a member of another national securities exchange registered under Section 6(a) of the Exchange Act or any person associated with such a registered broker or dealer shall be eligible to be, and to remain, a Member").

¹⁹⁹ See Form 1, Exhibit E-1 at 2.

²⁰⁰ See 24X Rule 11.8(a) and 24X Rule 11.9(a)(4).

24X proposes certain rules to govern trading during Exchange Trading Hours other than the 24X Market Session,²⁰¹ while other rules and requirements would apply exclusively to trading during the 24X Market Session.²⁰² For example, 24X proposes to accept Market Orders,²⁰³ Limit Orders²⁰⁴ and Pegged Orders²⁰⁵ with various modifiers and time-in-force instructions, although subject to certain limitations²⁰⁶ during various trading sessions.²⁰⁷ Specifically, Market Orders would be accepted only during the Core Market Session; Pegged Orders would be accepted only during the Pre-Market Session, the Core Market Session, and the Post-Market Session; and Limit Orders would be accepted during all sessions.²⁰⁸ Further, pursuant to 24X Rule 11.16, Market Orders and Pegged Orders are not eligible for execution during the 24X Market Session. Orders may be submitted in round lots, odd lots, or mixed lots.²⁰⁹ 24X will permit orders to be entered, canceled, modified, executed on or routed away

²⁰¹ See 24X Rule 11.1(a).

²⁰² See 24X Rule 11.16(a) (stating, “[e]xcept as explicitly set forth herein, each of the rules and requirements set forth in this Chapter 11 applies to trading activity during the 24X Market Session.”). The 24X rules make specific provisions for the 24X Market Session with respect to, for example, matters such as order types permitted. See, e.g., Exhibit E-1 to 24X’s Form 1; 24X Rule 11.7.

²⁰³ 24X defines the term “Market Order,” in part, as “[a]n order to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange.” See 24X Rule 11.7(a).

²⁰⁴ 24X defines the term “Limit Order” as “[a]n order to buy or sell a stated amount of a security at a specified price or better. A marketable Limit Order is a Limit Order to buy (sell) at or above (below) the lowest (highest) Protected Offer (Protected Bid) for the security.” See 24X Rule 11.7(b).

²⁰⁵ 24X defines the term “Pegged Order,” in part, as “[a] User may indicate to peg an order to a reference price, including an instruction of Primary Peg (the NBB for buy orders and NBO for sell orders, with or without offsets) or an instruction of Midpoint Peg (the midpoint of the NBBO). The System’s calculation of the NBBO would not take into account any Pegged Orders that are resting on the 24X Book. A new timestamp is created for a Pegged Order each time it is automatically re-priced.” See 24X Rule 11.7(c).

²⁰⁶ See 24X Rule 11.7 (describing, among other things, order types eligible for the various 24X trading sessions). See also Form 1, Exhibit E-1 at 7.

²⁰⁷ See, e.g., 24X Rule 11.7; Form 1, Exhibit B.

²⁰⁸ See 24X Rule 11.7(a)(4) for Market Orders, 24X Rule 11.7(c)(4) for Pegged Orders, and 24X Rule 11.7(b) for Limit Orders.

²⁰⁹ See 24X Rule 11.6(q). See also Form 1, Exhibit E-1 at 5.

from 24X during the Pre-Market Session, the Core Market Session, and the Post-Market Session.²¹⁰ 24X would also permit orders to be entered, canceled, modified or executed on the Exchange during the 24X Market Session.²¹¹

With respect to the price of executions that would occur on the Exchange,²¹² the 24X rules are designed to comply with short sale price test restriction under Rule 201 of Regulation SHO,²¹³ the order protection requirements of Rule 611 of Regulation NMS,²¹⁴ and the National Market System Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS (“LULD Plan”).²¹⁵ 24X will permit the use of self-trade protection (“STP”) modifiers to prevent an incoming order from executing against a resting order originating from the same market participant.²¹⁶

In addition, 24X will permit firms to register as Market Makers with affirmative and negative market making obligations.²¹⁷ In particular, Market Makers will be required to maintain continuous two-sided quotes of at least 100 shares only during Regular Trading Hours.²¹⁸ While

²¹⁰ See 24X Rule 11.1(b).

²¹¹ See 24X Rule 11.1(c) (providing, in part, that “to the extent that other Trading Centers are open during the 24X Market Session, orders may be routed away to such Trading Centers during the 24X Market Session”).

²¹² As discussed above, certain rules govern trading during Exchange Trading Hours other than the 24X Market Session, while other rules and requirements apply exclusively to trading during the 24X Market Session. See *supra* note 201 and accompanying text. See also 24X Rule 11.1(a).

²¹³ See 24X Rule 11.9(a)(1). See also 24X Rule 11.9(a)(5), 24X Rule 11.23, and 24X Rule 13.2. See also *supra* section III.D.2.f.

²¹⁴ See 24X Rule 11.9(a)(2).

²¹⁵ See 24X Rule 11.9(a)(3). See also section III.D.2.b.

²¹⁶ See 24X Rule 11.9(d).

²¹⁷ See 24X Rules 11.17 through 11.20.

²¹⁸ See 24X Rule 11.20(a)(1). The term “Regular Trading Hours” is defined as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time each U.S. Business Day.” See 24X Rule 1.5(dd).

Market Makers would have no such obligations during the Pre-Market, Post-Market or 24X Market Sessions, 24X’s proposed rules relating to Market Makers are similar to the rules of other national securities exchanges, which do not extend Market Maker obligations to extended hours trading sessions.²¹⁹

In its Form 1, 24X stated that it will join and participate in any applicable national market system plan that other national securities exchanges and/or market centers have joined, including, for example, the three Equity Data Plans²²⁰ that currently govern the collection, consolidation, processing, and dissemination of core data.²²¹ 24X further states that it would “likewise join all other applicable Plans as deemed necessary and in the interest of its Users.”²²²

One commenter stated that the Exchange proposal was “somewhat vague” with regard to transaction fees and that 24X “should give a range of where fees will land compared to other exchanges.”²²³ 24X responded that its approach to fees is “typical for exchange applications” and that Exhibit E states that it “intends to establish a Fee Schedule setting forth all applicable

²¹⁹ See, e.g., MEMX Exchange Rules 11.17 through 11.20; Cboe EDGX Rules 11.17 through 11.20.

²²⁰ The three equity data plans that currently govern the collection, consolidation, processing, and dissemination of national market system data by the exclusive Securities Information Processors (“SIPs”) are (1) the Consolidated Tape Association Plan (“CTA Plan”), (2) the Consolidated Quotation Plan (“CQ Plan”), and (3) 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”). See also 24X Rule 1.5(o).

²²¹ See Form 1, Exhibit E. See also 24X Rule 11.11 (providing, in part, that 24X will report executions to the appropriate consolidated transaction reporting system “to the extent required by the Exchange Act and the rules and regulations thereunder.”). See also *infra* section III.D.2.a.i. (discussing the availability of the Equity Data Plans during the 24X Market Session).

²²² See Form 1, Exhibit E (stating, “including, but not limited to, the NMS Plan to Address Extraordinary Market Volatility (“Limit Up-Limit Down Plan”), the NMS Plan Governing the Consolidated Audit Trail (the ‘CAT NMS Plan’), the NMS Plan for the Selection and Reservation of Securities Symbols, and the 17d-2 Plans for Allocation of Regulatory Responsibilities”).

²²³ See Montone Letter at 9.

transaction and other fees . . . close to launch of the Exchange” so that the fees reflect the “competitive landscape at that time.”²²⁴

Form 1 requires an applicant to provide a description of proposed fees.²²⁵ In its Exhibit E, 24X described its proposed fees, including transaction fees, membership fees, regulatory charges, permit application fees, market data fees, co-location fees, connectivity fees, and bandwidth fees.²²⁶ Further, 24X Rule 15.1, which establishes the Exchange’s authority to impose fees, dues, assessments and other charges that 24X may prescribe, lists the following fees that 24X will impose: “membership dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine.”²²⁷ 24X also stated that it intends to establish a fee schedule that sets forth all fees, and that the actual fee amounts and types will be determined at a time closer to launch.²²⁸

24X’s Form 1 satisfies the requirements of the Form 1 as it describes the fees that 24X may prescribe. However, any fees, dues or other charges that 24X intends to assess must be filed as a proposed rule change pursuant to Section 19(b) of the Exchange Act²²⁹ and Rule 19b-4 thereunder.²³⁰ Exchange fees are subject to the requirements of the Exchange Act, including Sections 6(b)(4) and 6(b)(5).²³¹

²²⁴ See 24X Letter II at 15.

²²⁵ See Form 1, Exhibit E (requiring a description of the manner of operation of the System and that the description should include proposed fees).

²²⁶ See Form 1, Exhibit E.

²²⁷ See 24X Rule 11.15(a).

²²⁸ See Form 1, Exhibit E.

²²⁹ 15 U.S.C. 78s(b).

²³⁰ 17 CFR 240.19b-4.

²³¹ 15 U.S.C. 78f(b)(4), (b)(5).

2. 24X Market Session

As discussed above, 24X will operate the 24X Market Session, a fourth trading session that will extend the hours of exchange trading for NMS stocks beyond the existing extended hours sessions.²³² In Amendment No. 2, 24X modified its original proposal for the 24X Market Session to include overnight trading only on certain nights of the week – Sunday through Thursday – that precede a U.S. Business Day.²³³ As discussed above,²³⁴ while several exchanges offer a pre-market trading session that may start as early as 4 a.m. on each U.S. Business Day, and most exchanges offer a post-close trading session that ends at 8 p.m. on each U.S. Business Day, 24X’s model, as amended, will expand exchange trading hours such that trading on 24X will be conducted on a largely continuous basis during the week subject to a daily one hour trading pause.²³⁵ 24X will operate the 24X Market Session, as amended, in a manner that is consistent with current extended hours sessions.²³⁶ Further, as discussed below, 24X will require that 24X Members make disclosures to their customers concerning risks associated with trading during Extended Hours Trading, and has included tailored disclosures that 24X Members must provide to their customers to reflect the potential risks associated with the 24X Market Session, as amended.²³⁷

²³² See 24X Rule 11.2(a); see also section III.D.2.d. (discussing securities eligible for trading during the 24X Market Session). See also supra notes 183 and 184 (describing the existing exchanges’ extended hours sessions).

²³³ See 24X Rule 1.5(c).

²³⁴ See supra notes 183 and 184 and accompanying text.

²³⁵ See 24X Rule 11.15(c). See also infra section III.D.2.c.

²³⁶ For example, 24X will not accept Market Orders or Pegged Orders in the 24X Market Session and 24X will utilize the same clearly erroneous execution rules that apply on other venues that have extended hours sessions.

²³⁷ See 24X Rule 3.21. See also infra section III.D.2.e.

The Commission received several comment letters about the proposed operation of the 24X Market Session, which, as initially proposed, would have operated 8 p.m. until 4 a.m. during every U.S. Business Day as well as most of the day on weekends and holidays, subject to proposed trading pauses. Some commenters supported the originally proposed expansion of trading hours.²³⁸ For instance, two commenters stated that the originally proposed 24X Market Session would bring the “current practice of trading 24/7 onto a lit exchange”²³⁹ and that the market should be left to decide whether this is a valuable endeavor.²⁴⁰ One commenter stated that 24-hour trading already occurs and that “it is better that it be on a national securities exchange with higher regulatory protections afforded by an exchange.”²⁴¹

One commenter stated that its recent research “implies that 23/7 trading will likely improve the market’s allocative efficiency relative to the traditional 6.5/5 trading schedule.”²⁴² This commenter stated that their research studied welfare, measured by the allocative efficiency of the market, in equilibria of two market designs: one with a daily closure, and another in which closure is eliminated. According to the commenter, the research showed that “as long as there is a closure for some time, most of the benefits of a market closure are accrued.”²⁴³ Thus, the commenter stated that it is likely that 24X’s proposed 23/7 exchange will maintain the welfare

²³⁸ See, e.g., Polygon Letter; DriveWealth Letter; Angel Letter I; Angel Letter II; Montone Letter.

²³⁹ See Polygon Letter at 5. See also DriveWealth Letter at 1.

²⁴⁰ See Polygon Letter at 5. See also Angel Letter I.

²⁴¹ See Angel Letter I at 2.

²⁴² See Blonien and Ober Letter at 1.

²⁴³ According to the commenter, in the model, a market closure not only concentrates liquidity throughout the day but also helps coordinate liquidity, especially towards the end of the trading. Moreover, the commenters state that the cost of a closure, that a traders’ positions may deviate far from their desired positions, is, according to the commenter, outweighed by its benefits. See Blonien and Ober Letter at 1.

benefits of a market closure, reduce the costs of a prolonged closure, and enhance allocative efficiency.²⁴⁴

Several commenters raised concerns about the original proposed expansion of trading hours. For instance, two commenters stated that the proposal would harm retail investors due to low volumes and wide spreads during the extended trading hours and a lack of liquidity would result in a wealth transfer from investors to professionals.²⁴⁵ Another commenter stated that although 24X suggests that retail investors would welcome 24-hour exchange trading, the demand for investors for overnight and weekend trading seems speculative because no information has been provided about the number of such investors or the relevance of the potential benefit.²⁴⁶ Another commenter stated that investor demand should be considered to assess whether the expansion of trading hours would justify the market-wide costs.²⁴⁷

One commenter suggested a “cautious approach to expanding hours” because its research indicated “negative consequences for retail investment.”²⁴⁸ Another commenter, however, stated that the research cited did not examine overnight trading or expansion of trading hours but instead examined time zone differences.²⁴⁹ This commenter stated 24-hour trading “is already

²⁴⁴ See Blonien and Ober Letter at 1. The commenter stated that these findings are based on a model of large and homogeneous traders, and that heterogeneous groups of traders, such as retail investors, market makers, and informed traders, may have asymmetric responses to market closures of differing lengths. See id.

²⁴⁵ See Better Markets Letter at 2; SIFMA Letter II at 2.

²⁴⁶ See IEX Letter at 2.

²⁴⁷ See SIFMA Letter II at 2. See infra notes 290-292 and accompanying text (discussing costs relating to the expansion of trading hours).

²⁴⁸ See Glover and deHaan Letter at 1.

²⁴⁹ See Angel Letter II at 3.

here on automated trading systems, so rejecting the 24X application would not restrict retail access to overnight trading at all.”²⁵⁰

With respect to the commenter’s concern about retail investor participation in the 24X Market Session,²⁵¹ 24X stated that, as discussed below, the Commission has historically allowed retail participation in expanded trading hours with appropriate disclosures.²⁵² In Amendment No. 1, 24X amended its 24X Rule 3.21 to provide additional disclosures designed to address the potential risks of the 24X Market Session.²⁵³ 24X stated, in response to commenters questioning whether additional trading hours would benefit investors, that “there is substantial interest in expanded trading hours” and that the markets should be able to determine whether the 24X proposal will be successful.²⁵⁴ 24X also stated that its amended rules for the 24X Market Session are a more incremental approach that will address the cost concerns raised by some commenters because it eliminates the potential costs related to weekend and holiday trading.²⁵⁵ 24X further stated that it did not believe that “costs related to innovation should be the basis for the Commission to determine that an exchange application does not comply with the Exchange

²⁵⁰ See Angel Letter II at 2.

²⁵¹ See supra note 245 and accompanying text.

²⁵² See 24X Letter II at 11. See also infra section III.D.2.e. (discussing customer disclosures relating to risks of the 24X Market Session).

²⁵³ As discussed above, in Amendment No. 2, 24X scaled back the hours of operation of the 24X Market Session to 8 p.m. to 4 a.m. Sunday, Monday, Tuesday, Wednesday, and Thursday nights, so long as the next trading day is a U.S. Business Day. See supra note 233 and accompanying text. As part of Amendment No. 2, 24X also revised the disclosures that must be provided by 24X Members to their customers to reflect the revised operating hours of the 24X Market Session. See infra section III.D.2.e.

²⁵⁴ See 24X Letter III at 5. See also 24X Letter IV at 6 (stating that “the number of market participants interested in overnight trading continues to grow.”).

²⁵⁵ See 24X Letter III at 2.

Act.”²⁵⁶ 24X also stated that the markets will determine whether “its innovative proposal” is successful.²⁵⁷

As discussed further below, the Commission finds that the 24X rules for the 24X Market Session, as amended, are consistent with the Exchange Act. Specifically, the 24X Market Session rules are modeled on the rules of national securities exchanges that currently operate trading sessions during extended hours and are designed to address the potential differences in trading compared to Regular Trading Hours.²⁵⁸ For example, during the 24X Market Session, the only order type that may be submitted is a Limit Order, which requires market participants to set the prices at which they are willing to trade. Accepting only Limit Orders during extended hours sessions can help to address the potential risks that there may be wider spreads,²⁵⁹ or that prices may be affected by new announcements made by issuers.²⁶⁰ Other exchanges allow the submission of only limit orders during extended hours sessions.²⁶¹

In addition, 24X Members are required to provide disclosures to customers that will provide information about potential risks of trading in extended hours, including the 24X Market Session. These disclosures are consistent with the rules of other SROs, which require customers to be provided with disclosures regarding the potential risks of extended hours trading.²⁶² While

²⁵⁶ See 24X Letter III at 2.

²⁵⁷ See 24X Letter IV at 6.

²⁵⁸ See *supra* notes 183-184 and accompanying text.

²⁵⁹ See 24X Rule 3.21(f).

²⁶⁰ See 24X Rule 3.21(e).

²⁶¹ See e.g., NYSEArca Rule 7.34-E(d) (stating that only limit orders are eligible to participate in the Early Trading Session and Late Trading Session).

²⁶² See e.g., NYSEArca Rule 7.34-E(d)(3); Nasdaq Rule Equity 2, Section 20; MEMX Exchange Rule 3.21; FINRA Rule 2265.

two commenters stated that investors would be harmed by low liquidity, low volumes and wider spreads, these potential risks are included in the disclosures that must be provided to customers by 24X Members.²⁶³ Investors are provided information about these potential risks and are able to decide whether to participate in extended hours sessions, including the 24X Market Session.

Further, the 24X Market Session will overlap with the extended hours trading that currently occurs in the over-the-counter (“OTC”) market.²⁶⁴ Accordingly, while the 24X Market Session represents a new trading session for exchange trading, market participants, including retail investors, are already able to trade during the times covered by the 24X Market Session. While commenters stated that investor demand should be considered to assess whether the expansion of trading hours would justify market-wide costs, the Commission is required to consider a Form 1 application for consistency with statutory standards.²⁶⁵ For the reasons discussed herein, the Commission has determined that the 24X Form 1 is consistent with the Exchange Act and the rules thereunder.

Finally, pursuant to this Form 1, as amended, 24X will not commence operation of the 24X Market Session prior to filing a proposed rule change. Specifically, 24X Rule 1.5(c) requires 24X, prior to commencing operations during the 24X Market Session, to file a proposed rule change, pursuant to Section 19(b) of the Exchange Act and the rules thereunder, to amend its

²⁶³ See 24X Rule 3.21(a) (describing the risk of lower liquidity); 24X Rule 3.21(f) (describing the risk of wider spreads).

²⁶⁴ See e.g., Blue Ocean ATS, LLC (“BOATS”). The operating hours for BOATS occur from 8 p.m. to 4 a.m. on days with the NYSE Trade Reporting Facility is open for trade reporting. See Form ATS-N, available at sec.gov/Archives/edgar/data/1795131/000153949723000091/xslATS-N_X01/primary_doc.xml.

²⁶⁵ In a letter to the Commission, 24X stated that investor demand for overnight trading is growing and provided details of other market participants that have recently expressed interest in expanding the hours of trading on an exchange. See 24X Letter IV at 6 (citing a proposal by NYSE Arca to expand its trading hours and a notice by Schwab announcing an expansion to 24-hour trading for certain stocks).

rules confirming that 24X is able to comply with its obligations under the Exchange Act during the 24X Market Session and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session (“24X Market Session Proposed Rule Change”). As discussed below, the 24X Market Session Proposed Rule Change must be filed with the Commission and approved, or otherwise become effective pursuant to Exchange Act Section 19(b), before 24X can provide trading during the 24X Market Session.²⁶⁶ In the 24X Market Session Proposed Rule Change, 24X must confirm that it is able to comply with its obligations under the Exchange Act during the 24X Market Session and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session.²⁶⁷ The 24X rule requiring the operation of the Equity Data Plans during the 24X Market Session is designed to ensure that consolidated quotation and transaction data are provided in a manner that is consistent with the existing extended hours sessions on exchanges.²⁶⁸ Accordingly, 24X rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in NMS stocks, and perfect the mechanism of a free

²⁶⁶ See 24X Rule 1.5(c) and 24X Rule 11.16. 24X may begin operations of its other trading sessions once the conditions discussed below have been satisfied.

²⁶⁷ See 24X Rule 1.5(c).

²⁶⁸ As discussed above, the 24X will not start operating the 24X Market Session unless the Equity Data Plans have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session, among other things. See 24X Rule 1.5(c).

and open market and a national market system.²⁶⁹ 24X rules are also designed to protect investors and the public interest.²⁷⁰ The 24X rules governing the 24X Market Session will expand the hours of trading available on a national securities exchange, and such trading will be transparent because trading will not occur unless the Equity Data Plans are able to collect, consolidate, process and disseminate consolidated quotation and transaction data during the 24X Market Session (i.e., between 8 p.m. and 4 a.m. Sunday, Monday, Tuesday, Wednesday, and Thursday nights that precede a U.S. Business Day).²⁷¹ The 24X rules for the 24X Market Session will foster competition by introducing another trading venue during these trading hours.²⁷² Finally, the 24X rules for the 24X Market Session are designed to provide additional investor protections.²⁷³

a. Effect of 24X Market Session on Market Structure

Several commenters raised questions about the potential impact of the 24X Market Session, as originally proposed, on current market structure because it would greatly expand exchange trading hours. Several commenters stated that the Commission should consider roundtable discussions about the market structure implications of 24-hour trading.²⁷⁴ One commenter stated that the 24X proposal “has serious implications for the regulatory, technological, and operational underpinnings of the equity securities markets and will result in

²⁶⁹ 15 U.S.C 78f(b)(5).

²⁷⁰ Id.

²⁷¹ See infra section III.D.2.a.i.

²⁷² See e.g., supra note 264.

²⁷³ See e.g., supra section III.C; and infra section III.D.e; section III.E.2; section III.F.

²⁷⁴ See DriveWealth Letter at 2, SIFMA Letter at 2, SIFMA Letter II at 3-4; FIA PTG Letter at 2; FIA PTG Letter II at 3.

significant costs for the industry.”²⁷⁵ Another commenter stated that the 24X Market Session, as originally proposed, is “incompatible” with current market structure and that a broader Commission engagement, outside of an exchange application, is needed to determine how U.S. equity market structure would be affected.²⁷⁶ This commenter further stated that the 24X Market Session as originally proposed “could exacerbate a two-tiered system of regulation between core and extended trading hours” because certain Exchange Act rules apply only during Regular Trading Hours²⁷⁷ and could make compliance with best execution obligations more challenging.²⁷⁸ Another commenter stated that the 24X Market Session, as originally proposed “[r]aises significant, insufficiently addressed market policy concerns,”²⁷⁹ while another stated

²⁷⁵ See FIA PTG Letter at 1, 2; FIA PTG Letter II at 1.

²⁷⁶ See SIFMA Letter at 4-5 (stating that the Commission must consider a number of factors, including the public interests involved, the effect on exchange competition dynamics, interaction with existing and proposed regulations, and whether a fair and orderly market is possible where potentially different rules would apply to exchanges based on the hours they operate). This commenter also stated that the Commission must consider how the 24X Form 1 would interact with “outstanding equity market structure proposals.” See SIFMA Letter at 6-7. The commenter asked interpretative questions about the proposal to amend Regulation NMS. See Securities Exchange Act Release No. 96494 (Dec. 14, 2022), 87 FR 80266 (Dec. 29, 2022). After submission of the comment letter, the Commission adopted amendments to Regulation NMS on Sept. 18, 2024. See Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (Oct. 8, 2024) (“2024 Regulation NMS Adopting Release”). The commenter also asked questions about proposed Regulation Best Execution, Securities Exchange Act Release No. 96496 (Dec. 14, 2022), 88 FR 5540 (Jan. 27, 2023); and the proposed Order Competition Rule, Securities Exchange Act Release No. 96495 (Dec. 14, 2022), 88 FR 128 (Jan. 3, 2023). 24X stated that “addressing how such proposals may relate to 24X’s exchange application are outside of the scope of consideration of whether 24X’s exchange application complies with the requirements of the Exchange Act.” See 24X Letter II at 19. Proposed Regulation Best Execution and the proposed Order Competition Rule remain proposals. The commenter submitted a second letter requesting confirmation about the application of aspects of the 2024 Regulation NMS Adopting Release during the 24X Market Session. See SIFMA Letter II at 13. The questions posed by the commenter are addressed within the 2024 Regulation NMS Adopting Release and existing rules and regulations. The 2024 Regulation NMS Adopting Release, as well as the definitions included in Rule 600 of Regulation NMS and the specific rules under Regulation NMS, define the application of the rules during different trading sessions.

²⁷⁷ For example, the commenter stated that certain aspects of Regulation NMS only apply during Regular Trading Hours, such as Rule 611 of Regulation NMS, and that certain definitions in Rule 600 of Regulation NMS specify Regular Trading Hours, such as “covered order.” See SIFMA Letter I at 4.

²⁷⁸ Id.

²⁷⁹ See Healthy Markets Letter at 7.

that the proposal represents the “first occurrence of a national securities exchange that utilizes unlisted trading privileges to operate outside the trading hours of the primary listing exchanges.”²⁸⁰

24X stated that “in today’s market, the regulatory requirements vary depending on the trading session” with greater protections required during Regular Trading Hours.²⁸¹ 24X stated that the Commission has allowed extended trading hours on other exchanges and the same rationale should be applied in this instance because the 24X rules for the 24X Market Session raise “no new issues.”²⁸² In response to the comment about trading NMS stocks pursuant to UTP outside of the hours of the primary listing exchanges, 24X stated that it would “coordinate with the primary listing markets with regard to their regulatory roles related to their listed companies (e.g., trading halts).”²⁸³ Further, 24X stated that 24X Rule 11.15(c)(5) requires 24X to halt trading if the primary listing exchange determines to halt trading.²⁸⁴ In response to comments about industry roundtables, 24X stated that “its exchange application has been subject to public comment by the industry and others . . . in accordance with the requirements of the Exchange Act.”²⁸⁵ 24X further stated that amending the rules governing the 24X Market Session to

²⁸⁰ See Nasdaq Letter at 3.

²⁸¹ See 24X Letter II at 14. 24X further states that it will comply with all required rules and regulations applicable to national securities exchanges during its Core Market Session. Id.

²⁸² See 24X Letter II at 14.

²⁸³ Id. at 8.

²⁸⁴ Id. at 4.

²⁸⁵ See 24X Letter III at 5.

eliminate trading on weekends and holidays in response to comments is a “significant adaption.”²⁸⁶

The 24X rules for the 24X Market Session have been amended to increase transparency and enhance customer risk disclosures such that it will operate in a manner that is consistent with the regulatory framework of the extended hours sessions of other national securities exchanges.²⁸⁷ As discussed throughout this order, the 24X Market Session, as amended, will operate with rules that are designed to protect investors consistent with the requirements of the federal securities laws and the rules and regulations thereunder.

Several commenters suggested that a broader study of expanded hours trading should be conducted prior to Commission action on the 24X exchange application.²⁸⁸ The continuing evolution of the equities market, including increasing investor interest in extended hours trading, may warrant consideration of the existing regulatory scheme that applies to expanded hours trading sessions. The Commission continually monitors the national market system and the operation of the Federal securities laws, and the Commission, consistent with its oversight of the national market system, will continue to monitor the developments of extended hours trading. However, the monitoring of new market developments does not foreclose Commission action on the 24X Form 1, which, for reasons discussed throughout, satisfies the requirements of the Exchange Act.

²⁸⁶ Id.

²⁸⁷ See also infra section III.D.2.b.i.

²⁸⁸ See supra note 274 and accompanying text.

Further, the 24X Form 1 has been subject to the relevant notice and comment requirements. Public comment on the application has been solicited four separate times – with the publication of the Notice, the OIP, Amendment No. 1, and Amendment No. 2. The public, including market participants, have been afforded adequate opportunity for comment, and interested persons have taken the opportunity to provide written data, views, and arguments concerning this application which has yielded a robust analysis of the relevant issues.²⁸⁹ 24X has responded, by amending its Form 1, in part, to address the various concerns raised by certain commenters. Notably, 24X has narrowed its hours of operation, added rules to increase operational transparency and relevant customer risk disclosures, and amended certain proposed rules to conform with the existing regulatory framework for extended hours trading of other national securities exchanges. In addition, as has been discussed throughout this order, the expansion of trading hours initially proposed by 24X is not entirely novel as off-exchange trading currently occurs during those hours. Accordingly, issues related to the 24X Market Session have been raised, analyzed, and addressed, and Commission action on the 24X Form 1 should not be delayed by, and is not dependent on, a broader study of equity market structure.

While there will be costs to the industry related to implementing the expansion of exchange trading hours, the record does not support a denial of the 24X Form 1 application as inconsistent with the Exchange Act. The operation of the 24X Market Session will not commence until the conditions outlined in this order have been met.²⁹⁰

²⁸⁹ 15 U.S.C 78s(a).

²⁹⁰ See infra section V.

i. Equity Data Plans

The Equity Data Plans do not operate during the time period that will cover the 24X Market Session, as amended. Several commenters raised concerns about the lack of consolidated data during the 24X Market Session, as originally proposed.²⁹¹ One commenter stated that the 24X trading sessions should align with the operational hours of the Equity Data Plans.²⁹² Another commenter stated that if 24X was approved without extending the exclusive SIP hours, quotes and trades would not be publicly disseminated in real time and that the delay would be inconsistent with the national market system and significantly reduce market transparency.²⁹³ One commenter stated, in response to the 24X Market Session as originally proposed, that moving to 24-hour on-exchange trading requires deliberate consideration of the market-wide implications of such a move, including the cost and complexity of overhauling the market-wide infrastructure to allow for the publication of quote and trade data by the exclusive SIPs during the proposed overnight and weekend sessions, as measured against its potential benefits.²⁹⁴ The commenter stated that changing exclusive SIP operations to accommodate the original proposal would amount to a huge undertaking, and that the costs and timeline associated with these changes have not been determined.²⁹⁵ Moreover, the commenter stated that 24X has neither

²⁹¹ See Polygon Letter; Nasdaq Letter, Montone Letter, IEX Letter, SIFMA Letter. Several commenters also stated that there should be a consideration of off-exchange trade reporting to the Equity Data Plans. See Nasdaq Letter at 3, SIFMA Letter at 3, DriveWealth Letter at 2, FIA PTG Letter at 2. The Commission agrees and believes that the Equity Data Plans and FINRA should consider accommodating real-time OTC trade reporting.

²⁹² See Nasdaq Letter at 3. See also Montone Letter at 8.

²⁹³ See SIFMA Letter at 3. See also FIA PTG Letter at 2.

²⁹⁴ See IEX Letter at 1-2. See also DriveWealth Letter at 2.

²⁹⁵ See IEX Letter at 2. See also FIA PTG Letter at 2; FIA PTG Letter II at 3.

acknowledged responsibility for funding these changes, nor provided information on its ability to do so.²⁹⁶ The commenter further stated that the exclusive SIPs would likely incur substantial increased ongoing costs to maintain the originally proposed extended hours, and that neither these costs, which the commenter stated would likely be borne by all exclusive SIP subscribers regardless of whether they participate in overnight or weekend trading, nor their potential benefits, have been determined.²⁹⁷

In Amendment No. 2, in response to commenters' concerns about the operation of the 24X Market Session during time periods when the Equity Data Plans are not in operation,²⁹⁸ 24X modified its Rule 1.5(c) and Rule 11.16 to require the concurrent operation of the Equity Data Plans before the operation of the 24X Market Session commences, and that 24X file the 24X Market Session Proposed Rule Change that would serve to provide notice to the Commission and the public of 24X's intention to commence operation of the 24X Market Session. Specifically, 24X Rule 1.5(c) states that 24X will not start operating the 24X Market Session unless the Equity Data Plans "(1) have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session," and (2) the Equity Data Plans have notified 24X of their readiness.²⁹⁹

²⁹⁶ See IEX Letter at 2.

²⁹⁷ See IEX Letter at 2; FIA PTG Letter II at 3.

²⁹⁸ See SIFMA Letter at 3; FIA PTG Letter at 2; Nasdaq Letter at 3; Healthy Markets Letter at 10-11; but see Polygon Letter at 2-5 (stating that Commission should approve 24X and force the adoption of the competing consolidator model to allow for the dissemination of market data in real time). 24X stated that it has "fully addressed" commenter concerns about trading in the 24X Market Session occurring outside of the operating hours of the Equity Data Plans by the changes proposed in Amendment No. 2. See 24X Letter IV at 4-5.

²⁹⁹ See 24X Rule 1.5(c).

24X Rule 1.5(c) requires 24X, prior to commencing the 24X Market Session, to file the 24X Market Session Proposed Rule Change, pursuant to Section 19(b) of the Exchange Act and the rules thereunder. The 24X Market Session Proposed Rule Change must be filed with the SEC within 18 months of the SEC’s approval of 24X’s application for registration as a national securities exchange. If the 24X Market Session Proposed Rule Change is not filed within 18 months of the SEC’s approval of 24X’s application for registration as a national securities exchange, the Exchange will promptly file a proposed rule change to remove the rules that apply to the 24X Market Session. In addition, 24X Rule 11.16 states that, “24X will not commence operations of the 24X Market Session until a proposed rule change as required under 24X Rule 1.5(c) has been approved, or has otherwise become effective, under Section 19(b) of the Exchange Act and the rules thereunder.”³⁰⁰

24X responded to commenters’ concerns about costs by stating that it recognized that innovations, such as the introduction of the 24X Market Session, “may involve additional costs” but that increased costs should not “be the basis for the Commission to determine that an exchange application does not comply with the Exchange Act.”³⁰¹ 24X stated that market participants “are already trading overnight on ATSs or otherwise” and that new costs for exchange trading would be “incremental.”³⁰² 24X also stated that broker-dealers can decide

³⁰⁰ The approval of 24X’s application to register as a national securities exchange is separate and distinct from Commission consideration of any future amendments to the Equity Data Plans or proposed rule changes filed by 24X. As a matter of course, the Commission will consider any future amendments to the Equity Data Plans and any proposed rule changes filed by 24X upon filing, pursuant to the applicable statutory provisions and rules.

³⁰¹ See 24X Letter II at 16.

³⁰² Id.

whether to participate in the 24X Market Session.³⁰³ Finally, 24X stated with regard to the expansion of the exclusive SIPs' hours that the Equity Data Plans have a process for determining the cost for new participants and for changes.³⁰⁴

The Commission agrees with commenters regarding consolidated quotation and transaction information during the 24X Market Session. Pursuant to its amended Form 1, 24X will not operate during the 24X Market Session until the Equity Data Plans are able to collect, consolidate, process and disseminate quotation and transaction information at all times during the session. The 24X rules for the 24X Market Session, as amended, are consistent with Sections 6(b)(5) and 11A of the Exchange Act.³⁰⁵

24X Rules 1.5(c) and 11.16 provide that 24X will submit a proposed rule change within 18 months of the Commission's approval of 24X's application to operate as a national securities exchange with regard to the operation of the 24X Market Session. These provisions relating to the force and effect of the 24X Market Session rules set forth in 24X Rule 11.16 help to balance the interest in providing the time needed for 24X to be able to comply with 24X Rule 1.5(c) with the interest in ensuring that the rules of an Exchange are effective and can be enforced by the Exchange.

The requirement contained in its rules that the 24X Market Session will not begin operation until the 24X Market Session Proposed Rule Change is approved or otherwise has become effective will enhance transparency during the 24X Market Session and promote the

³⁰³ Id.

³⁰⁴ See 24X Letter IV at 7. See supra notes 290-292 and accompanying text (discussing costs relating to the expansion of trading hours).

³⁰⁵ 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78k-1.

goals of the national market system. Specifically, the Commission finds that the 24X rules for the 24X Market Session, as amended, are consistent with Section 11A(a)(1)(C) of the Exchange Act, in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers executing investors' orders in the best market.³⁰⁶ The requirement ensuring that 24X will not commence operation of its 24X Market Session until the availability of the concurrent operation of the Equity Data Plans accomplishes Exchange Act objectives by ensuring that there is transparency during these new, extended trading hours through the communication of quotations and transactions to market participants and investors.

Finally, one commenter stated that the Market Data Infrastructure (“MDI”) Rules³⁰⁷ should be implemented because competing consolidators would not be “time-bound” and would collect, consolidate and disseminate data “in real-time 24/7.”³⁰⁸ The MDI Rules continue to be implemented, however, the MDI Rules will not be implemented before action is required on the 24X Form 1.³⁰⁹

³⁰⁶ 15 U.S.C. 78k-1(a)(1)(C).

³⁰⁷ Securities Exchange Act Release No. 90610 (Dec. 11, 2020), 86 FR 18596 (Apr. 9, 2021) (“MDI Rules Adopting Release”).

³⁰⁸ See Polygon Letter at 4.

³⁰⁹ See 2024 Regulation NMS Adopting Release, supra note 276.

b. Volatility Moderators in the 24X Market Session

24X initially proposed to implement unique “24X Price Bands” to moderate risk and volatility during the 24X Market Session.³¹⁰ Several commenters questioned the use of the proposed volatility moderators.³¹¹ In particular, one commenter asked why the proposed 24X Price Bands differed from the existing Limit up-Limit down bands and stated that the proposed 24X Price Bands were “different from price bands used by ATSs that operate outside of core trading hours,”³¹² while another commenter stated there was no basis to justify the 24X Price Bands.³¹³ Another commenter, however, stated that the proposed 24X Price Bands “should be sufficient to prevent erroneous trades.”³¹⁴

24X proposed in Amendment No. 1 to remove proposed 24X Rule 11.15(a) from its rules, which removed all references to the proposed 24X Price Bands.³¹⁵ In its letter responding to comments on the OIP, 24X stated that it “would rely upon its clearly erroneous rule, [p]roposed 24X Rule 11.14, to address volatility and risk during the 24X Market Session.”³¹⁶ 24X stated that it would also “provide other additional protections to investors to address

³¹⁰ See, e.g., Proposed 24X Rule 11.15(a); Form 1, Exhibit E-1. As initially proposed, a 24X Price Band would be calculated for each relevant security by multiplying the “Reference Price,” as specified in 24X Rule 11.15(a)(2), by the applicable “Percentage Parameter,” set out in 24X Rule 11.15(a)(1). Under Rule 11.15(a)(1) as initially proposed, this figure (rounded to the nearest \$0.01) would then be added to the Reference Price to calculate the “Upper 24X Price Band” and subtracted from the Reference Price to calculate the “Lower 24X Price Band” and no trades would be allowed outside the 24X Price Bands. Proposed 24X Rule 11.15(a)(1).

³¹¹ See Healthy Markets Letter at 8; SIFMA Letter at 6; FIA PTG Letter at 2.

³¹² See SIFMA Letter at 6.

³¹³ See Healthy Markets Letter at 8.

³¹⁴ See Angel Letter I at 3. See also Montone Letter at 7.

³¹⁵ See 24X Letter II at 5-6; Amendment No. 1; 24X Rule 11.15(a) (now Reserved).

³¹⁶ See 24X Letter II at 6. In Amendment No. 1, 24X further proposed to make a conforming change to its clearly erroneous rule, 24X Rule 11.14, by deleting subparagraph (d)(4) regarding calculation of the reference price when the 24X Price Bands would have been in effect during the 24X Market Session.

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.”³¹⁷ As a result, 24X stated that its rules designed “to address potential volatility in both regular and extended hours trading” are the same as those previously approved by the Commission for other exchanges.³¹⁸

One commenter stated that given the significance of displayed quotations and transaction prices to stock valuations, many trading firms and other participants will need to monitor the prices published during overnight and weekend hours, regardless of whether they trade during those hours and that “SIP subscribers” would experience “costs.”³¹⁹ This commenter also stated that “[t]his is particularly the case” because 24X does not include volatility limits other than those that exist under its clearly erroneous execution rule.³²⁰ Another commenter opposed 24X’s plan to rely on its clearly erroneous execution rules instead of price bands, as initially proposed.³²¹ This commenter stated that the Commission should consider “whether the regulatory framework and market functionality are in place to support 24x7 trading (including, for example, whether extending the LULD plan to cover non-core hours is appropriate).”³²²

³¹⁷ See 24X Letter II at 6.

³¹⁸ See 24X Letter II at 6.

³¹⁹ See IEX Letter at 2.

³²⁰ See IEX Letter at 2.

³²¹ See FIA PTG Letter II at 3 (stating, “[p]rice bands serve as an important investor protection, particularly during periods of extreme volatility, whereas busting trades under an Exchange’s clearly erroneous rules can give rise to increased risks and uncertainty.”).

³²² Id. See also supra note 288 and accompanying text. The LULD Plan applies during Regular Trading Hours. See LULD Plan, available at <https://www.luldplan.com/>.

24X’s proposed use of its clearly erroneous execution rule during the 24X Market Session addresses commenters’ concerns about its initially proposed 24X Price Bands. The use of clearly erroneous execution rules in the 24X Market Session, instead of the unique, market-specific 24X Price Bands, will help to ensure there is a consistent, market-wide regulatory approach across the extended hours trading sessions of all national securities exchanges.³²³ Accordingly, 24X Rule 11.14 is designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.

While one commenter suggested that “SIP subscribers” may experience increased costs due to the need to monitor prices during the 24X Market Session, the commenter did not provide information as to how this differs from other extended hour trading sessions and the commenter was commenting on the 24X Market Session as originally proposed. As amended by Amendment No. 2, the 24X Market Session would cover hours that are currently available for OTC trading and 24X may not begin operating its 24X Market Session at least until the Equity Data Plans are able to collect, process, consolidate and disseminate quotation and transaction data during the 24X Market Session,³²⁴ which will help to facilitate monitoring of price valuations. Further, as stated above, the use of clearly erroneous execution rules in extended hours sessions is consistent with the regulatory framework applied to other national securities exchanges.³²⁵

³²³ See e.g., CboeBZX Rule 11.17; Nasdaq Equity 11, Rule 11890; NYSE Arca Rule 7.10-E.

³²⁴ See 24X Rule 1.5(c). Under the rule, 24X will not begin operation of the 24X Market Session until the 24X Market Session Proposed Rule Change has been approved or otherwise become effective. See also supra section III.D.b.i.

³²⁵ See supra note 323.

c. Trading Halts and Pauses

24X proposed rules governing trading halts and pauses for technology updates and regulatory purposes. As originally proposed, 24X Rules 11.15(c)(1), (c)(2), (c)(3), (c)(4) and (c)(5) would have paused trading for: (i) three hours each Saturday morning, from 8 a.m. until 11 a.m.; (ii) an hour at 7 p.m. daily; (iii) industry-wide testing; (iv) technological or other purposes; and (v) material corporate actions with respect to a particular security during the 24X Market Session, respectively. In Amendment No. 2, 24X deleted 24X Rules 11.15(c)(1) and 11.15(c)(3) and amended 24X Rule 11.15(c)(2), all to reflect the amended hours for the 24X Market Session. Pursuant to 24X Rule 11.15(c), 24X will pause trading on Monday, Tuesday, Wednesday and Thursday at 7 p.m.,³²⁶ during the 24X Market Session at such other times that the Exchange determines is necessary for technological or other purposes,³²⁷ and if the primary listing exchange determines to halt trading or delay the start of trading in one of its listed securities.³²⁸

With respect to regulatory halts, several commenters questioned how market surveillance and trading halts, including regulatory trading halts, would be handled in the 24X Market Session.³²⁹ Specifically, one commenter stated that 24X's proposal raised a series of surveillance questions, including (i) how 24X will manage real-time surveillance during the 24X Market Session, (ii) how the existing surveillance, trading halt, and trade review infrastructure—one in which primary listing markets perform real-time surveillance of securities listed on their markets and implement trading halts and pauses for those securities during their hours of operation—will

³²⁶ See 24X Rule 11.15(c)(2).

³²⁷ See 24X Rule 11.15(c)(4).

³²⁸ See 24X Rule 11.15(c)(5).

³²⁹ See Nasdaq Letter at 3, 4; Montone Letter at 6-7; SIFMA Letter at 8-9; Healthy Markets Letter at 7.

intersect with the proposed 24X Market Session, including how 24X would coordinate with other exchanges, and (iii) the impact that such trading will have on investors, listed companies, and other market participants.³³⁰ Similarly, other commenters expressed concerns about regulatory halts, including possible unanticipated or unintended effects on primary listing markets and issuers.³³¹ One of these commenters stated that the expanded trading hours would interfere with exclusive SIPs’ “periodic testing and maintenance, which currently occur at times when the exchanges are closed.”³³² Another commenter generally supported the proposed trading halts but recommended that 24X “revisit trading halts around key disclosures from companies” if “they find they can adequately secure the markets around the key disclosure periods.”³³³

In response to commenters’ concerns about regulatory halts,³³⁴ 24X stated that it intends to surveil all of its trading sessions, including the 24X Market Session, in the same manner.³³⁵ 24X stated that it will coordinate with the primary listing markets to halt trading in a security when the primary listing market halts trading in the security.³³⁶ In addition, in Amendment No. 1, 24X proposed to revise its trading halt rules related to the primary listing market to clarify that Rule 11.15(c)(5) will apply during all of its trading sessions.³³⁷ Specifically, 24X proposed to

³³⁰ See Nasdaq Letter at 3. This commenter further stated in response to the initial Form 1, “pauses in the trading day allow for the SIPs to make certain technical changes with little to no disruption to the markets. We believe the Commission should consider whether 24X’s proposed trading pauses are sufficient to address the technical implications of 23-hour trading sessions.” Id. See also Healthy Markets Letter at 7.

³³¹ See SIFMA Letter at 8-9; Healthy Markets Letter at 7.

³³² See SIFMA Letter at 8.

³³³ See Montone Letter at 6-7.

³³⁴ See supra notes 329-330 and accompanying text.

³³⁵ See 24X Letter II at 8.

³³⁶ See 24X Letter II at 8.

³³⁷ See 24X Rule 11.15(c)(5)

add language to 24X Rule 11.15(c)(5) that 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.³³⁸

24X's rules, as amended, governing trading halts related to corporate news and announcements will track the trading halts imposed by the primary listing markets. To the extent that material corporate news is released during the 24X Market Session and the primary listing market does not impose trading halts, the requirements of 24X Rule 3.21(e)³³⁹ and 24X Rule 3.21(i)³⁴⁰ that disclosures be provided to investors relating to the risks associated with news announcements and the additional risks of trading in the 24X Market Session, respectively, will help to ensure that market participants, including investors, are informed about the potential risks associated with trading during that time period. 24X's rules governing trading pauses, coupled with its Rule 3.21,³⁴¹ are consistent with the Exchange Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest.

³³⁸ See 24X Rule 11.15(c).

³³⁹ See 24X Rule 3.21(e) (stating, "[n]ormally, issuers make news announcements that may affect the price of their securities after Regular Trading Hours. Similarly, important financial information is frequently announced outside of Regular Trading Hours. In Extended Hours Trading, these announcements may occur during trading, and if combined with lower liquidity and higher volatility, may cause an exaggerated and unsustainable effect on the price of a security.").

³⁴⁰ See 24X Rule 3.21(i)(1)-(6).

³⁴¹ See infra section III.D.2.e. (discussing customer disclosures relating to risks of the 24X Market Session).

Regarding technology halts, one commenter on the 24X Market Session, as originally proposed, stated that testing for the exclusive SIP of the UTP Plan currently occurs at times which would overlap “with a portion of the 24X Market Session, and 24X has not explained how it will operate during the overlapping time.”³⁴² In Amendment No. 2, 24X has amended the 24X rules for the 24X Market Session to exclude trading on weekends. This amendment addresses concerns about conflicts with industry-wide testing, “which currently occur[s] at times when the exchanges are closed.” The trading pauses provided in 24X Rule 11.15(c), as amended³⁴³ should be sufficient to permit 24X to address the technical implications of a 23-hour trading day and will facilitate industry-wide testing, and internal market testing and systems updates and improvements.

d. Securities Eligible for Trading During the 24X Market Session

In its initial Form 1, 24X proposed to limit the securities that would be available for trading during the 24X Market Session. Specifically, proposed 24X Rule 11.2 specified that any class of securities listed or admitted to unlisted trading privileges on the Exchange would be eligible to be traded during the Pre-Market Session, Core Market Session and Post-Market Session, while in the 24X Market Session, trading would be limited to any 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, as determined by the Exchange. Proposed 24X Rule

³⁴² See Nasdaq Letter at 4; see also SIFMA Letter at 8.

³⁴³ As discussed above, 24X proposed in Amendment No. 2 to limit the hours of operation of the 24X Market Session and, because the 24X Market Session will not operate on Saturdays, 24X further proposed in Amendment No. 2 to remove 24X Rule 11.15(c)(1) to delete the proposed Saturday morning trading pauses.

11.2 also included a notice provision for securities that might be added to, or removed from, being eligible to trade during the 24X Market Session. Finally, proposed 24X Rule 11.2 initially would have allowed Exchange members to request that securities be made eligible for trading during the 24X Market Session.³⁴⁴

One commenter stated that the proposal was “wise in limiting the trading to certain well-known NMS stocks.”³⁴⁵ Another commenter stated that 24X did not adequately justify its proposal to limit the securities eligible for trading in the 24X Market Session.³⁴⁶ Another commenter stated that 24X should provide more transparency about the proposed notice of securities that would be available to trade because the commenter stated that a “lack of timely information” about the securities available to trade “runs the risk of material trading risks, including higher volatility and lower liquidity.”³⁴⁷

In Amendment No. 1, 24X amended 24X Rule 11.2 to remove the limit on the securities eligible for trading during the 24X Market Session. As amended, 24X Rule 11.2 will allow any securities listed or admitted to trading pursuant to UTP to be eligible to trade on 24X. In other words, 24X Rule 11.2 was amended to make the eligibility requirements for the trading of

³⁴⁴ One commenter stated that proposed 24X Rule 11.2 describes how exchange-traded funds will be “addressed in terms of listing,” but that “24X should give a similar explanation of how mutual funds will be handled in terms of listing and pricing.” Montone Letter at 8. As discussed above, 24X will not be a listing market. See 24X Rule 14.1. The commenter also stated that mutual funds may need to be priced at a different time of day if trading evolved into a 23-hour format. See Montone Letter at 8. In response, 24X stated, and the Commission agrees, 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 Letter II at 19. 24X further stated, and the Commission agrees, that the “24X Market Session does not present new issues regarding the timing of the pricing of mutual funds” because “trading already takes place on exchange today during pre-market sessions and post-market sessions (including overnight in the OTC market)” and “mutual funds have already faced such timing decisions.” Id.

³⁴⁵ See Montone Letter at 6.

³⁴⁶ See SIFMA Letter at 8.

³⁴⁷ See Nasdaq Letter at 3. See also SIFMA Letter at 8; Healthy Markets Letter at 10.

securities during the 24X Market Session the same as the other three market sessions (i.e., Pre-Market Session, Core Market Session and Post-Market Session). According to 24X, expanding the securities eligible to trade during the 24X Market Session will allow 24X Members and their customers to manage their security lists, and ensure continuity of eligible securities across trading sessions, which will reduce potential trading complexities and investor inquiries about eligible securities.³⁴⁸ 24X also stated that expanding the securities eligible to trade will allow it to compete with ATSS and other markets that operate in the overnight hours.³⁴⁹ Finally, 24X stated that the amended rule will prevent the exclusion of securities that may be appropriate for trading in the 24X Market Session, such as international ETFs.³⁵⁰

24X Rule 11.2 as amended, is consistent with Section 6(b)(5) of the Exchange Act in that it will promote just and equitable principles of trade, facilitate transactions in NMS stocks, remove impediments to, and facilitate transactions in NMS stocks and remove impediments to and perfect the mechanism of a free and open market and a national market system. While one commenter supported limiting the securities eligible for trading in the 24X Market Session,³⁵¹ 24X's market structure choice not to limit the securities eligible for trading in the 24X Market Session will reduce the complexity of the 24X market structure, compared to the original proposal, by allowing securities to be eligible continuously throughout the four 24X trading sessions. In addition, 24X Members and their customers will have control over the trading strategies they may choose to implement. Finally, expanding the number of securities that are

³⁴⁸ See 24X Letter II at 11.

³⁴⁹ See id.

³⁵⁰ See id.

³⁵¹ See supra note 345 and accompanying text.

eligible to be traded during the 24X Market Session should help to promote competition between trading venues that may be operating during the times covered by the 24X Market Session, which will ultimately benefit investors.

e. Customer Disclosures Pertaining to Extended Hours Trading, Including the 24X Market Session

24X proposed to require that 24X Members make certain disclosures to investors concerning risks associated with trading during Extended Hours Trading.³⁵² In 24X Rule 3.21, 24X proposed to require the same disclosures as those required by other SROs relating to extended hours trading.³⁵³ Specifically, SRO rules require firms to provide disclosures to customers that extended hours trading “involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads.”³⁵⁴

While one commenter stated, in response to a question posed by the Commission in the OIP, that the proposed disclosures would be sufficient to highlight the unique risks posed to investors during the 24X Market Session, as originally proposed,³⁵⁵ others disagreed.³⁵⁶ One of these commenters stated that existing customer disclosures would not provide the necessary

³⁵² See 24X Rule 3.21.

³⁵³ See, e.g., MEMX Exchange Rule 3.21; Cboe EDGX Rule 3.21; NYSE Arca Rule 7.34-E(d)(3); Nasdaq Section 20; FINRA Rule 2265.

³⁵⁴ See 24X Rule 3.21. See also, e.g., MEMX Exchange Rule 3.21, Cboe EDGX Rule 3.21, NYSE Arca Rule 7.34-E(d)(3), Nasdaq, Equity 2, Section 20; FINRA Rule 2265.

³⁵⁵ See Montone Letter at 6 (further stating, “[a]ny person looking to trade during the 24X Market Session will be aware of the numerous risks they face in trading during this period.”).

³⁵⁶ See SIFMA Letter at 4; Healthy Markets Letter at 9.

protection for investors given the heightened risks associated with the 24X Market Session.³⁵⁷

Similarly, another commenter stated that it cannot “comprehend how any disclosure that would be sufficiently short and clear to be comprehensible would adequately capture the sheer volume of potential new risks or regulatory gaps in which such trading would occur.”³⁵⁸

In response, 24X stated that it agreed with commenters that it is appropriate to require customer disclosures relating to the “heightened” risks inherent in Extended Hours Trading.³⁵⁹ In Amendment No. 1, 24X proposed “expanded” investor disclosures relating to additional potential risks of its 24X Market Session.³⁶⁰ Specifically, the new paragraph (i) added to 24X Rule 3.21 will highlight the following additional potential risks related to trading during the 24X Market Session, including the risks that: (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.³⁶¹ In Amendment No. 2, 24X amended 24X Rule 3.21 to remove the disclosure related to the risk that consolidated data may not be available because pursuant to amended 24X Rule 1.5(c), 24X will not begin operation of its 24X Market Session unless the exclusive SIPs are able

³⁵⁷ See SIFMA Letter at 4.

³⁵⁸ See Healthy Markets Letter at 9.

³⁵⁹ See 24X Letter II at 2.

³⁶⁰ See 24X Rule 3.21(i).

³⁶¹ Id.

to concurrently collect, consolidate, process and disseminate consolidated data.³⁶² Thus, the proposed disclosure stating the risk that there might not be information disseminated by the exclusive SIPs during the 24X Market Session is no longer necessary.

The expanded proposed customer disclosures set forth in 24X Rule 3.21, as amended, should address commenters' concerns because these disclosures will provide investors with important information that should help to inform their decisions as to whether trading during extended hours, including the 24X Market Session, is suitable for them. In addition, the expanded customer disclosures set forth in 24X Rule 3.21, as amended, are consistent with the Exchange Act and, in particular, the Section 6(b)(5) requirement that an exchange's rules be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and protect investors and the public interest. The disclosures will help provide notice to market participants, including investors, about the specific risks associated with Extended Hours Trading.

f. Other Comments

24X proposed 24X Rule 11.12 related to the clearance and settlement of trades. Under this rule, 24X will require that all transactions through the facilities of the Exchange be automatically cleared and settled through a registered clearing agency using a continuous net settlement system when the continuous net settlement system is open. When the continuous net settlement system is closed, 24X will require trades to be processed for clearing and settlement as soon as the relevant clearing agency reopens the continuous net settlement system.

³⁶² See 24X Rule 1.5(c). Under the rule, 24X will not operate the 24X Market Session until the 24X Market Session Proposed Rule Change has been approved or has otherwise become effective.

One commenter questioned the settlement cycle of trades in the context of the 24X Market Session, as originally proposed.³⁶³ The commenter stated that a trade executed at 11:59 p.m. would settle the next day and a trade that executed just two minutes later, at 12:01 a.m., would not settle until the following day (assuming consecutive settlement dates).³⁶⁴ The commenter also stated that the 24X Market Session, as originally proposed, raises additional operational and risk management questions related to the clearance and settlement processes for trades that occur overnight and on non-business days operated by registered clearing agencies, including the National Securities Clearing Corporation (“NSCC”).³⁶⁵ In its second letter, the commenter stated that all default risks and related clearance, settlement, payment and delivery risks would be borne by broker-dealers until trades were transferred to DTCC for novation, which would impose significant counterparty risk on broker-dealers.³⁶⁶ The commenter stated that retail investors “would be unaware” that trades executed during the 24X Market Session

³⁶³ See SIFMA Letter at 8. Specifically, the commenter stated that for certain transactions on Fridays, Saturdays, Sundays, and holidays, the day after the trade might not be a business day and thus the settlement periods would be longer than T+1. As noted above, in Amendment No. 2, 24X amended the 24X rules for the 24X Market Session so that 24X will not offer trading on weekends and holidays. The commenter submitted a second comment that raised questions about clearance and settlement of trades in the amended 24X Market Session, as well as the 24X Market Session as originally proposed. See SIFMA Letter II.

³⁶⁴ See SIFMA Letter at 8.

³⁶⁵ Id. The Depository Trust and Clearing Corporation (“DTCC”) is the holding company for the three registered clearing agencies, including NSCC and the Depository Trust Company (“DTC”), each of which provides clearance and settlement services for U.S. equities. The commenter further questioned whether the NSCC (1) would require an additional deposit to support overnight activity; (2) would process trades that occur on Saturday on the following Monday or Tuesday; (3) require Monday morning stock loan delivery or margin calls for weekend trades. The commenter also questioned whether clearing firms would be able to opt-out of clearing extended hours (pre-, post-, and overnight) activity. Id. These interpretative questions about NSCC rules should be directed to the NSCC, an SRO. As discussed throughout, trading of NMS stocks occurs overnight in the OTC market on ATSs. The commenter did not detail how the 24X proposal, as amended, raises new or novel concerns as compared to existing overnight trading sessions.

³⁶⁶ See SIFMA Letter II at 5.

would be excluded from the NSCC and DTCC’s real-time guarantee model.³⁶⁷ The commenter stated that delays in reporting overnight trades to NSCC also impact margin requirements, including margin calculations.³⁶⁸

24X responded that the commenter’s concerns related to the clearance and settlement of trades “have long existed and are contemplated within existing NSCC/DTCC rules.”³⁶⁹ 24X also stated that it understood, from the DTCC, that the operational and clearance and settlement risks related to its proposed overnight and weekend trading are manageable using existing risk management rules and protocols,³⁷⁰ and that “DTCC plans to implement additional changes to its processes going forward to further narrow the risks presented by extended trading hours.”³⁷¹ Further, 24X stated that trades occurring within a matter of minutes that could settle on different days is a “natural outgrowth” of the T+1 settlement process because there must be a time that delineates the end of a trading day.³⁷² Finally, 24X stated that, “as with overnight trading on ATSs today, 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.”³⁷³

The 24X rules related to clearance and settlement of transactions on 24X are consistent with the requirements of Section 6(b)(5) of the Exchange Act that provides, among other things, that the rules of an exchange must foster cooperation and coordination with persons engaged in

³⁶⁷ See id.

³⁶⁸ See SIFMA Letter II at 6.

³⁶⁹ See 24X Letter II at 17.

³⁷⁰ See 24X Letter II at 18.

³⁷¹ See 24X Letter IV at 5.

³⁷² See 24X Letter II at 18.

³⁷³ See 24X Letter IV at 5.

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.³⁷⁴ Further, the Commission concludes that while risk cannot be eliminated, it can be appropriately managed as it relates to: (1) the proposed operation of the 24X Market Session and (2) the ability of the relevant clearing agencies for equities, NSCC and the DTC, to address any potential credit, market, and liquidity risks associated with trades submitted by the Exchange. While one commenter submitted several interpretative questions related to how clearance and settlement of trades will occur during the 24X Market Session, the commenter did not explain how the clearance and settlement of 24X Market Session trades would be different from trades that occur in the overnight sessions in the OTC market.³⁷⁵ Further, the commenter stated that broker-dealers will carry all default risks and related clearance, settlement, payment and delivery risks until trades are reported. Broker-dealers may assess the risks and benefits of participating in the 24X Market Session. Although a commenter stated that investors would be unaware of the risks held by broker-dealers, 24X Rule 3.21(g) requires disclosure of the risk that certain financial market infrastructure, including “the relevant clearing agency” and “certain other providers of settlement services,” may be closed for business during the Extended Hours Trading sessions. Finally, the concerns of certain commenters about weekend trading are no longer relevant because 24X has amended its rules to eliminate weekend trading.

24X proposed several rules that are reasonably designed to ensure compliance with Regulation SHO. 24X Rule 11.9(a)(1) requires the execution price of an order with short sale

³⁷⁴ 15 U.S.C. 78f(b)(5).

³⁷⁵ As discussed above, the 24X Market Session will not operate until the 24X Market Session Proposed Rule Change has been approved or otherwise become effective. Market participants should direct their interpretative questions about the rules of other SROs, including NSCC or DTC, to those SROs.

instruction to be above the current national best bid if a short sale price test restriction under Rule 201 is in effect, unless the order is marked short exempt; and 24X Rule 11.9(a)(5) requires all orders to sell short to include a short sale instruction. 24X Rule 11.23 relates to Short Sale Circuit Breakers and sets forth that once a Short Sale Circuit Breaker pursuant to Rule 201 of Regulation SHO has been triggered during Regular Trading Hours, the price test restriction of Rule 201 will be in place for the applicable covered security for the remainder of the trading day on which the Short Sale Circuit Breaker is triggered, through the next U.S. Business Day after the trading day on which the Short Sale Circuit Breaker is triggered, and until 4 a.m. on the U.S. Business Day after the next U.S. Business Day after the trading day on which the Short Sale Circuit Breaker is triggered, unless the listing market for the covered security provides a notification via the exclusive SIPs indicating that the price test restriction is no longer in effect at a time earlier than 4 a.m. on the U.S. Business Day after the next U.S. Business Day after the trading day on which the Short Sale Circuit Breaker is triggered. 24X Rule 13.2 requires borrowing and deliveries to be effected in accordance with Rule 203 of Regulation SHO and provides that the 24X incorporates by reference Rules 200 and 203 of Regulation SHO.

One commenter questioned how would compliance with the circuit breaker requirements set forth in Rule 201(b)(1)(ii) of Regulation SHO be achieved if the exclusive SIPs were not in operation during the 24X Market Session.³⁷⁶ The commenter also stated that the close-out requirement for the failure to deliver, set forth in Rule 204 of Regulation SHO, could be delayed

³⁷⁶ See SIFMA Letter at 5.

due to the extension of trading hours to non-business days.³⁷⁷ 24X responded that it would comply with Rule 201 of Regulation SHO whenever it is deemed to apply.³⁷⁸

The 24X rules are consistent with the Exchange Act as they incorporate Regulation SHO requirements. Accordingly, 24X rules are consistent with Section 6(b)(5) of the Exchange Act because they are designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. Further, in response to commenter's concerns about potential delays in the close out requirement due to the initially proposed 24X Market Session operating during non-business days,³⁷⁹ the 24X Market Session, as amended, will not provide for trading on non-U.S. Business Days. In response to the question raised by the commenter about compliance with the circuit breaker requirements if the exclusive SIPs were not in operation, in Amendment No. 2, 24X amended the rules governing the 24X Market Session so that 24X will not commence operations of the 24X Market Session until the Equity Data Plans are able to collect, consolidate, process and disseminate consolidated data during the 24X Market Session designated hours.³⁸⁰

24X proposed 24X Rule 11.13 governing 24X's limitation of liability arising from use of Exchange systems or facilities.³⁸¹ Two commenters commented on 24X's rule.³⁸² One commenter stated that 24X failed to appropriately justify its proposed limitation of liability.³⁸³

³⁷⁷ See id.

³⁷⁸ See 24X Letter II at 14.

³⁷⁹ See supra notes 376-377 and accompanying text.

³⁸⁰ See 24X Rule 1.5(c), which requires 24X to file the 24X Market Session Proposed Rule Change.

³⁸¹ See 24X Rule 11.13.

³⁸² See FIA PTG Letter II and SIFMA Letter II.

³⁸³ See FIA PTG Letter II at 1-3.

This commenter stated that 24X’s limitation of liability provision is modeled on a similar provision adopted in 2005 and that subsequent significant equity market structure changes have rendered the proposed provision inadequate, particularly given the 24X Market Session, as originally proposed.³⁸⁴ One of these commenters further stated that 24X provides no support for the Commission to find the limitation of liability provisions consistent with the Exchange Act or the public interest, and that “[a]n even greater level of scrutiny regarding the proposed 24X limitation of liability is warranted due to the additional operational risks associated with operating a near 24x7 market center.”³⁸⁵ The other commenter stated that “[n]otably, 24X intends to operate for significantly more trading hours and trading days than other national securities exchanges, and it has not explained why the liability caps included in its proposed rule are reasonable or appropriately tailored to address the risk of system errors or malfunctions on its market across these longer periods.”³⁸⁶

In response to the commenter’s concerns, 24X stated that it believes that the 24X rule complies with the Exchange Act.³⁸⁷ 24X continued that other exchanges operate pursuant to the “same rule” and that “there is no basis for reaching a different conclusion in the context of 24X’s Form 1 application.”³⁸⁸ 24X also stated that “the liability caps were not established based on the number of trading hours on the exchange.”³⁸⁹

³⁸⁴ Id. at 2-3; see also SIFMA Letter II at 8-9.

³⁸⁵ FIA PTG Letter II at 2 (stating, as an example, “in the event of a technological error during the 24X Market Session, there may be limited staff available to quickly resolve a critical issue, increasing the likelihood a malfunction will cause harm and persist over an extended period of time.”).

³⁸⁶ See SIFMA Letter II at 9.

³⁸⁷ See 24X Letter III at 5.

³⁸⁸ Id.

³⁸⁹ See 24X Letter IV at 5.

The limitation of liability provisions of 24X Rule 11.13 are consistent with the Exchange Act requirement that the rules of an exchange be designed to promote just and equitable principles of trade and not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.³⁹⁰ 24X Rule 11.13 is substantively similar to other exchanges' limitation of liability provisions previously approved by the Commission and applicable to other exchanges that have extended hours trading sessions.³⁹¹ In addition, with respect to the commenters' statements that greater exchange liability would be appropriate given the "additional operational risks associated with operating a near 24x7 market center," 24X will be required to comply with its obligations under the Exchange Act during all hours that it is operating. While 24X has more hours of operations as compared to other exchanges, 24X will have SRO obligations during the 24X Market Session as it does during its other trading sessions. Further, as discussed below, 24X will be an SCI entity that must comply with Regulation SCI.³⁹² While commenters submitted comments on the 24X Form 1, both commenters stated that the limitation of liability caps on all exchanges should be reevaluated. As stated above, the Commission, consistent with its oversight of the national market system, will continue to monitor the national market system. However, the monitoring of market developments does not foreclose Commission action on the 24X Form 1, which for reasons discussed throughout, satisfies the requirements of the Exchange Act.

³⁹⁰ 15 U.S.C. 78f(b)(5) and (8).

³⁹¹ See e.g., MEMX Exchange Rule 11.14; LTSE Exchange Rule 11.260.

³⁹² See section III.E.2.

One commenter requested interpretative guidance on the application of Commission Rule 605 and Rule 610(d) and FINRA Rule 5320.08 to the proposed 24X trading sessions (i.e., Pre-Market Session, Post-Market Session, 24X Market Session and Core Market Session).³⁹³ These rules are clear as to their application during different sessions and the commenter did not state why the 24X Form 1 raised unique interpretative questions compared to the extended hours sessions on other national securities exchanges that have operated for several years.

E. Technology Agreement with MEMX Technology

1. Delivery, Licenses and Services Agreement (“DLSA”)

The Exchange will utilize trading technology and systems (collectively, the “Technology and System”) developed by MEMX Technologies, LLC (“MEMX Technologies”),³⁹⁴ a subsidiary of MEMX Holdings LLC, and provided to the Exchange pursuant to a DLSA between MEMX Technologies and the Exchange.³⁹⁵ Specifically, pursuant to the DLSA, MEMX Technologies will provide technology support services to 24X, which will include “(1) the development and testing of software and hardware necessary to operate the matching engine and

³⁹³ See SIFMA Letter II at 13. This commenter posed a number of questions that were interpretive in nature or technical and related to implementation of extended hours trading. As discussed throughout, there are existing extended hours trading sessions on other exchanges and the rules that are applicable during extended hours sessions are clear. The commenter stated that a broader consideration of extended hours trading in the national market system should be conducted. See supra section III.D.2.a (discussing comments requesting a roundtable or broader consideration of extended hours trading). As discussed above, the Commission continues to monitor the national market system, including the expansion of trading hours in the equity market.

³⁹⁴ 24X does not own the Technology and System but states that it has obtained all necessary licenses and authorizations from MEMX Technologies in order for 24X and its Members and Users to fully utilize the Technology and System. See Form 1, Exhibit E.

³⁹⁵ See Form 1, Exhibit E. Among other things, the DLSA sets forth a multi-year term with automatic renewal provisions that requires MEMX Technologies to deliver the Technology and System and run industry connectivity testing and other functional-based testing. See id. The DLSA also provides for transition services to the extent either party decides to terminate the arrangement. See id.

connectivity to other exchanges via a third-party routing broker(s) and third party-developed functions (including clearing, custody, and client connectivity), (2) the provision of technical support in order for the Exchange to operate and monitor the Exchange; and (3) the provision of ongoing system availability commitments, updates, fixes, and technology support.”³⁹⁶ MEMX Technologies will support intra-day compliance monitoring by 24X and provide timely reporting to 24X of any potential Regulation SCI events or other operational issues with the System.³⁹⁷

All services provided to the Exchange by MEMX Technologies will be based upon requirements and instructions determined by the Exchange.³⁹⁸ Although MEMX Technologies would provide the technology support services, 24X will be responsible for operating and monitoring its Exchange-related Technology and System and administering the rules of the Exchange and other rules and regulations applicable to the Exchange.³⁹⁹ To ensure logical and physical separation from MEMX Technologies and its affiliates, the Technology and System will operate a separate instance of MEMX Technologies’ core matching engine technology and software, utilizing separate servers from the MEMX Exchange system and separate connections for 24X Members to connect to 24X.⁴⁰⁰ Under the terms of the DLSA, 24X may request MEMX Technologies to develop and implement (for a fee to be determined by the parties) technology changes that change the operation of the 24X Technology and System. 24X is not obligated to agree to, accept, or adopt changes to the Technology and System that are not essential to the

³⁹⁶ See Form 1, Exhibit C.

³⁹⁷ See id.

³⁹⁸ See id.

³⁹⁹ See id.

⁴⁰⁰ See Form 1, Exhibit E.

operation of its instance of the Technology and System.⁴⁰¹ Additionally, 24X stated that the “trading platforms operated by MEMX Technologies (including 24X National Exchange, LLC, MEMX Exchange, and any other exchanges or trading platforms operated by MEMX Technologies) currently are and will be segregated to ensure that 24X is not deemed to be a facility of MEMX Exchange.”⁴⁰² MEMX Technologies will not use or disclose information or data (i) about or originating with 24X in its dealings with MEMX Exchange or any other platform or (ii) about or originating with MEMX Exchange or any other platform in its dealing with 24X.⁴⁰³

One commenter stated that the proposal by 24X to outsource its technology needs, along with the maintenance and remediation of technology issues, to MEMX Technologies “is distinct from the existing common practice of exchanges and other venues to outsource discrete technology elements to individual vendors based on the expertise provide by each vendor, subject to oversight of the vendors by the exchange as required by Regulation SCI.”⁴⁰⁴ The commenter further stated that other “existing examples do not involve exclusive reliance on a single technology provider (affiliated with one exchange) for multiple U.S. registered exchange[s].”⁴⁰⁵

This commenter’s statements were disputed by another commenter, who stated that “having a common technology platform underlying multiple registered exchanges is hardly a

⁴⁰¹ See id.

⁴⁰² See Form 1, Exhibit C.

⁴⁰³ See id.

⁴⁰⁴ See IEX Letter at 2.

⁴⁰⁵ See IEX Letter at 3.

new phenomenon. Of the sixteen currently licensed U.S. equities exchanges, twelve are operated by just three exchange groups that each operate several independently-registered exchanges using a common technology platform.”⁴⁰⁶ The commenter further stated that use of vendors “allows competitors of all sorts to focus on their core business, whether that’s facilitating the move to a 24-hour trading model, . . . or in attracting listings from corporate issuers.”⁴⁰⁷ 24X responded that “the use of a common technology platform for multiple registered exchanges is a common practice. 24X understands that three existing exchange groups operate several independently-registered national securities exchanges using a common technology platform.”⁴⁰⁸ The Commission agrees that the outsourcing of an exchange’s technology platform to another entity is not novel.⁴⁰⁹

Two commenters stated that there should be greater clarification on the relationship between 24X and MEMX Technologies.⁴¹⁰ A third commenter expressed concerns about the proposed agreement between 24X and MEMX Technologies.⁴¹¹ One of these commenters stated

⁴⁰⁶ See MEMX Letter at 2. The commenter further stated, that as an example, “Nasdaq technology is also used to operate at least one ATS that meets the volume threshold for compliance with Regulation SCI; the securities information processor (“SIP”) for Tape C stocks; and two of three trade reporting facilities (“TRFs”).” 24X agreed with this statement. See 24X Letter IV at 2-3.

⁴⁰⁷ See MEMX Letter at 4.

⁴⁰⁸ See 24X Letter III at 4.

⁴⁰⁹ See Securities Exchange Act Release No. 100783 (Aug. 20, 2024), 89 FR 68481 (Aug. 26, 2024) (SR-LTSE-2024-03) (“LTSE – MEMX Technologies Approval Order”) (approval of proposed rule change by the Long-Term Stock Exchange to transition from its current trading platform to a new trading platform that uses technology provided by MEMX Technologies). One commenter had stated that arguments regarding the use of MEMX’s technology have been substantively addressed by the Commission in the LTSE – MEMX Technologies Approval Order and that “the Commission’s order addresses the pertinent legal questions and concludes that this arrangement [between LTSE and MEMX Technologies] ‘is consistent with the Exchange Act.’” See MEMX Letter at 5. 24X agreed with this commenter’s statement. See 24X Letter IV at 3.

⁴¹⁰ See Healthy Markets Letter at 9-10; Montone Letter at 5.

⁴¹¹ See IEX Letter.

that the Exchange would be heavily dependent on MEMX Technologies, and asked whether MEMX Technologies would be more properly viewed as an owner or control person for its technology needs.⁴¹² As the Commission stated above, MEMX Technologies is a vendor that will provide technology support services to 24X, to meet requirements established by 24X; MEMX Technologies has no ownership interest in 24X.⁴¹³ The ultimate responsibility for regulatory compliance with the Exchange Act and rules thereunder falls on 24X as the SRO. Nor will MEMX Technologies be able to assert control over 24X regarding operation of the Technology and System. Under the terms of the DLSA, as described in the Form 1, 24X is not obligated to agree to, accept, or adopt changes to the Technology and System that are not essential to the operation of its instance of the Technology and System.⁴¹⁴

Another commenter stated that the “exclusive reliance on a single vendor raises questions about the availability of resources by [MEMX Technologies] to fill that role.”⁴¹⁵ Similarly, one commenter asked for clarification as to whether MEMX Technologies “has the staff and

⁴¹² See Healthy Markets Letter at 9. The commenter also stated that the arrangement between 24X and MEMX Technologies “would need to be public, so that the Commission and public could assess the conflicts of interests and risks posed by it to the operations of 24X.” Healthy Markets Letter at 10. A description of the DLSA and its terms may be found in 24X’s Form 1 at Exhibits C and E and have been subject to notice and public comment. Exhibits C and E to the Form 1 do not require these contracts to be filed. See Exhibit C (requiring, among other things, information relating to any entity with whom the applicant has a contractual or other arrangement relating to the operation of an electronic trading system to be used to effect transactions on the exchange) and Exhibit E (requiring a description of the operation of the exchange). These exhibits provide sufficient information to assess the proposed arrangement.

⁴¹³ See Form 1, Exhibit C.

⁴¹⁴ See Form 1, Exhibit E.

⁴¹⁵ See IEX Letter at 2. Although MEMX Technologies will develop and maintain the Technology and System pursuant to the DLSA, it is 24X market operations staff that will be responsible for the daily operations of 24X’s market. See Form 1, Exhibit E.

infrastructure to facilitate 23-hour continuous trading”⁴¹⁶ and stated that there should be “a detailed reassurance that the technology underlying the exchange will not breakdown due to a high user rate and further if the technology does fail, what the procedures will be to protect the exchange while also safeguarding investors information and portfolios.”⁴¹⁷ 24X in response stated that the technology it will utilize “has a proven track record for resiliency, a track record that should give the SEC and market participants comfort regarding the reliability of 24X’s market offering.”⁴¹⁸

Another of the commenters stated that 24X’s potential use of MEMX Technologies for operational support raises conflicts concerns and that the Form 1 “contains little if any information about management of conflicts more generally.”⁴¹⁹ This commenter stated that there are no statements or information about the “nature and extent” of the segregation between 24X and MEMX Technologies or the “financial terms of 24X’s agreement with [MEMX Technologies] and about what type of separation may exist between [MEMX Technologies] and MEMX.”⁴²⁰ The commenter further stated that its concerns “may be magnified to the extent that

⁴¹⁶ Montone Letter at 5. One commenter asked whether in the event of a potentially serious cyber breach of its systems, 24X would “be in a position to promptly identify such a breach if it is entirely reliant on a third party for security and other technology” and, once aware, what assistance it would “require from its supplier to be able to respond in a timely way that protects exchange systems and user information.” See Heathy Markets Letter at 9. The Commission reiterates that the ultimate responsibility for regulatory compliance with the Exchange Act and rules thereunder falls on 24X and should 24X require, the DLSA provides that 24X may request technology changes from MEMX Technologies to change the operation of the System. See Form 1, Exhibit E.

⁴¹⁷ See Montone Letter at 5.

⁴¹⁸ 24X Letter III at 4. 24X also agreed with a commenter that stated that “the strength of MEMX’s technology platform is the primary reason that 24X, LTSE, and several other trading venues have contracted with MEMX Technologies to power their trading systems. MEMX has shown that its technology platform is robust and resilient day in and day out for the past four years.” See 24X Letter IV at 2-3 (quoting from MEMX Letter at 2).

⁴¹⁹ See IEX Letter at 2-3.

⁴²⁰ See IEX Letter at 3.

other exchanges propose to make use of this same exclusive ‘white label’ technology solution by the same vendor to meet their technology needs, as has been widely reported. Under that construction, [MEMX Technologies] would appear to be performing in effect a technology utility function for multiple regulated exchanges, but it would not be a regulated entity itself, and the Commission would have limited ability to evaluate, and no ability to control, how it performs that critical function.”⁴²¹

24X, not MEMX Technologies, has regulatory responsibility over the 24X System, and therefore 24X as a SRO is fully responsible for discharging its obligations as a registered national securities exchange. The Commission disagrees with the commenter that the Form 1 contains little information about these matters.⁴²² 24X has provided sufficient detail in the Form 1 regarding the relationship between 24X and MEMX Technologies.⁴²³ MEMX Technologies will not use or disclose information or data (i) about or originating with 24X in its dealings with MEMX Exchange or any other platform or (ii) about or originating with the MEMX Exchange or any other platform in its dealings with 24X.⁴²⁴ Also, the DLSA, among other things, enforces logical and physical separation from MEMX Technologies and its affiliates in that the Technology and System will operate a separate instance of MEMX Technologies’ core matching engine technology and software, utilizing separate servers from MEMX Exchange system and separate connections for Members to connect to 24X.⁴²⁵ Further, 24X will interact with the

⁴²¹ See id.

⁴²² See supra note 412.

⁴²³ See Form 1, Exhibit E. See also 24X Letter II at 15.

⁴²⁴ See Form 1, Exhibit C.

⁴²⁵ See Form 1, Exhibit E.

MEMX Exchange, including MEMX Exchange’s routing broker-dealer, on the same arms-length commercial terms as 24X interacts with other registered national securities exchanges and their routing broker-dealers.⁴²⁶ Membership in the MEMX Exchange will not confer any advantages when trading on 24X (or vice versa), such as faster connections, lower fees, or preferential treatment of orders on the 24X System.⁴²⁷ Membership in the MEMX Exchange will also not be a requirement for membership in or connection to 24X (or vice versa).⁴²⁸

After consideration of the disclosures 24X made in its Form 1 application and review of the comments, the Commission finds that 24X’s proposal to utilize technology provided and maintained by MEMX Technologies is consistent with the Exchange Act, in particular with Section 6(b)(1) of the Exchange Act,⁴²⁹ which requires an exchange to be so organized and have the capacity to carry out the purposes of the Exchange Act and to comply and enforce compliance by its members and persons associated with its members with the Exchange Act and the rules thereunder. The arrangement between 24X and MEMX Technologies, as described in the 24X Form 1, will enable the Exchange to utilize trading platform technology that is already in use with an experienced operator.⁴³⁰ However, the terms of the DLSA between 24X and MEMX Technologies, as described in the Form 1, are reasonably designed not to confer upon either MEMX Exchange or 24X Members any advantages when trading on 24X, or vice versa,

⁴²⁶ See id.

⁴²⁷ See id.

⁴²⁸ See Form 1, Exhibit E.

⁴²⁹ 15 U.S.C. 78f(b)(1).

⁴³⁰ See e.g., LTSE – MEMX Technologies Approval Order, supra note 409.

such as faster connections, lower fees, or preferential treatment of orders on the 24X System.⁴³¹

Further, as described in the Form 1, the DLSA will not include the technology or systems to route orders to the MEMX Exchange or any other exchange.⁴³² 24X will retain responsibility for overseeing the daily market operations of its trading system; MEMX Technologies will be responsible for performing all necessary maintenance and remediation of problems relating to the logical and physical infrastructure, in accordance with the DLSA.⁴³³ Therefore, 24X will be capable of exercising sufficient control over the operation of its Technology and System, and will be sufficiently independent from MEMX Technologies, to enable 24X to comply with the requirements under the Exchange Act and the rules thereunder.

The provisions of the DLSA described above demonstrate that the support services provided by MEMX Technology are adequate to enable 24X to meet its self-regulatory obligations. In order for 24X to perform its regulatory obligations, the DLSA provides 24X with enumerated audit rights to review books and records of MEMX Technologies related to the provision of services under the DLSA, and the ability either to produce itself, or direct MEMX Technologies to produce, MEMX Technologies documents and information related to the operation of the Technology and System to the Commission or other regulators or parties upon request, subject to appropriate due process.⁴³⁴

⁴³¹ See Form 1, Exhibit E.

⁴³² 24X may automatically route orders to other exchanges through the use of one or more routing brokers that are not affiliated with 24X. See Form 1, Exhibit E. See also 24X Rules 2.11 and 11.10.

⁴³³ See Form 1, Exhibit E.

⁴³⁴ See id.

Finally, 24X will have regulatory responsibility for its trading Technology and System and will be responsible to fully discharge its obligations as a national securities exchange. 24X will also be responsible for its market and cross-market surveillance through the RSA, described above,⁴³⁵ and maintain its independent regulatory function to oversee the RSA and will not rely on or utilize MEMX Exchange or its personnel to fulfill any aspect of those obligations on 24X's behalf.

2. Regulation SCI

As a registered national securities exchange, 24X will be an "SCI entity" responsible for compliance with the requirements of Regulation Systems Compliance and Integrity ("Regulation SCI").⁴³⁶ Regulation SCI requires SCI entities to establish written policies and procedures reasonably designed to ensure that their applicable systems have levels of capacity, integrity, resiliency, availability, and security adequate to maintain their operational capability and promote the maintenance of fair and orderly markets, and that they operate in a manner that complies with the Exchange Act.⁴³⁷ In addition, Regulation SCI requires SCI entities to take corrective action with respect to SCI events (defined to include systems disruptions, systems compliance issues, and systems intrusions), notify the Commission of such events, and disseminate information about certain SCI events to affected members or participants (and, for certain major SCI events, to all members or participants of the SCI entity).⁴³⁸ Moreover,

⁴³⁵ See supra section III.C.2. (discussing 24X's RSA with FINRA).

⁴³⁶ See Securities Exchange Act Release No.73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) ("Regulation SCI 2014 Adopting Release").

⁴³⁷ See 17 CFR 242.1001.

⁴³⁸ See 17 CFR 242.1002. See also 17 CFR 242.1000 and 17 CFR 242.1006.

Regulation SCI requires SCI entities to conduct a review of their systems by objective personnel at least annually, submit quarterly reports regarding completed, ongoing, and planned material changes to their SCI systems to the Commission,⁴³⁹ and maintain certain books and records.⁴⁴⁰ It also requires SCI entities to mandate participation by designated members or participants in scheduled testing of the operation of their business continuity and disaster recovery plans, including backup systems, and to coordinate such testing on an industry- or sector-wide basis with other SCI entities.⁴⁴¹

Regulation SCI applies to an SCI entity's "SCI systems," which are systems that directly support any one of six key securities market functions – trading, clearance and settlement, order routing, market data, market regulation, and market surveillance ("SCI systems"). Regulation SCI also applies to "indirect SCI systems," which are any systems that, if breached, are likely to pose a security threat to SCI systems. Further, certain SCI systems that are "critical SCI systems" are held to certain heightened requirements under Regulation SCI.⁴⁴²

The Exchange has obtained commitments from MEMX Technologies in connection with the Exchange's engagement of MEMX Technologies to develop, license, and operate the Technology and System on behalf of the Exchange to, among other things, address how this arrangement is consistent with the requirements of Regulation SCI.⁴⁴³ The Exchange acknowledges that as the SCI entity contracting with MEMX Technologies to provide software

⁴³⁹ See 17 CFR 242.1003. See also 17 CFR 242.1000.

⁴⁴⁰ See 17 CFR 242.1005. See also 17 CFR 242.1007.

⁴⁴¹ See 17 CFR 242.1004.

⁴⁴² See 17 CFR 242.1000 (definitions of "SCI systems," "indirect SCI systems," and "critical SCI systems").

⁴⁴³ See Form 1, Exhibit E.

and hardware to operate both SCI systems and indirect SCI systems, 24X will have full responsibility for ensuring that it is in compliance with all aspects of Regulation SCI, including the requirements for its backup and recovery capabilities.⁴⁴⁴ In addition, the DLSA includes commitments from MEMX Technologies as developer, licensor, and operator of the Technology and System to cooperate with the Exchange and provide the Exchange with the information and access that the Exchange reasonably believes will allow the Exchange to satisfy its obligations under Regulation SCI.⁴⁴⁵

One commenter stated that it does “not see how 24X would be able to comply with Regulation SCI when it would not be in control of its own systems. . . . The introduction of another essential business partner creates previously unprecedented conflicts of interest for a registered exchange and complications for ownership and governance.”⁴⁴⁶ Contrary to the commenter’s statements, Regulation SCI contemplates the possibility of an SCI entity’s SCI systems and indirect SCI systems being operated on its behalf by another entity.⁴⁴⁷ In fact, because SCI entities engage in outsourcing to varying degrees, the Commission stated when it adopted Regulation SCI, “if an SCI entity determines to utilize a third party for an applicable system, it is responsible for having in place processes and requirements to ensure that it is able to

⁴⁴⁴ See id.

⁴⁴⁵ See id.

⁴⁴⁶ See Healthy Markets Letter at 9.

⁴⁴⁷ See, e.g., Rule 1000 (definitions of SCI systems, critical SCI systems and indirect SCI systems, each of which contains “any...systems of, or operated by or on behalf of...”). See also Regulation SCI 2014 Adopting Release, supra note 436 at 72276 (discussing the utilization of third parties by SCI entities for applicable systems).

satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party.”⁴⁴⁸

Another commenter questioned how exchanges that are operating Regulation SCI systems “in production mode at all hours” would be able to comply with Regulation SCI, including requirements for systems testing.⁴⁴⁹ In its response, 24X set forth a description of how its policies and procedures comply with the requirements of Regulation SCI.⁴⁵⁰ 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, and 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.⁴⁵¹ Finally, as discussed above, in Amendment No. 2, 24X has modified the 24X Market System so that trading will not occur on weekends. Accordingly, the concerns raised about systems testing when Regulation SCI systems would be “in production mode at all hours” are no longer germane. Based on the statements 24X has made in the Form 1, as amended, and 24X’s response to

⁴⁴⁸ See id. (“The Commission agrees with the comment that an SCI entity should be responsible for managing its relationship with third parties operating systems on behalf of the SCI entity through due diligence, contract terms, and monitoring of third party performance. However, the Commission believes that these methods may not be sufficient in all cases to ensure that the requirements of Regulation SCI are met for SCI systems operated by third parties....Instead, if an SCI entity determines to utilize a third party for an applicable system, it is responsible for having in place processes and requirements to ensure that it is able to satisfy the requirements of Regulation SCI for systems operated on behalf of the SCI entity by a third party. The Commission believes that it would be appropriate for an SCI entity to evaluate the challenges associated with oversight of third-party vendors that provide or support its applicable systems subject to Regulation SCI. If an SCI entity is uncertain of its ability to manage a third-party relationship (whether through due diligence, contract terms, monitoring, or other methods) to satisfy the requirements of Regulation SCI, then it would need to reassess its decision to outsource the applicable system to such third party.”).

⁴⁴⁹ See SIFMA Letter at 8.

⁴⁵⁰ See 24X Letter II at 5.

⁴⁵¹ See id.

commenters with respect to its obligations under Regulation SCI, as well as the provisions in the DLSA as described by 24X in the Form 1, 24X's proposal regarding the engagement of a third party to develop, license, and operate the Technology and System is designed to support the Exchange's ability to comply with its regulatory obligations under Regulation SCI.

F. Discipline and Oversight of Members

As stated above, one prerequisite for the Commission's grant of an exchange's application for registration is that a proposed exchange must be so organized and have the capacity to be able to carry out the purposes of the Exchange Act.⁴⁵² Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with the federal securities laws and rules thereunder and the rules of the exchange.⁴⁵³ Pursuant to an RSA with FINRA, FINRA will perform many of the initial disciplinary processes on behalf of 24X.⁴⁵⁴ For example, FINRA will investigate potential securities laws violations, issue complaints, and conduct hearings pursuant to 24X rules. Appeals from disciplinary decisions will be heard by the 24X Appeals Committee,⁴⁵⁵ and the 24X Appeals Committee's decision shall be final.⁴⁵⁶ In addition, the 24X Board on its own initiative may order review of a disciplinary decision.⁴⁵⁷

⁴⁵² See 15 U.S.C. 78f(b)(1).

⁴⁵³ See id.

⁴⁵⁴ See supra notes 119-120 and accompanying text. See also 24X Rule 9.8 (stating that 24X and FINRA are parties to a regulatory services agreement, pursuant to which FINRA will perform certain functions described in Chapter 9 on behalf of 24X).

⁴⁵⁵ See 24X Rule 8.10(b).

⁴⁵⁶ See id.

⁴⁵⁷ See 24X Rule 8.10(c).

The 24X LLC Agreement and 24X rules provide that the Exchange has disciplinary jurisdiction over its Members⁴⁵⁸ so that it can enforce its Members' compliance with its rules and the federal securities laws and rules.⁴⁵⁹ The Exchange's rules also permit 24X to sanction Members for violations of its rules and violations of the federal securities laws and rules by, among other things, expelling or suspending Members, limiting Members' activities, functions, or operations, fining or censuring Members, or suspending or barring a person from being associated with a Member, or any other fitting sanction.⁴⁶⁰ 24X's rules also provide for the imposition of fines for certain minor rule violations in lieu of commencing disciplinary proceedings.⁴⁶¹ Accordingly, as a condition to the operation of 24X, a Minor Rule Violation Plan ("MRVP") filed by 24X under Exchange Act Rule 19d-1(c)(2) must be declared effective by the Commission.⁴⁶²

The Commission finds that the 24X LLC Agreement and 24X rules concerning its disciplinary and oversight programs are consistent with the requirements of Sections 6(b)(6) and 6(b)(7) of the Exchange Act⁴⁶³ in that they provide fair procedures for the disciplining of members and persons associated with members. The Commission further finds that the rules of 24X provide it with the ability to comply, and with the ability to enforce compliance by its

⁴⁵⁸ See supra note 48.

⁴⁵⁹ See generally 24X LLC Agreement, Article XI and 24X Rules Chapters 7 and 8.

⁴⁶⁰ See 24X Rule 8.1(a).

⁴⁶¹ See 24X Rule 8.15.

⁴⁶² 17 CFR 240.19d-1(c)(2).

⁴⁶³ 15 U.S.C. 78f(b)(6) and (b)(7).

Members and persons associated with its Members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of 24X.⁴⁶⁴

G. Trading on 24X Pursuant to Unlisted Trading Privileges

24X does not intend to be a primary listing market for securities.⁴⁶⁵ Accordingly, 24X has not proposed rules that would allow it to primarily list any securities at this time. Instead, 24X has proposed to trade securities pursuant to UTP. 24X Rule 14.1 establishes the Exchange's authority to trade securities on a UTP basis. 24X Rule 14.1(a) provides that 24X may extend UTP to any security that is an NMS stock that is listed on another national securities exchange or with respect to which UTP may otherwise be extended in accordance with Section 12(f) of the Exchange Act.⁴⁶⁶ 24X Rule 14.1(a) further provides that any such security would be subject to all 24X rules applicable to trading on 24X, unless otherwise noted.

24X Rule 14.1(b) establishes additional rules for trading of UTP Exchange Traded Products, which are defined in 24X Rule 1.5(nn).⁴⁶⁷ 24X Rule 14.1(b) provides that 24X will distribute an information circular prior to the commencement of trading in a UTP Exchange Traded Product that generally would include the same information as the information circular

⁴⁶⁴ See 15 U.S.C. 78f(b)(1).

⁴⁶⁵ See Form 1, Exhibit H.

⁴⁶⁶ 15 U.S.C. 78l(f).

⁴⁶⁷ Pursuant to 24X Rule 1.5(nn), the term "UTP Exchange Traded Products" means "derivative securities products that are not listed on the Exchange but that trade on the Exchange pursuant to unlisted trading privileges, including the following: equity linked notes, investment company units, index-linked exchangeable notes, equity gold shares, equity index-linked securities, commodity-linked securities, currency-linked securities, fixed-income index-linked securities, futures linked securities, multifactor-index-linked securities, trust certificates, currency and index warrants, portfolio depository receipts, trust issued receipts, commodity-based trust shares, currency trust shares, commodity index trust shares, commodity futures trust shares, partnership units, paired trust shares, trust units, managed fund shares, and managed trust securities."

provided by the listing exchange, including (a) the special risks of trading the Exchange Traded Product, (b) the Exchange's rules that would apply to the Exchange Traded Product, and (c) information about the dissemination of value of the underlying assets or indices. 24X Rule 14.1(b)(2) establishes certain requirements for Members that have customers that trade UTP Exchange Traded Products.⁴⁶⁸ 24X Rule 14.1(b)(4) also establishes certain requirements for any Member registered as a Market Maker in a UTP Exchange Traded Product that derives its value from one or more currencies, commodities, or derivatives based on one or more currencies or commodities, or is based on a basket or index composed of currencies or commodities. 24X Rule 14.1(b)(5) provides that the Exchange's surveillance procedures for Exchange Traded Products traded on the Exchange pursuant to UTP would be similar to the procedures used for equity securities traded on the Exchange and would incorporate and rely upon existing Exchange surveillance systems.

The Commission finds that the Exchange's proposed approach to the trading of securities on a UTP basis, as set forth in 24X Rule 14.1, is consistent with Section 12(f) of the Exchange Act and Rule 12f-5 thereunder.⁴⁶⁹ Rule 12f-5 under the Exchange Act requires an exchange that extends unlisted trading privileges to securities to have in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends unlisted trading

⁴⁶⁸ 24X Rule 14.1(b)(2)(A) states that 24X Rule 14.1(b)(2) applies to UTP Exchange Traded Products that are the subject of an order by the Commission exempting the series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. 24X Rule 14.1(b)(2)(B) requires members to provide a written description of the terms and characteristics of UTP Exchange Traded Products to purchasers of such securities, not later than the time of confirmation of the first transaction, and with any sales materials relating to UTP Exchange Traded Products. 24X Rule 14.1(b)(2)(C) requires members to provide a prospectus to a customer requesting a prospectus.

⁴⁶⁹ 15 U.S.C. 78j(f); 17 CFR 240.12f-5.

privileges.⁴⁷⁰ 24X Rule 14.1 includes a provision that any security traded UTP on the Exchange “shall be subject to all Exchange rules applicable to trading on the Exchange, unless otherwise noted.”⁴⁷¹ The provisions in 24X Rule 14.1 are substantively the same as the existing rules of the MEMX Exchange.⁴⁷² Accordingly, pursuant to Section 12(f) of the Exchange Act and Rule 12f-5 thereunder, 24X will be permitted to extend unlisted trading privileges to securities of the same class, subject to the trading rules of the Exchange.

H. Section 11(a) of the Exchange Act

Section 11(a)(1) of the Exchange Act⁴⁷³ prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises investment discretion (collectively, “covered accounts”) unless an exception applies. Rule 11a2-2(T) under the Exchange Act,⁴⁷⁴ known as the “effect versus execute” rule, provides exchange members with an exemption from the Section 11(a)(1) prohibition. Rule 11a2-2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute transactions on the exchange. To comply with Rule 11a2-2(T)’s conditions, a member: (i) must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the

⁴⁷⁰ See 17 CFR 240.12f-5. See also Securities Exchange Act Release No. 35737 (Apr. 21, 1995), 60 FR 20891 (Apr. 28, 1995) (File No. S7-4-95) (adopting Rule 12f-5 under the Exchange Act).

⁴⁷¹ See 24X Rule 14.1(a).

⁴⁷² See MEMX Exchange Rule 14.1.

⁴⁷³ 15 U.S.C. 78k(a)(1).

⁴⁷⁴ 17 CFR 240.11a2-2(T).

member performing the execution;⁴⁷⁵ (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction except as provided in the Rule.

In a letter to the Commission, 24X requested that the Commission concur with 24X's conclusion that 24X Members that enter orders into the 24X trading system satisfy the conditions of Rule 11a2-2(T).⁴⁷⁶ For the reasons set forth below, 24X Members entering orders into the 24X trading system could satisfy the requirements of Rule 11a2-2(T).

Rule 11a2-2(T)'s first condition is that orders for covered accounts be transmitted from off the exchange floor. In the context of automated trading systems, the Commission has found that the off-floor transmission condition is met if a covered account order is transmitted from a remote location directly to an exchange's floor by electronic means.⁴⁷⁷ 24X represents that 24X does not have a physical trading floor, and the 24X trading system will receive orders from members electronically through remote terminals or computer-to-computer interfaces.⁴⁷⁸ The 24X trading system satisfies this off-floor transmission condition.

⁴⁷⁵ This prohibition also applies to associated persons. Rule 11a2-2(T)(a)(2)(iii), 17 CFR 240.11a2-2(T)(a)(2)(iii). The member may, however, participate in clearing and settling the transaction. Rule 11a2-2(T)(b)(3), 17 CFR 240.11a2-2(T)(b)(3).

⁴⁷⁶ See letter from David Sassoon, General Counsel, 24X, to Vanessa Countryman, Secretary, Commission, dated Feb. 6, 2024 ("24X 11(a) Letter").

⁴⁷⁷ See, e.g., Nasdaq Order, supra note 57; Securities Exchange Act Release Nos. 61419 (Jan. 26, 2010), 75 FR 5157 (Feb. 1, 2010) (SR-BATS-2009-031) (approving BATS options trading); 59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR-BSE-2008-48) (approving equity securities listing and trading on BSE); 57478 (Mar. 12, 2008), 73 FR 14521 (Mar. 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (approving Nasdaq Options Market options trading); 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR-NYSE-90-52 and SR-NYSE-90-53) (approving NYSE's Off-Hours Trading Facility); and 15533 (Jan. 29, 1979), 44 FR 6084 (Jan. 31, 1979) ("1979 Release").

⁴⁷⁸ See 24X 11(a) Letter, supra note 476 at 2.

The second condition requires that the member and any associated person not participate in the execution of its order after the order has been transmitted. 24X represents that at no time following the submission of an order is a member or an associated person of the member able to acquire control or influence over the result or timing of the order's execution.⁴⁷⁹ According to 24X, the execution of a member's order is determined solely by what quotes and orders are present in the system at the time the member submits the order, and the order priority based on the 24X rules.⁴⁸⁰ Accordingly, a 24X member and its associated persons do not participate in the execution of an order submitted to the 24X trading system.⁴⁸¹

The third condition states that the order be executed by an exchange member who is unaffiliated with the member initiating the order. The Commission has stated that this condition is satisfied when automated exchange facilities, such as the 24X trading system, are used, as long as the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange.⁴⁸² 24X

⁴⁷⁹ See *id.* at 3. 24X states that a member may cancel or modify the order, or modify the instructions for executing the order, after the order has been transmitted, provided that such cancellations or modifications are transmitted from off an exchange floor. The Commission has stated that the non-participation condition is satisfied under such circumstances so long as such modifications or cancellations are also transmitted from off the floor. See Securities Exchange Act Release No. 14563 (Mar. 14, 1978), 43 FR 11542 (Mar. 17, 1978) ("1978 Release") (stating that the "non-participation requirement does not prevent initiating members from canceling or modifying orders (or the instructions pursuant to which the initiating member wishes orders to be executed) after the orders have been transmitted to the executing member, provided that any such instructions are also transmitted from off the floor").

⁴⁸⁰ See 24X 11(a) Letter, *supra* note 476, at 3.

⁴⁸¹ See, e.g., BATS Order, *supra* note 57, at 49505; DirectEdge Exchanges Order, *supra* note 84, at 13164.

⁴⁸² See, e.g., BATS Order, *supra* note 57 at 49505; DirectEdge Exchanges Order, *supra* note 84, at 13164. In considering the operation of automated execution systems operated by an exchange, the Commission stated that, while there is not an independent executing exchange member, the execution of an order is automatic once it has been transmitted into the system. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution condition of Rule 11a2-2(T). See 1979 Release, *supra* note 477.

represents that the design of the 24X trading system ensures that no member has any special or unique trading advantage in the handling of its orders after transmitting its orders to 24X.⁴⁸³

Based on 24X's representation, the 24X trading system satisfies this condition.

Fourth, in the case of a transaction effected for an account with respect to which the initiating member or an associated person thereof exercises investment discretion, neither the initiating member nor any associated person thereof may retain any compensation in connection with effecting the transaction, unless the person authorized to transact business for the account has expressly provided otherwise by written contract that refers to Section 11(a) of the Exchange Act and Rule 11a2-2(T) thereunder.⁴⁸⁴ 24X members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption.⁴⁸⁵

IV. Exemption from Section 19(b) of the Exchange Act with Regard to FINRA Rules Incorporated by Reference

24X proposes to incorporate by reference certain FINRA rules as 24X rules.⁴⁸⁶ Thus, for

⁴⁸³ See 24X 11(a) Letter, supra note 476, at 3.

⁴⁸⁴ See, e.g., BATS Order, supra note 57, at 49505; DirectEdge Exchanges Order, supra note 84, at 13164. In addition, Rule 11a2-2(T)(d) requires a member or associated person authorized by written contract to retain compensation, in connection with effecting transactions for covered accounts over which such member or associated persons thereof exercises investment discretion, to furnish at least annually to the person authorized to transact business for the account a statement setting forth the total amount of compensation retained by the member or any associated person thereof in connection with effecting transactions for the account during the period covered by the statement. See 17 CFR 240.11a2-2(T)(d). See also 1978 Release, supra note 479 (stating "[t]he contractual and disclosure requirements are designed to assure that accounts electing to permit transaction-related compensation do so only after deciding that such arrangements are suitable to their interests").

⁴⁸⁵ 24X represents that it will advise its membership through the issuance of an Information Circular that those Members trading for covered accounts over which they exercise investment discretion must comply with this condition in order to rely on the rule's exemption. See 24X 11(a) Letter, supra note 476, at 4.

⁴⁸⁶ See letter from David Sassoon, General Counsel, 24X, to Vanessa Countryman, Secretary, Commission, dated Feb. 6, 2024 ("24X Exemption Request Letter"). 24X proposes to incorporate by reference the

those 24X rules, Exchange Members will comply with the 24X rule by complying with the FINRA rule referenced therein. In connection with its proposal to incorporate FINRA rules by reference, 24X requests, pursuant to Rule 240.0-12,⁴⁸⁷ an exemption under Section 36 of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act for changes to those 24X rules that are effected solely by virtue of a change to a cross-referenced FINRA rule.⁴⁸⁸ 24X represents in its letter that, as a condition to the exemption, it will provide written notice to its Members whenever a proposed rule change to a FINRA rule that is incorporated by reference is proposed and whenever any such proposed change is approved by the Commission or otherwise becomes effective.⁴⁸⁹

Using its authority under Section 36 of the Exchange Act,⁴⁹⁰ the Commission is hereby granting 24X's request for an exemption, pursuant to Section 36 of the Exchange Act, from the rule filing requirements of Section 19(b) of the Exchange Act with respect to the rules that 24X proposes to incorporate by reference.⁴⁹¹ This exemption is conditioned upon 24X providing

following FINRA rules: (1) FINRA Rule 2210 (Communications with the Public), via 24X Rule 3.5 (Communications with the Public); (2) the definition of a research report in FINRA Rule 2241, via 24X Rule 3.13(b)(3); (3) the 12000 and 13000 Series of the FINRA Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes), via 24X Rules 9.1, 9.2, 9.4, 9.5 and 9.8; (4) FINRA Rule 2268 (Requirements When Using Pre-dispute Arbitration Agreements for Customer Accounts), via 24X Rule 9.3 (Pre-dispute Arbitration Agreements); (5) the 14000 Series of the FINRA Manual (Code of Mediation Procedures), via 24X Rule 9.7 (Mediation); and (6) FINRA Rule 5270 (Frontrunning of Block Transactions), via 24X Rule 12.14 (Frontrunning of Block Transactions).

⁴⁸⁷ See 17 CFR 240.0-12.

⁴⁸⁸ See 24X Exemption Request Letter, supra note 486.

⁴⁸⁹ See 24X Exemption Request Letter, supra note 486. 24X will provide such notice through a posting on the same website location where 24X posts its own rule filings pursuant to Rule 19b-4 under the Exchange Act, within the required time frame. The website posting will include a link to the location on the FINRA website where FINRA's proposed rule change is posted. See id.

⁴⁹⁰ 15 U.S.C. 78mm.

⁴⁹¹ The Commission previously exempted other exchanges from the requirement to file proposed rule changes under Section 19(b) of the Exchange Act. See, e.g., IEX Order, supra note 65; ISE Mercury Order, supra

written notice to its Members whenever FINRA proposes to change a rule that 24X has incorporated by reference. This exemption is appropriate, in the public interest and consistent with the protection of investors because it will promote more efficient use of Commission and SRO resources by avoiding duplicative rule filings based on simultaneous changes to identical rules of more than one SRO.

V. Conclusion

IT IS ORDERED that the application of 24X for registration as a national securities exchange be, and it hereby is, granted.

IT IS FURTHERED ORDERED that operation of 24X is conditioned on the satisfaction of the requirements below:

A. Participation in National Market System Plans. 24X must join the Consolidated Tape Association Plan, the Consolidated Quotation Plan, and the Nasdaq UTP Plan (or any successors thereto); the National Market System Plan Establishing Procedures Under Rule 605 of Regulation NMS; the Regulation NMS Plan to Address Extraordinary Market Volatility; the Plan for the Selection and Reservation of Securities Symbols; and the National Market System Plan Governing the Consolidated Audit Trail.

B. Intermarket Surveillance Group. 24X must join the Intermarket Surveillance Group.

note 75; Securities Exchange Act Release No. 68341 (Dec. 3, 2012), 77 FR 73065, 73067 (Dec. 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC (“MIAX Exchange”)) (“MIAX Order”); Securities Exchange Act Release No. 79543 (Dec. 13, 2016), 81 FR 92901, 92903 (Dec. 20, 2016) (File No. 10-227) (order granting registration of MIAX PEARL, LLC) (“MIAX PEARL Order”), BATS Order, supra note 57; DirectEdge Exchanges Order, supra note 84.

C. Minor Rule Violation Plan. A Minor Rule Violation Plan filed by 24X under Rule 19d-1(c)(2)⁴⁹² must be declared effective by the Commission.

D. Rule 17d-2 Agreement. An agreement pursuant to Rule 17d-2⁴⁹³ that allocates regulatory responsibility for those matters specified above⁴⁹⁴ must be declared effective by the Commission, or 24X must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

E. Participation in Multi-Party Rule 17d-2 Plans. 24X must become a party to the multi-party Rule 17d-2 agreement concerning the surveillance, investigation, and enforcement of common insider trading rules and the agreement concerning certain Regulation NMS and Consolidated Audit Trail rules.

F. RSA. 24X must finalize the provisions of the RSA with its regulatory services provider, as described above,⁴⁹⁵ that will specify the 24X and Commission rules for which the regulatory services provider will provide certain regulatory functions, or 24X must demonstrate that it independently has the ability to fulfill all of its regulatory obligations.

IT IS FURTHER ORDERED, pursuant to Section 36 of the Exchange Act,⁴⁹⁶ that 24X shall be exempted from the rule filing requirements of Section 19(b) of the Exchange

⁴⁹² 17 CFR 240.19d-1(c)(2).

⁴⁹³ 17 CFR 240.17d-2.

⁴⁹⁴ See supra section III.C.3. (discussing Rule 17d-2 agreements).

⁴⁹⁵ See supra section III.C.2. (discussing 24X's RSA with FINRA).

⁴⁹⁶ 15 U.S.C. 78mm.

Act with respect to the FINRA rules that 24X proposes to incorporate by reference into its rules, subject to the conditions specified in this Order.

By the Commission.

Stephanie J. Fouse,

Assistant Secretary.