

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95651; File No. 10-239)

In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Order Instituting Proceedings to Determine Whether to Grant or Deny an Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934

September 1, 2022

I. Introduction

On March 25, 2022, 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 (“Act”), seeking registration as a national securities exchange under Section 6 of the Act.¹ Notice of the application was published for comment in the Federal Register on June 6, 2022.² The Commission received three comments on the application.³ As discussed further below, the commenters stated that 24X’s application does not include sufficient information about several aspects of its proposed operation.⁴ One commenter stated that the application “does not meet the legal and administrative requirements” under the Act.⁵ Another commenter questioned whether “24X has the necessary structure and checks in place to protect

¹ 15 U.S.C. 78f.

² See Securities Exchange Act Release No. 95007 (May 31, 2022), 87 FR 34333 (“Notice”).

³ See letters from Brian Hyndman, President and Chief Executive Officer, Blue Ocean ATS, LLC, dated July 21, 2022 (“Blue Ocean Letter”); Eun Ah Choi, Senior Vice President, The Nasdaq Stock Market LLC, dated July 21, 2022 (“Nasdaq Letter”); and Hope Jarkowski, General Counsel, NYSE Group, dated July 29, 2022 (“NYSE Letter”) to Vanessa A. Countryman, Secretary, Commission. The public comment file for 24X’s Form 1 application (File No. 10-239) is available on the Commission’s website at: <https://www.sec.gov/comments/10-239/10-239.htm>.

⁴ See Blue Ocean Letter at 2-6, Nasdaq Letter at 2-5 and NYSE Letter at 2-4.

⁵ See Blue Ocean Letter at 6.

investors and ensure a fair and orderly market” and stated that certain elements of 24X’s proposal were not sufficiently described and that additional information was required to evaluate the proposal.⁶ This commenter stated that 24X “contemplates trading concepts that have not been tested within the U.S. equities markets” and that the application raises a number of questions “including how its new exchange will interact with the current trading ecosystem.”⁷ Another commenter stated that the 24X Form 1 should not be approved because the regulatory infrastructure necessary to support its proposed trading system does not yet exist.⁸

Section 19(a)(1) of the Act⁹ requires the Commission, within ninety days of the date of publication of notice of an application for registration as a national securities exchange, or such longer period as to which the applicant consents, to, by order, grant such registration¹⁰ or institute proceedings to determine whether such registration should be denied.¹¹ This order is instituting proceedings under Section 19(a)(1)(B) of the Act¹² to determine whether 24X’s application for registration as a national securities exchange should be granted or denied, and provides notice of the grounds for denial under consideration by the Commission, as set forth below.

II. Description of 24X’s Proposed Trading System

⁶ See Nasdaq Letter at 5.

⁷ Id.

⁸ See NYSE Letter at 4

⁹ 15 U.S.C. 78s(a)(1).

¹⁰ 15 U.S.C. 78s(a)(1)(A).

¹¹ 15 U.S.C. 78a(a)(1)(B).

¹² 15 U.S.C. 78s(a)(1)(B).

According to 24X’s Form 1, 24X proposes to operate a fully automated electronic trading platform for the trading of listed NMS stocks pursuant to unlisted trading privileges (“UTP”).¹³ 24X would not maintain a physical trading floor.¹⁴ Liquidity would be derived from quotes as well as orders to buy and orders to sell submitted to 24X electronically by exchange members¹⁵ from remote locations.¹⁶ The Exchange proposes to operate an electronic limit order book with a continuous matching function. Orders resting on the book would be ranked in price/time priority.¹⁷ 24X proposes to accept market orders, limit orders and pegged orders with various modifiers and time-in-force instructions.¹⁸ Orders may be submitted in round lots, mixed lots or odd-lots.¹⁹ One novel feature of 24X’s proposal is that it proposes to allow the unit of trading of an order to be 1/1000th of a share.²⁰ 24X proposes to report executions to the appropriate consolidated transaction reporting system “to the extent required by the Act and the rules and regulations thereunder.”²¹

¹³ See Exhibit E of 24X’s Form 1 at 1, 4.

¹⁴ Id. at 1.

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

¹⁶ See Exhibit E of 24X’s Form 1 at 1.

¹⁷ Proposed 24X Rule 11.8(a).

¹⁸ Proposed 24X Rule 11.7. See also Exhibit B-1 of 24X’s Form 1.

¹⁹ Proposed 24X Rule 11.6(q). See also Exhibit E-1 of 24X’s Form 1 at 4.

²⁰ Proposed 24X Rule 11.6(q).

²¹ Proposed 24X Rule 11.11(a); see also Exhibit E to 24X Form 1 at 10 (stating that 24X intends to join the CTA and Nasdaq UTP Plans).

24X proposes a retail order program.²² Pursuant to this program, retail orders²³ submitted by retail organization members²⁴ would be eligible to receive price improvement from retail market makers.²⁵ Pursuant to proposed 24X Rule 11.21(d)(2), retail market makers would be required to provide continuous two-sided quotes of at least 100 shares during “Regular Trading Hours.”²⁶

As discussed further below, one novel feature of 24X’s proposed trading rules is that 24X proposes to allow trading in NMS stocks 24 hours a day, 7 days per week, 365 days a year.²⁷ 24X has proposed specific rules to govern trading during regular trading hours²⁸ as well as trading outside of regular trading hours.²⁹

III. Proceedings to Determine Whether to Grant or Deny the Application and Grounds for Potential Denial Under Consideration

²² Proposed 24X Rules 11.17-11.21.

²³ See proposed 24X Rule 11.17(a)(2) for the proposed definition of “retail order.”

²⁴ See proposed 24X Rule 11.17(a)(1) for the proposed definition of “retail organization member.”

²⁵ See proposed 24X Rule 11.18 for the proposed registration requirements for retail market makers.

²⁶ The term “Regular Trading Hours” is not defined in the proposed 24X rule book. See Exhibit B-1 to the 24X Form 1.

²⁷ See proposed 24X Rule 11.1 (describing the hours of trading and trading days for 24X).

²⁸ Regulation NMS Rule 600(b)(77) defines “regular trading hours” as “the time between 9:30 a.m. and 4:00 p.m. Eastern Time . . .” As described further below, 24X proposes to define four different trading sessions. See proposed 24X Rules 1.5(b), defining the “24X Market Session”; 1.5(k) defining the “Core Market Session”; 1.5(v) defining the “Post-market Session”; and 1.5(w) defining the “Pre-Market Session.”

²⁹ See e.g., proposed 24X Rule 11.16 (describing what orders are eligible for execution outside of regular trading hours).

As required by Section 19(a)(1)(B) of the Act,³⁰ the Commission is hereby providing notice of grounds for denial under consideration, as set forth below. Institution of such proceedings is appropriate at this time in view of the issues raised by the application. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Under Section 19(a)(1) of the Act, the Commission shall grant an application for registration as a national securities exchange if the Commission finds that the requirements of the Act and the rules and regulations thereunder with respect to the applicant are satisfied. The Commission shall deny such application for registration if it does not make such a finding.³¹ Under Section 6(b) of the Act, an exchange shall not be registered as a national securities exchange unless the Commission determines that it has satisfied the relevant requirements of the Act.³² In particular, Section 6(b)(1) of the Act requires that the Commission find that an exchange is so organized and has the capacity to carry out the purposes of the Act.³³ In addition, under Section 6(b)(3) of the Act, the Commission must find that the rules of the exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer.³⁴ Section 6(b)(5) of the Act requires that the rules of the exchange be designed, among other things, to prevent fraudulent

³⁰ 15 U.S.C. 78s(a)(1)(B).

³¹ 15 U.S.C. 78s(a)(1).

³² 15 U.S.C. 78f.

³³ 15 U.S.C. 78f(b)(1).

³⁴ 15 U.S.C. 78f(b)(3).

and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general to protect investors and the public interest.³⁵ Finally, under Section 6(b)(8) of the Act, the Commission must find that the rules of the exchange do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Act.³⁶

The Commission is particularly interested in commenters' views as to whether 24X has provided sufficient information in its Form 1 to support a finding that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.³⁷

In addition, the Commission is particularly interested in commenters' views as to whether the proposed rules relating to the corporate structure of 24X, as described in more detail below, would ensure that 24X is so organized and has the capacity to carry out the purposes of the Act and assure a fair representation of its members in the selection of its directors and administration of its affairs.

The Commission also is particularly interested in commenters' views as to whether 24X's proposed rules that would extensively expand the hours of trading in NMS stocks, as described in more detail below, are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons

³⁵ 15 U.S.C. 78f(b)(5).

³⁶ 15 U.S.C. 78f(b)(8).

³⁷ 15 U.S.C. 78s(a)(1). See also NYSE Letter at 2 (“the application falls short in providing sufficient information upon which to assess how such innovations could function consistent either with the Act . . .”); Nasdaq Letter at 2; and Blue Ocean Letter at 2.

engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general protect investors and the public interest.

Further, the Commission is particularly interested in commenters' views as to whether 24X's proposed rules to allow orders to be submitted in fractional shares are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system.

Additionally, the Commission is particularly interested in commenters' views as to whether 24X's proposal to locate a "mirrored" primary platform in London would result in 24X being so organized and have the capacity to be able to carry out the purposes of the Act and whether 24X's rules relating to the mirrored platform are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

A. Corporate Governance

1. 24X

24X is wholly-owned by its direct parent company, 24X US Holdings LLC ("US Holdings"), which in turn is wholly-owned by 24X Bermuda Holdings LLC ("Bermuda Holdings").³⁸ 24X is a Delaware limited liability company whose sole member is US Holdings.³⁹ The proposed business and affairs of 24X will be managed under the direction of a Board that is

³⁸ See Exhibits A and C of 24X's Form 1.

³⁹ See Exhibit A-2 of 24X's Form 1 at 1.

proposed to have at a minimum six Directors once 24X commences operations as a national securities exchange.⁴⁰ As proposed, the 24X Board would consist of

- one Director who is the Chief Executive Officer of the Company;
- at minimum three “Independent Directors”⁴¹; and
- the number of “Membership Representative Directors”⁴² which shall be at least twenty percent of the Board, provided that if twenty percent of the Directors then serving on the Board is not a whole number, such minimum number of “Representative Directors”⁴³ shall be rounded up to the next whole number.

The 24X LLC Agreement also provides for “Public Directors”⁴⁴ although none are proposed to serve on the 24X Board.

The proposed Nominating Committee of 24X would nominate candidates for election to the 24X Board.⁴⁵ For positions on the 24X Board requiring persons who qualify as Member

⁴⁰ See Exhibit A-2 of 24X’s Form 1 at 6.

⁴¹ “Independent Directors” are proposed to be defined as a “Director who has no material relationship with the Company or any affiliate of the Company, or any Exchange Member or any affiliate of any such Exchange Member; provided, however, that an individual who otherwise qualifies as an Independent Director shall not be disqualified from serving in such capacity solely because such Director is a Director of the Company or an affiliate thereof.” See Exhibit A-2 of 24X’s Form 1 at 2.

⁴² “Member Representative Director” is proposed to be defined as a Director “who has been elected or appointed to the Board from time to time in accordance with this Agreement after having been nominated by the Member Nominating Committee. A Member Representative Director must be an officer, director, employee, or agent of an Exchange Member.” See Exhibit A-2 of 24X’s Form 1 at 3.

⁴³ “Representative Directors” are not defined in the Limited Liability Company Agreement of 24X National Exchange LLC (“24X LLC Agreement”).

⁴⁴ See Exhibit A-2 of 24X’s Form 1 at 7. “Public Directors” are not defined in the 24X LLC Agreement.

⁴⁵ See Exhibit A-2 of 24X’s Form 1 at 9. According to the proposed Nominating Committee Charter, the Nominating Committee shall consist of at least three members, or such

Representative Directors, the proposed Nominating Committee would nominate only those persons whose names have been approved and submitted by the “Member Nominating Committee.”⁴⁶ Nominees to the 24X Board from both the proposed Nominating Committee and the proposed Member Nominating Committee would be elected on an annual basis by vote of US Holdings.⁴⁷

In the past, the Commission has stated that ensuring that at least 20% of an exchange’s governing board is comprised of directors that are chosen and elected by the exchange’s members helps to ensure the fair representation of members in the selection of directors and the administration of an exchange as required by Section 6(b)(3) of the Act.⁴⁸ The Commission has stated that this requirement helps to ensure that members have a voice in an exchange’s self-regulatory program, and that an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.⁴⁹ The Commission also has stated that a process

greater number as determined by the Board, each of whom shall be an “Independent Director,” as such term is proposed to be defined in the Limited Liability Company Agreement of the Exchange. See Exhibit J-4 of 24X’s Form 1 at 1.

⁴⁶ The “Member Nominating Committee” is defined to mean “the Member Nominating Committee elected pursuant to [the 24X Limited Liability Company Agreement].” See Exhibit A-2 of 24X’s Form 1 at 1. According to the Member Nominating Committee Charter, the Member Nominating Committee shall consist of at least three members, or such greater number as determined by the Board, two of whom shall be a Member Representative Director and one of whom shall be an ‘Independent Director,’ as such term is defined in the Limited Liability Company Agreement of the Exchange.” See Exhibit J-3 of 24X’s Form 1 at 1.

⁴⁷ See Exhibit A-2 of 24X’s Form 1 at 9.

⁴⁸ Securities Exchange Act Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020) (File No. 10-237) (order granting registration of MEMX LLC) (“MEMX Order”) at 27452. See also 15 U.S.C. 78f(b)(3).

⁴⁹ See, e.g., MEMX Order, supra note 48 at 27452; Securities Exchange Act Release Nos. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (File No. 10-234) (order granting registration of Long Term Stock Exchange, Inc.) (“LTSE Order”) at 21843; 79543 (December 13, 2016), 81 FR 92901, 92903 (December 20, 2016) (File No. 10-227) (order

whereby exchange members can directly nominate candidates for directors for an exchange board via a petition process also helps to ensure the fair representation of members, consistent with Section 6(b)(3) of the Act.⁵⁰

The Commission is considering whether the overall composition of the 24X Board, including the specific categories of Directors as defined in the 24X LLC Agreement, would enable 24X to be so organized and have the capacity to carry out the purposes of the Act consistent with Section 6(b)(1) of the Act⁵¹. As proposed, there are categories of Directors that are not defined in the 24X LLC Agreement.⁵² In addition, the Commission is considering whether the 24X Board composition fulfills the statutory requirement that one or more directors on the 24X Board is representative of issuers and investors and not associated with a member of the exchange, broker or dealer.⁵³ The Commission also is considering whether the proposed

granting registration of MIAX PEARL, LLC) (“MIAX PEARL Order”) at 92903. See also Securities Exchange Act Release Nos. 68341 (December 3, 2012), 77 FR 73065, 73067 (December 7, 2012) (File No. 10-207) (order granting the registration of Miami International Securities Exchange, LLC); 58375 (August 18, 2008), 73 FR 49498, 49501 (August 21, 2008) (File No. 10-182) (order granting the registration of BATS Exchange, Inc.); and 53128 (January 13, 2006), 71 FR 3550, 3553 (January 23, 2006) (File No. 10-131) (granting the exchange registration of Nasdaq Stock Market, Inc.) (“Nasdaq Order”).

⁵⁰ See e.g., MEMX Order, supra note 48, at 27452; LTSE Order, supra note 49, at 21843; and MIAX PEARL Order, supra note 49, at 92903.

⁵¹ 15 U.S. C. 78f(b)(1).

⁵² See supra notes 43 and 44.

⁵³ 15 U.S.C. 78f(b)(3). The Commission has approved in the past an exchange board composition that requires that the number of “Non-Industry Directors” equal or exceed the number of “Industry Directors” and directors that represent the exchange’s members. With respect to this compositional requirement, the Commission stated that this requirement supports an exchange’s ability to protect the public interest. See e.g., MEMX Order, supra note 48, at 27452; LTSE Order, supra note 49, at 21843; MIAX PEARL Order, supra note 49, at 92903.

process for nominating candidates for the Member Representative Directors positions on the 24X Board is consistent with the Section 6(b)(3) of the Act in light of the fact that 24X does not propose a process that would permit 24X Members to directly nominate such Member Representative Directors for election to the 24X Board.⁵⁴

2. US Holdings, Bermuda Holdings and Regulation of 24X

US Holdings is a Delaware limited liability company whose sole member is Bermuda Holdings.⁵⁵ As proposed, US Holdings would be managed by, and all decisions on behalf of US Holdings would be made by, Bermuda Holdings.⁵⁶ Generally, the members of Bermuda Holdings include holders of “Preferred Units”⁵⁷ (which are further divided into “Series A Units” and “Series Seed Units”),⁵⁸ “Common Units”⁵⁹ and “Non-Voting Units”.⁶⁰ Members with voting

⁵⁴ See LTSE Order, supra note 49, at 21843 (stating that, among other things, the means by which member representatives will be chosen will help ensure fair representation of members in selection of directors and administration of LTSE, and is therefore consistent with Section 6(b)(3) of the Act).

⁵⁵ See Exhibit C-12 and C-13 of 24X’s Form 1 at 1.

⁵⁶ See Exhibit C-13 of 24X’s Form 1 at 2. Bermuda Holdings is a limited liability company formed under the laws of Bermuda. See Exhibit C-1 and C-2 of 24X’s Form 1 at 1.

⁵⁷ “Preferred Units” are defined to mean “Series A Units and the Series Seed Units.” See Exhibit C-2 of 24X’s Form 1 at 7.

⁵⁸ See Exhibit C-2 of 24X’s Form 1.

⁵⁹ “Common Units” are defined to mean “[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 Exhibit C-2 of 24X’s Form 1 at 5.

⁶⁰ “Non-voting Units” are defined to mean “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 Exhibit C-2 of 24X’s Form 1 at 7.

rights, or “Voting Units,” include Common Units and Preferred Units except Series Seed-2 Units, which are a sub-category of Series Seed Units.⁶¹ Each Voting Unit shall have one vote.⁶²

If 24X’s application for registration as a national securities exchange is granted, 24X would have all of the attendant regulatory obligations of a national securities exchange under the Act. In particular, 24X would be responsible for the operation and regulation of its exchange and the regulation of its members. Therefore, the Commission is considering whether US Holdings’ and Bermuda Holdings’ activities with respect to the operation of 24X are consistent with, and do not interfere with, 24X’s self-regulatory obligations.⁶³ In making this determination previously, the Commission has considered whether the governing documents of an exchange’s parent company are designed to facilitate the ability of the exchange to fulfill its regulatory obligations and their impact on Commission oversight of the exchange.⁶⁴ For the reasons discussed below, the Commission is considering whether US Holdings and Bermuda Holdings are organized in such a way as to enable 24X to fulfill its statutory obligations as a national securities exchange under Section 6(b) of the Act.⁶⁵

Ownership Structure: Voting and Ownership Concentration Limits. The Commission is considering whether the corporate documents of 24X’s holding companies, which are US Holdings and Bermuda Holdings, contain ownership and voting provisions that are designed to prevent the holding companies, or any party to the holding companies, from exercising undue

⁶¹ See Exhibit C-2 of 24X’s Form 1 at 11.

⁶² Id.

⁶³ See 15 U.S.C. 78f(b)(1). See also Nasdaq Order, supra note 49, at 3552.

⁶⁴ See e.g., MEMX Order, supra note 48, at 27453; LTSE Order, supra note 49, at 21843; MIAX Pearl Order, supra note 49, at 73069; and Nasdaq Order, supra note 49, at 3552.

⁶⁵ 15 U.S.C. 78f(b).

control over the operation of 24X, and to ensure that 24X and the Commission are able to carry out their regulatory obligations under the Act.⁶⁶

For example, among other things, the Commission has approved applications for registration as a national securities exchange where the governing documents of the holding companies of the exchange provide that for so long as the holding companies shall control, directly or indirectly, the exchange, no person, either alone or together with its related persons will be permitted to beneficially own, directly or indirectly, of record or beneficially, more than 40% of the holding company.⁶⁷ The Commission stated that such ownership concentration provisions are consistent with the Act because they are designed to prevent any party holding an interest in the holding companies 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

⁶⁶ In some cases, an exchange applicant has been owned by more than one holding company. For purposes of this discussion regarding 24X, the Commission shall refer to “holding companies” when referring to an entity or entities that own an exchange.

⁶⁷ See e.g., MEMX Order, supra note 48, at 27453; LTSE Order, supra note 49, at 21844; and MIAX Pearl Order, supra note 49, at 92905. See also MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(1); LTSE Group Inc. Certificate, Article IX, subparagraph (A)(2)(b)(i)(A); Miami Holdings Certificate, Article NINTH (b)(i)(A). The Commission also has approved registration where a related provision also requires the exchange to redeem any voting interest that was sold, transferred or otherwise disposed of that was above the ownership concentration limitation. See e.g., MEMX Order, supra note 48 at 27453; LTSE Order, supra note 49, at 21844; and MIAX Pearl Order, supra note 49, at 92905. See also MEMX Holdings LLC Agreement, Article III, Section 3.7(c); LTSE Group Inc. Certificate, Article IX, subparagraph (a)(2)(e); Miami Holdings Certificate, Article Ninth (e).

regulatory obligations under the Act.⁶⁸ The Commission has approved provisions setting ownership limitations for all national securities exchanges.⁶⁹

The Commission also has approved more restrictive conditions for broker-dealer members of an exchange applicant; specifically, the Commission has approved requirements for holding companies of exchanges that prohibit a broker-dealer member of the exchange from beneficially owning, directly or indirectly, either alone or together with their related persons, more than 20% of voting interest in the exchange applicant.⁷⁰ The Commission stated that such ownership limitations on broker-dealer members of an exchange applicant are appropriate because they are designed to address the conflicts of interest that might result from a member of a national securities exchange owning interests in the exchange.⁷¹ The Commission also has

⁶⁸ See e.g., MEMX Order, supra note 48, at 27455; LTSE Order, supra note 49, at 21845; and MIAX PEARL Order, supra note 49, at 92906.

⁶⁹ See, e.g., Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066, 6070-71 (February 4, 2016) (File No. 10-221) (order granting the exchange registration of ISE Mercury, LLC); 70050 (July 26, 2013), 78 FR 46622, 46627 (August 1, 2013) (File No. 10-209) (order granting the exchange registration of Topaz Exchange LLC (nka ISE Gemini, LLC)); 68341 (December 3, 2012), 77 FR 73065, 73070 (December 7, 2012) (File No. 10-207) (order granting the exchange registration of Miami International Securities Exchange LLC); 58375 (August 18, 2008), 73 FR 49498, 49500 (August 21, 2008) (File No. 10-182) (order granting the exchange registration of BATS Exchange, Inc.) (“BATS Order”). See also supra notes 67-68; Securities Exchange Act Release Nos. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE-2008-88) (CBOE Demutualization Approval Order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) (NSX Demutualization Order); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26) (CHX Demutualization Order); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003- 73) (Phlx Demutualization Order).

⁷⁰ See e.g., MEMX Order, supra note 48, at 27453; LTSE Order, supra note 49, at 21844; and MIAX Pearl Order, supra note 49, at 92905. See also MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(2); LTSE Group Inc. Certificate, Article IX, subparagraph (A)(2)(b)(i)(B); Miami Holdings Certificate, Article NINTH (b)(i)(B).

⁷¹ See MEMX Order, supra note 48, at 27455; LTSE Order, supra note 49, at 21845; and MIAX PEARL Order, supra note 49, at 92906.

previously stated that a 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.⁷² The Commission stated that such 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 Act.⁷³ The Commission has approved provisions setting membership ownership limitations for all national securities exchanges.⁷⁴

In addition, the Commission has previously approved voting limitations in the corporate documents of the holding companies of exchanges that provide that no person, alone or together with its related persons, may, directly, indirectly, or pursuant to any agreement, vote or cause the voting of voting interest in the exchange, or give any consent or proxy with respect to voting units in the exchange representing more than 20% of the voting power of the exchange.⁷⁵

⁷² Id. The Commission has further stated that a 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 exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. Id.

⁷³ See MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21845; and MIAX PEARL Order, supra note 49, at 92906.

⁷⁴ See supra notes 69-73.

⁷⁵ See e.g., MEMX Order, supra note 48, at 27454; LTSE Order, supra note 49, at 21844; MIAX Pearl Order, supra note 49, at 92905. See also MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(iii); LTSEG Certificate, Article IX, subparagraph (A)(2)(b)(i)(C); Miami Holdings Certificate, Article NINTH (b)(i)(C). Such provisions also applied to any voting agreement, plan, or other arrangement, 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 voting interest in the exchange that would represent more than 20% of the voting power of the then issued and outstanding voting interest in the exchange. See MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(iii); LTSEG Certificate, Article IX, subparagraph (A)(2)(b)(i)(C).

Similar to the ownership concentration limits, the Commission stated that such voting concentration limits are a way 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 Act through the exercise of voting power.⁷⁶ The Commission has approved provisions setting voting limitations for all national securities exchanges.⁷⁷

The Commission is considering whether the Limited Liability Company Agreement of 24X US Holdings LLC and the Amended and Restated Limited Liability Company Agreement of 24X Bermuda Holdings LLC, as proposed, contain provisions that help ensure that 24X is so organized and has capacity to carry out the purposes of Section 6(b)(1) of the Act. As proposed, there are no ownership or voting concentration limits in either the Limited Liability Company Agreement of 24X US Holdings LLC or in the Amended and Restated Limited Liability Company Agreement of 24X Bermuda Holdings LLC.⁷⁸ Therefore, the Commission is considering whether 24X is so organized and has capacity to carry out the purposes of Section 6(b)(1) of the Act without undue influence by US Holdings and Bermuda Holdings. Further, the

⁷⁶ See MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21845; and MIAX PEARL Order, supra note 49, at 92906. The Commission also has approved the ability of an exchange to waive the ownership and voting concentration limits under certain circumstances. See e.g., MEMX Order, supra note 48, at 27454; LTSE Order, supra note 49, at 21844; and MIAX PEARL Order, supra note 49, at 92905 MEMX Holdings LLC Agreement, Article III, Section 3.5(b)(ii); LTSEG Certificate, Article IX, subparagraph (A)(2)(b)(ii)(B); Miami Holdings Certificate, Article NINTH (b)(ii)(B).

⁷⁷ See supra notes 69, 75-76 .

⁷⁸ As proposed, Schedule A to the Amended and Restated Limited Liability Company Agreement of 24X Bermuda Holdings LLC indicates two members, Dmitri Galinov and Point72 Ventures Investments, LLC, own 44.76% and 20.09%, respectively, of Bermuda Holdings. See Schedule A to Exhibit C-2 of 24X's Form 1. However, Exhibit K of 24X's Form 1 also indicates that Dmitri Galinov and Point72 Ventures Investments, LLC own 35.58% and 15.97% of Bermuda Holdings, respectively.

Commission is considering whether 24X retains a sufficient degree of independence to effectively carry out its regulatory obligations under the Act. Similarly, because 24X does not propose to include any ownership or voting limitations on 24X members that might have or acquire an ownership interest in US Holdings and Bermuda Holdings, the Commission is considering whether the Limited Liability Company Agreement of 24X US Holdings LLC and the Amended and Restated Limited Liability Company Agreement of 24X Bermuda Holdings LLC contain mechanisms to ensure that should a member of 24X own Voting Units, such ownership would not interfere with 24X's ability to be so organized and have the capacity to carry out the purposes of Section 6(b)(1) of the Act without undue influence by such member.

Regulatory Independence of 24X and Oversight of 24X. In order to be granted registration as a national securities exchange, 24X must be able to carry out its regulatory responsibilities under, and operate in a manner consistent with, the Act. This requires 24X to have the ability to carry out its regulatory function independently, and to be organized and operate in a fashion consistent with, the Act, particularly with Section 6(b)(1) of the Act, which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁷⁹ Although neither US Holdings nor Bermuda Holdings would themselves carry out 24X's regulatory functions or be directly overseen by the Commission, as direct and indirect owners of 24X, the activities and actions of US Holdings and Bermuda Holdings with respect to the operation of 24X must be consistent with, and must not interfere with, 24X's regulatory obligations as a national securities exchange. Therefore, the Commission is considering whether the corporate documents of US Holdings and Bermuda Holdings contain provisions that are

⁷⁹ 15 U.S.C. 78f(b)(1).

designed to help maintain the independence of the regulatory function of 24X and oversight of 24X by the Commission.

The Commission has granted the registration of national securities exchanges that have holding company structures.⁸⁰ As part of the Commission's analysis of a holding company structure proposed by an exchange, the Commission has considered and approved provisions in the exchange's holding companies' corporate documents that are designed to help ensure that the holding companies of an exchange will enable the exchange to operate in a way that facilitates the exchange's ability to carry out its regulatory function independently, and to be organized and operate in a fashion that is consistent with the Act, particularly with Section 6(b)(1) of the Act, which requires, in part, an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁸¹ Such provisions generally address:⁸²

Giving Due Regard to a National Securities Exchange's Self-Regulatory Obligations. A commitment that requires the directors, officers, employees and agents of exchange holding

⁸⁰ See e.g., supra note 69.

⁸¹ 15 U.S.C. 78f(b)(1).

⁸² The Commission has approved provisions addressing regulatory independence for all exchanges. See, e.g., Securities Exchange Act Release Nos. 76998 (January 29, 2016), 81 FR 6066, 6071-72 (February 4, 2016) (File No. 10-221) (order granting the exchange registration of ISE Mercury, LLC); 70050 (July 26, 2013), 78 FR 46622, 46627-29 (August 1, 2013) (File No. 10-209) (order granting the exchange registration of Topaz Exchange LLC (nka ISE Gemini, LLC); 68341 (December 3, 2012), 77 FR 73065, 73070-71 (December 7, 2012) (File No. 10-207) (order granting the exchange registration of Miami International Securities Exchange LLC); 58375 (August 18, 2008), 73 FR 49498, 49498-99 (August 21, 2008) (File No. 10-182) (order granting the exchange registration of BATS Exchange, Inc.) ("BATS Order"). See also infra notes 83-91; Securities Exchange Act Release Nos. 62158 (May 24, 2010), 75 FR 30082 (May 28, 2010) (CBOE-2008-88) (CBOE Demutualization Approval Order); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (SR-NSX-2006-03) (NSX Demutualization Order); 51149 (February 8, 2005).

companies to give due regard to the preservation of the independence of the self-regulatory function of the exchange and its obligations to investors and the general public.⁸³

Compliance with Federal Securities Laws. A provision that requires exchange holding companies and their officers, directors, employees, and agents to comply with the federal securities laws and the rules and regulations promulgated thereunder and agree to cooperate with the Commission and the exchange in respect of the Commission's oversight responsibilities.⁸⁴

Submission of Jurisdiction. A provision that requires exchange holding companies and their officers, directors, employees, and agents to submit to the jurisdiction of the U.S. federal courts, the Commission, and the exchange, for purposes of any suit, action or proceeding arising out of, or relating to, the exchange's activities.⁸⁵

Books and Records of a National Securities Exchange Reflecting Confidential Information. A provision that requires all books and records of an exchange reflecting confidential information pertaining to the self-regulatory function of the exchange to be retained

⁸³ See e.g., MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21845; and MIAX Pearl Order, supra note 49, at 92906. See also MEMX Holdings LLC Agreement, Article III, Section 3.5(a)(iii); LTSE Group Inc. Bylaws, Article X, Section 10.1; Miami Holdings Bylaws, Article VII, Section 1.

⁸⁴ See e.g., MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21845-21856; and MIAX Pearl Order, supra note 49, at 92906. See also MEMX Holdings LLC Agreement, Article XI, Section 11.3(h); LTSE Group Inc. Bylaws, Article X, Section 10.4; Miami Holdings Bylaws, Article VII, Section 4. The holding companies also must take reasonable steps necessary to cause its officers, directors, employees and agents to so cooperate. Id.

⁸⁵ See e.g., MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21846; and MIAX Pearl Order, supra note 49, at 92906. See also MEMX Holdings LLC Agreement, Article XV, Section 15.12(b); LTSE Group Inc. Bylaws, Article X, Section 10.5; Miami Holdings Bylaws, Article VII, Section 5.

in confidence by the exchange and its personnel, directors, officers, employees, and agents, and will not be used by the exchange for any non-regulatory purposes and shall not be made available to any person other than to personnel of the Commission, or to other personnel under specified conditions.⁸⁶ Similar provisions regarding the treatment of confidential information pertaining to the self-regulatory function of the exchange apply to the holding companies of an exchange, including the directors, officers, employees, and agents of the holding companies.⁸⁷

Books and Records of the Holding Companies. A provision that requires the books and records of exchange holding companies to be maintained in the United States and, to the extent they are related to the operation or administration of the exchange, the holding companies' books and records will be subject at all times to inspection and copying by the Commission and the exchange,⁸⁸ and to the extent they are related to the operation or administration of the exchange, the books, records, premises, officers, directors, employees, and agents of the holding companies will be deemed to be the books, records, premises, officers, directors,

⁸⁶ See e.g., MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21846; and MIAX Pearl Order, supra note 49, at 92906. See also Second Amended and Restated Limited Liability Company Agreement of MEMX LLC, Article XIII, Section 13.1; LTSE, Inc. Bylaws, Article XI, Section 11.4; MIAX Pearl Bylaws, Article X, Section 10.4.

⁸⁷ See e.g., MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21846; and MIAX Pearl Order, supra note 49, at 92906. See also MEMX Holdings LLC Agreement, Article XII, Section 12.2(c); LTSE Group Inc. Bylaws, Article X, Section 10.2; Miami Holdings Bylaws, Article VII, Section 2.

⁸⁸ See e.g., MEMX Order, supra note 48 at 27456; LTSE Order, supra note 49, at 21846; and MIAX Pearl Order, supra note 49, at 92906-92907. See also MEMX Holdings LLC Agreement, Article XII, Section 12.2(a) and (b); LTSE Group Inc. Bylaws, Article X, Section 10.3; Miami Holdings Bylaws, Article VII, Section 3.

employees, and agents of exchange, for purposes of, and subject to oversight pursuant to, the Act.⁸⁹

Consent to Provisions by Holding Company Officers, Directors, Employees and Agents.

A provision that requires exchange holding companies to take reasonable steps necessary to cause its officers, directors, employees, and agents, prior to accepting a position with the holding companies to consent in writing to the applicability of the provisions discussed above, with respect to their activities related to the exchange.⁹⁰

Changes to Holding Company Constituting Documents to be Filed with the Commission. A provision that requires exchange holding companies' corporate documents to provide that so long as the holding companies control the exchange, any changes to the holding companies' constituting documents must be submitted to the exchange governing board for approval, and, if such change is required to be filed with the Commission pursuant to Section 19(b) of the 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.⁹¹

⁸⁹ See e.g., MEMX Order, supra note 48, at 27456; LTSE Order, supra note 49, at 21846; and MIAX Pearl Order, supra note 49, at 92907. See also MEMX Holdings LLC Agreement, Article XII, Section 12.2(b); LTSE Group Inc. Bylaws, Article X, Section 10.3; Miami Holdings Bylaws, Article VII, Section 3.

⁹⁰ See e.g., MEMX Order, supra note 48, at 27456-27457; LTSE Order, supra note 49, at 21846; and MIAX Pearl Order, supra note 49, at 92907. See also MEMX Holdings LLC Agreement, Article XIII, Section 8.18(b); LTSE Group Inc. Bylaws, Article X, Section 10.6; Miami Holdings Bylaws, Article VII, Section 6.

⁹¹ See e.g., MEMX Order, supra note 48, at 27457; LTSE Order, supra note 49, at 21846; and MIAX Pearl Order, supra note 49, at 92907. See also MEMX Holdings LLC Agreement, Article XV, Section 15.9(a); LTSEG Certificate, Article IX, Section (A)1 and LTSEG Bylaws, Article IX; Miami Holdings Certificate, Article VIII and Miami Holdings By-Laws, Article XII, Section 1. This requirement is critical as it helps to

The Commission is considering whether US Holdings and Bermuda Holdings are proposed to be organized in a way that would help maintain the independence of the regulatory function of 24X and foster the oversight of the exchange by the Commission. 24X has not adopted any of these provisions in the Amended and Restated Limited Liability Company Agreement of 24X Bermuda Holdings LLC.⁹² Therefore, the Commission is considering whether the structure of 24X and its parent companies, US Holdings and Bermuda Holdings, help to ensure the independence of 24X’s regulatory function. Further, the Commission is considering whether the structure of 24X and its parent companies helps to ensure that 24X can carry out its regulatory responsibilities under, and operate in a manner consistent with, the Act. Specifically, the Commission is considering whether the proposed structure is consistent with Section 6(b)(1), which requires, in part, that an exchange to be so organized and have the capacity to carry out the purposes of the Act.⁹³

B. 24X Trading Sessions

24X proposes to offer significantly expanded trading outside of regular trading hours for NMS stocks by operating a national securities exchange 24 hours a day, seven days a week, 365 days a year, including holidays.⁹⁴ 24X proposes to offer four trading sessions – a “Core Market Session” that corresponds with regular trading hours of 9:30 a.m. to 4:00 p.m. Eastern time; a “Post-Market Session” that would run from 4:00 p.m. to 8:00 p.m. Eastern time on each U.S.

ensure Commission oversight and approval, as appropriate, for any changes to an exchange holding company corporate documents.

⁹² See Amended and Restated Limited Liability Company Agreement of 24X Bermuda Holdings LLC and the Limited Liability Company Agreement of 24X US Holdings LLC.

⁹³ 15 U.S.C. 78f(b)(1).

⁹⁴ Proposed 24X Rule 11.1.

business day; a “Pre-Market Session” that would run from 4:00 a.m. to 9:30 a.m. Eastern time on each U.S. business day; and a “24X Market Session” that would run from 8:00 p.m. to 4:00 a.m. Eastern time on each U.S. business day, and any time that falls on weekends and holidays.⁹⁵ While several exchanges offer a pre-market trading session starting as early as 4:00 a.m. Eastern time on each U.S. business day,⁹⁶ and most exchanges offer a post-close trading session until 8:00 p.m. Eastern time on each business day,⁹⁷ the Commission has not previously considered the potential issues arising from an exchange application that expands the trading hours for continuous trading as 24X proposes.

1. Exchange Trading Hours

24X refers to the proposed Core Market Session, Pre-Market Session and Post-Market Session collectively in its proposed rules as “Exchange Trading Hours.”⁹⁸ 24X proposes to permit orders to be entered, canceled, modified, executed on or routed away from the Exchange during Exchange Trading Hours.⁹⁹ Orders outstanding at 7:59:59 p.m. Eastern Time each business day would be automatically cancelled.¹⁰⁰ 24X proposes to permit trading in fractional

⁹⁵ Proposed 24X Rule 11.1(a).

⁹⁶ See, e.g., NYSE Arca, Inc., Cboe EDGX Exchange, Inc. and The Nasdaq Stock Market LLC.

⁹⁷ See, 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., and The Nasdaq Stock Market LLC.

⁹⁸ Proposed 24X Rule 11.1(a)(1).

⁹⁹ Proposed 24X Rule 11.1(b).

¹⁰⁰ Proposed 24X Rule 11.1(d).

shares in round lots, odd lots, or mixed lots.¹⁰¹ Market Orders¹⁰² and pegged orders¹⁰³ would be accepted only during the Core Market Session, while limit orders would be accepted during Exchange Trading Hours and the 24X Market Session, as discussed below.¹⁰⁴

2. 24X Market Session

24X proposes to apply some, but not all, of its rules that would apply during Exchange Trading Hours to trading that would occur during the 24X Market Session.¹⁰⁵ For example, market orders¹⁰⁶ and pegged orders¹⁰⁷ would be prohibited from the 24X Market Session. Limit orders,¹⁰⁸ which would be allowed during the 24X Market Session, would be required to have one of the following time-in-force (“TIF”) instructions: immediate or cancel (“IOC”)¹⁰⁹, fill-or-kill (“FOK”)¹¹⁰ or Day+¹¹¹. In addition, the proposed rules would permit orders to be entered,

¹⁰¹ See Proposed 24X Rule 11.6(q) and Exhibit E of 24X’s Form 1 at 4.

¹⁰² Proposed 24X Rule 11.7(a)(4).

¹⁰³ Proposed 24X Rule 11.7(c)(4).

¹⁰⁴ Proposed 24X Rule 11.7(b)(6).

¹⁰⁵ See, e.g., Proposed 24X Rule 11.16.

¹⁰⁶ Proposed 24X Rules 11.7(a)(5) and 11.16(b)(1).

¹⁰⁷ Proposed 24X Rules 11.7(c)(5) and 11.16(b)(2).

¹⁰⁸ Proposed 24X Rule 11.7(b)(7).

¹⁰⁹ Proposed 24X Rule 11.6(o)(1). IOC is defined as an instruction the User may attach to an order stating the order is to be executed in whole or in part as soon as such order is received. The portion not executed immediately on the Exchange or another trading center (pursuant to proposed Rule 11.10) is treated as cancelled and is not posted to the 24X Book.

¹¹⁰ Proposed 24X Rule 11.6(o)(3). FOK is defined as an instruction the User may attach to an order stating that the order is to be executed in its entirety as soon as it is received and, if not so executed, cancelled. An order with a FOK instruction is not eligible for routing away pursuant to proposed Rule 11.10.

¹¹¹ Proposed 24X Rule 11.6(o)(4). Day+ is defined as an instruction the User may attach to an order stating that an order to buy or sell is designated for execution starting with the

canceled, modified or executed on the Exchange, but not routed away, during the 24X Market Session.¹¹² While the proposed rules would impose continuous two-sided quoting obligation on retail market makers during “Regular Trading Hours,”¹¹³ the proposed rules would establish no analogous market making obligation during the 24X Market Session.

While 24X proposes to join the CTA/CQ and UTP Plans, the 24X proposal does not address how real-time consolidated dissemination of quotation information and transaction reporting could be available during the 24X Market Session because currently, the CTA/CQ and UTP Plans do not operate during the times that cover the proposed 24X Market Session. One commenter stated that the exclusive SIPs do not operate during the 24X Market Session and that therefore the national best bid or offer (“NBBO”) would not be disseminated.¹¹⁴ This commenter asked the Commission to “consider the potential risks related to the lack of transparency, including the risk to investors associated with trading during the 24X Trading Session, without a real-time NBBO and if 24X’s proprietary feeds are the only displayed liquidity.”¹¹⁵ Another commenter stated that it was unclear how 24X could offer after-hours trading in the absence of real time reporting or operation of the securities information processors (“SIPs”) and that such trading would likely be inconsistent with Regulation NMS Rule 601.¹¹⁶

beginning of the 24X Market Session and, if not executed, expires at the end of the Post-Market Session.

¹¹² Proposed 24X Rules 11.1(c) and 11.10.

¹¹³ See supra note 26.

¹¹⁴ See Nasdaq Letter at 2.

¹¹⁵ See Nasdaq Letter at 2. This commenter also stated that it did “not believe that the Application has adequately explained how 24X’s new exchange will interact with, and be integrated into, the national market system.”

¹¹⁶ See NYSE Letter at 3.

The proposed 24X Market Session rules relating to risk and volatility moderators would also differ from those applicable during Exchange Trading Hours. While 24X would participate in the Plan to Address Extraordinary Market Volatility (“LULD Plan”)¹¹⁷ during the Core Market Session,¹¹⁸ the LULD Plan currently is not effective during the times that 24X proposes to operate the 24X Market Session. Consequently, during the 24X Market Session, 24X proposes that the Reference Price of a given security would be defined as either the last sale price prior to the start of the 24X Market Session or the primary market’s most recent closing price when opening on a quote.¹¹⁹ Under 24X’s proposal, five minutes after the start of the 24X Market Session, the Reference Price would be required to be updated every 30 seconds to reflect the average price of the security over the last preceding five minute period of the 24X Market Session, but only if the new Reference Price would be at least 1% above or below the existing Reference Price.¹²⁰ 24X also proposes to include certain price bands during the 24X Market Session (“24X Price Band(s)”). Under the proposal, the 24X Price Bands are calculated for a given security by multiplying the Reference Price by an applicable Percentage Parameter, which is then 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.¹²¹ If an order entered during the 24X Market Session falls outside of the 24X Price Bands, 24X proposes to identify three distinct

¹¹⁷ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

¹¹⁸ Proposed 24X Rule 11.15(e)(2).

¹¹⁹ Proposed 24X Rules 11.14(c)(3) and 11.15(f).

¹²⁰ Id.

¹²¹ Proposed 24X Rule 11.15(f).

Members that have at least 100 shares in the relevant security priced at the applicable end of the 24X Price Bands and consult with these Members as to whether the 24X Price Bands should be adjusted.¹²² In the event that 24X is unable to find such Members, or 24X and the Members determine that the 24X Price Bands should not change, the order that triggered the review will be represented at the Upper 24X Price Band or Lower 24X Price Band, as appropriate.¹²³ One commenter expressed concern with the proposed 24X volatility monitors, stating that it is not clear how well the mechanism would work, especially during periods of extreme market volatility or material newsworthy events.¹²⁴ Commenters also raised concerns about how 24X would implement regulatory trading halts and pauses.¹²⁵

24X's proposal to provide for continuous trading on an exchange outside of regular trading hours raises a number of issues, many of which have been considered previously in the context of pre-market and post-market trading sessions. In particular, these include the need for heightened disclosures and consolidated last sale and quotation information in the after-hours market, as well as the associated increased trading risks of after-hours trading, including, among other things, greater price volatility, reduced liquidity, wider spreads, and fewer investor

¹²² Id.

¹²³ Id.

¹²⁴ See Blue Ocean Letter at 4. The commenter also stated that 24X's proposal is silent on the actual mechanics for initiating and ending trading halts and does not explain how clearance and settlement of trades made before or during a halt would occur. See id. Further, the commenter states that no explanation is given as to how corporate actions would be treated. See id., at 5.

¹²⁵ See Blue Ocean Letter at 4 and Nasdaq Letter at 4 ("the Application does not sufficiently explain how 24X will coordinate with primary listing exchanges to implement regulatory trading halts and pauses during the entirety of the 24X Trading Session").

protections, have been raised before.¹²⁶ As other exchanges have proposed expanded trading hours to include pre-market and post-market sessions, the Commission has approved such expansion where certain safeguards were implemented to mitigate these concerns.¹²⁷ Such safeguards include, among other things, specific disclosures to investors of heightened risks of after-hours trading,¹²⁸ establishing risk and volatility moderators and a corresponding expansion of the operational hours of the SIPs,¹²⁹ to help ensure the availability of consolidated last sale and quotation information.

¹²⁶ See, e.g., Special Study: Electronic Communication Networks and Afterhours Trading, Division of Market Regulation, Commission (June 2000), <https://www.sec.gov/news/studies/ecnafter.htm>; Investor Bulletin: After-Hours Trading, Office of Investor Education and Advocacy, Commission (May 2011), <https://www.sec.gov/files/afterhourtrading.pdf>; and Investor Publications, Commission, After-Hours Trading: Understanding the Risks (Nov. 8, 2008), <https://www.sec.gov/reportspubs/investor-publications/investorpubsafterhourshtm.html>. Investor Bulletin: Extended Hours Trading (June 6, 2022) Extended-Hours Trading: Investor Bulletin | Investor.gov. Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person. The Commission has expressed no view regarding the analysis, findings, or conclusions contained herein.

¹²⁷ See, e.g., Securities and Exchange Act Nos. 77607 (April 13, 2016) 81 FR 23032 (April 19, 2016) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Adopt an Early Trading Session and Three New Time-In-Force Instructions), at 23034; 42003 (October 13, 1999) 64 FR 56554 (October 20, 1999) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. Relating to the Extension of Certain Nasdaq Services and Facilities Until 6:30 p.m. Eastern Time); 42004 (October 13, 1999) 64 FR 56548 (October 20, 1999) (Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rules Change and Amendment Nos. 1 and 2 by the Chicago Stock Exchange Relating to the Implementation of an Extended Hours Trading Session).

¹²⁸ See, e.g., FINRA Rule 2265, Investors Exchange Rule 3.290, Nasdaq Section 20.

¹²⁹ The SIPs, which collect, consolidate and disseminate consolidated data, including the NBBO, in the equity market are currently governed by (1) the Consolidated Tape

The Commission is considering whether the 24X proposal to operate as an exchange that permits continuous trading is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange be 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 securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general protect investors and the public interest, particularly given the lack of transparency during the 24X Market Session. Specifically, the SIPs currently do not operate during the hours the 24X Market Session is proposed to occur and therefore quotation and last sale information, including the calculation of an NBBO, would not be available during the 24X Market Session. The Commission is evaluating whether the absence of consolidated market information during the 24X Market Session is consistent with Section 6(b)(5) of the Act.¹³⁰ The Commission is considering whether 24X’s proposed investor disclosures,¹³¹ which mirror those made available by other exchanges,¹³² are sufficient to highlight the what appear to be unique risks associated

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”).

¹³⁰ One commenter states that 24X has not sufficiently analyzed how the Exchange would comply with certain Commission rules and interact with other exchanges when the SIPs are not operating. See Nasdaq Letter at 2. The commenter “encouraged” the Commission to consider the potential risks resulting from the absence of a real-time NBBO. See id. Further, the commenter states that the 24X proposal would not allow for technical changes that typically take place during pauses in the trading day. See id., at 3.

¹³¹ Proposed 24X Rule 3.21.

¹³² See supra note 128.

with continuous trading during the 24X Market Session. Specifically, the Commission is evaluating whether these disclosures, currently used for exchange pre-market and post-market trading sessions, sufficiently inform investors of the greater potential risks associated with the significantly expanded after-hours trading that 24X proposes for its 24X Market Session.

Next, the Commission is considering whether the rules proposed by 24X to address certain risks associated with trading during the 24X Market Session are consistent with the Act. First, certain mechanisms that address volatility in individual symbols and the equities market as a whole are not available during the after-hours sessions.¹³³ The Commission is considering whether the 24X proposed risk and volatility moderators are consistent with Section 6(b)(5) of the Act. Second, 24X proposes to impose on its members certain requirements governing risk management controls and supervisory procedures¹³⁴ that are similar to requirements imposed by other exchanges.¹³⁵ The Commission is evaluating whether such proposed risk management controls and supervisory procedures, which appear to be based on requirements that were established for the current trading hours and environment are sufficient during the 24X Market Session or whether additional mechanisms would be needed. The Commission is also considering how the relevant clearing agencies for equities, the National Securities Clearing Corporation (“NSCC”) and the Depository Trust Company, would address any potential credit,

¹³³ Specifically, Limit Up – Limit Down trading pauses and market wide circuit breakers are unavailable during after-hours trading.

¹³⁴ See Proposed 24X Rule 11.10(g). The Market Access Rule, Rule 15c3-5, referred to in proposed 24X Rule 11.10(g), requires broker-dealers with market access to, among other things, establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage financial, regulatory, and other risks of this business activity. 17 CFR 240.15c3-5.

¹³⁵ See, e.g., Cboe Rule 5.36(f); CboeEDGX Rules 21.9(f); Nasdaq Rule 4757(b); Nasdaq BX Rule 4758(c); MEMX Rule 11.11(g).

market, and liquidity risks associated with trades submitted by the Exchange when the markets, banks, Fedwire, and any providers of settlement services are closed for business.¹³⁶ The Commission is considering whether the 24X proposal would permit risk to be managed in a manner consistent with the requirements of Section 6(b)(5) of the Act that an exchange's rules be 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 securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general protect investors and the public interest.

Further, the Commission is considering other issues raised by commenters about 24X's proposal to substantially extend exchange trading hours. Commenters raise concerns about whether 24X's proposal is consistent with the requirements of Section 6(b)(5) of the Act that an exchange's rules be 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 securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general protect investors and the public interest.

¹³⁶ Three commenters raised concerns relating to 24X's ability to clear and settle trades after-hours. See Nasdaq Letter at 3 (stating that US equities clearance and settlement does not operate on a 24/7 basis); NYSE Letter at 2-4 (stating that 24X does not describe any procedures or process for NSCC to clear trades during the 24X market session); and Blue Ocean Letter at 4 (stating that 24X has not addressed the daily settlement of trades with NSCC when NSCC and its constituent members are typically closed). One commenter also questioned whether 24X would be able to clear trades on a continuous net settlement system as proposed under its Rule 11.2 because NSCC is not open for business on weekends. Id.

Specifically, commenters raised concerns about the effect of 24X’s proposal on market-wide surveillance.¹³⁷ These commenters stated that the 24X proposal does not sufficiently detail how 24X will coordinate with primary listing exchanges to surveil securities during the 24X Market Session or how market surveillance will work generally.¹³⁸

In addition, commenters stated that 24X has not sufficiently explained how 24X will comply with relevant Commission rules in light of 24X’s novel features.¹³⁹ Specifically, one commenter states that the 24X proposal does not explain how 24X intends to comply with Regulation NMS Rules 602, 603, 610 and 611 and Regulation SHO generally.¹⁴⁰ The commenter also stated that the 24X’s proposed routing relationship with Instinet is not adequately described, especially in light of the 24X Market session when other exchanges are closed.¹⁴¹

A commenter stated that listed companies often release material information outside of core market hours and that primary listing exchanges typically require companies to notify their primary listing exchanges prior to the release of such information to allow the exchange to determine whether a trading halt is necessary.¹⁴² The commenter suggested the Commission consider the effect the 24X Market Session would have on the disclosure of material information

¹³⁷ See Nasdaq Letter at 4-5. See also Blue Ocean Letter at 5-6.

¹³⁸ See id. One commenter states that 24X’s proposal would be the first occurrence of a national securities exchange that utilizes unlisted trading privileges to operate outside the trading hours of the primary listing exchange. See Nasdaq Letter at 3.

¹³⁹ See Nasdaq Letter at 3. See also Blue Ocean Letter at 3 and 5.

¹⁴⁰ See Blue Ocean Letter at 3 and 5.

¹⁴¹ See Blue Ocean Letter at 3 (stating that it is “critical” for the Commission and other market participants to be able to understand and evaluate how routing of orders will be administered when other markets are closed).

¹⁴² See Nasdaq Letter at 4.

and the volatility in securities outside of core hours trading hours when material information is released.¹⁴³

A commenter stated that the 24X proposal does not address how 24X will handle the elimination of natural trading pauses when corporate actions, such as stock splits, dividends, mergers and SPAC combinations typically occur at the end of the trading day.¹⁴⁴ The commenter also stated that the 24X proposal does not adequately explain how 24X will pause trading to allow for critical exchange, industry, and systems tests that are typically performed when the exchange is not operating.¹⁴⁵

1. Fractional Shares

24X proposes to permit orders to be submitted in round lots, mixed lots or odd-lots. Orders are proposed to be submitted in as small as 1/1000th of a share.¹⁴⁶ 24X's proposal does not describe how trading in fractional shares would occur. Trading in fractional shares on an exchange raises issues relating to trade reporting,¹⁴⁷ custody, clearance¹⁴⁸ and settlement, and quote display. The Commission is considering whether 24X's proposal to accept orders and offer trading in fractional shares in units as small as 1/1000th of a share is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

¹⁴³ See id.

¹⁴⁴ See id. Specifically, the commenter referenced corporate actions including stock splits, dividends, and mergers that typically take effect at the end of the trading day.

¹⁴⁵ See id. Specifically, the commenter references tests such as general customer testing, disaster recovery tests, industry-wide business continuity tests.

¹⁴⁶ See supra note 101.

¹⁴⁷ See Nasdaq Letter at 3. (“the SIPs do not currently allow for the reporting of fractional shares”).

¹⁴⁸ See Nasdaq Letter at 3 and NYSE Letter at 3.

information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, consistent with Section 6(b)(5) of the Act.

Three commenters raised concerns over 24X's proposal to allow for trading in fractional shares. Three commenters stated that 24X's proposal does not sufficiently explain how trading in fractional shares would function.¹⁴⁹ One commenter stated that it is unclear from 24X's proposal how trading in fractional shares will comply with certain relevant Commission rules.¹⁵⁰ Two commenters also stated that the 24X proposal has not adequately described how fractional share trading would operate in connection with the SIPs,¹⁵¹ or how fractional shares would clear, settle, and route to other markets that do not allow fractional share trading.¹⁵² One commenter stated that because 24X's proposed rules require all transactions to be cleared using a continuous net settlement system, and because NSCC is not available for either after-hours trading or trading in fractional shares, 24X will not be able to provide after-hours trading and trading in fractional shares while also complying with its own rules regarding clearing and settlement.¹⁵³ Therefore,

¹⁴⁹ See Blue Ocean Letter at 3. See also NYSE Letter at 2 and Nasdaq Letter at 3. The commenters state that important information including minimum trade size and how fractional trading would interact with other Exchanges is not addressed.

¹⁵⁰ See Nasdaq Letter at 3. The commenter specifically states that 24X has not explained how fractional share trading is consistent with Rules 602, 603, 610, and 611 of Regulation NMS.

¹⁵¹ See id. The commenter stated that 24X has not analyzed the potential costs of technical enhancements to the exclusive SIPs. See also NYSE Letter at 2-4 (stating that 24X is silent on whether it intends to report to the SIP in fractional quantities or if it would round to a whole share. Further, the commenter states that certain studies have found that rounding up fractional shares to a whole can distort reported market volumes).

¹⁵² See Nasdaq Letter at 3.

¹⁵³ See NYSE Letter at 2-3.

the commenter states that if 24X were approved as a national securities exchange, it would immediately be in violation of Section 19(g) of the Act.¹⁵⁴

C. Sufficiency of Exhibits - Regulatory Funding

1. Exhibit I

To help ensure that 24X has and would continue to have adequate funding to be able to meet its responsibilities under the Act, 24X represents that, if the Commission approves 24X's application for registration as a national securities exchange, US Holdings, as the controlling owner of the membership interests in the Exchange, would allocate sufficient assets to 24X to enable 24X's operation.¹⁵⁵ Specifically, 24X represents that the US Holdings will make a cash contribution to 24X of \$5,000,000, "in addition to any previously-provided in-kind contributions, such as legal, regulatory, and infrastructure-related services."¹⁵⁶ 24X also represents that such cash and in-kind contributions from the US Holdings will be adequate to operate 24X, including the regulation of the Exchange, and that 24X and the US Holdings have entered into an agreement that requires the US Holdings to provide adequate funding for the Exchange's operations, including the regulation of the Exchange.¹⁵⁷ 24X represents this agreement provides that (1) the Exchange shall receive all fees, including regulatory fees and trading fees, payable by the Exchange's members, as well as any funds received from any applicable market data fees and tape revenue, and (2) US Holdings will provide the Exchange

¹⁵⁴ Id. This commenter also states that it is unclear how fractional share quotations would be incorporated into any potential odd-lot quotation reporting, should odd-lot quotations reporting be expanded in the future.

¹⁵⁵ See Exhibit I of 24X's Form 1.

¹⁵⁶ Id.

¹⁵⁷ Id.

with cash, cash equivalents, securities or other sufficiently liquid instruments sufficient to help ensure that the Exchange’s financial resources (calculated as assets in excess of liabilities) remain greater than \$5 million.¹⁵⁸

Further, any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the US Holdings, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities), or, as the case may be, shall be used to pay restitution and disgorgement of funds intended for customers (except in the event of liquidation of the Exchange, which case US Holdings will be entitled to the distribution of the remaining assets of the Exchange).¹⁵⁹

The Commission is considering whether 24X has satisfied the requirements to file certain exhibits included in 24X’s Form 1. In its Form 1 application, 24X states that it is not filing audited financial statements for itself as the applicant, as required under Exhibit I, because “24X National Exchange LLC has been formed but has not commenced operations and does not yet have audited financial statements for any fiscal year.”¹⁶⁰ Further, in the Exhibit I, 24X represents that US Holdings “shall make prior to the launch of the Exchange, through its U.S. bank account, a cash contribution to the Exchange of \$5 million, in addition to any previously provided in-kind contributions, such as legal, regulatory, and infrastructure-related services.”¹⁶¹ However, as discussed further below, 24X has not explained or otherwise

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Id.

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See Proposed 24X Rule 15.2.

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See Exhibit I of 24X’s Form 1.

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Id.

shown how the financial statements filed for the US Holdings under Exhibit D reflect that US Holdings has or will have sufficient funds to provide 24X with such cash contributions.

2. Exhibit D

Exhibit D requires that the applicant file unconsolidated financial statements for each subsidiary or affiliate for the latest fiscal year. Such financial statements must include a balance sheet and income statement “with such footnotes and other disclosures as are necessary to avoid rendering the financial statements misleading.” In the US Holdings balance sheet filed under Exhibit D, total assets are reported as negative \$439.¹⁶² It is unclear as to what this number signifies, as assets generally cannot be below \$0. Further, this negative \$439 is not reflected in the financial statements of other subsidiaries. The financial statements filed by 24X do not include accompanying footnotes or disclosures that explain these discrepancies. Moreover, while in Exhibit I 24X states that US Holdings “shall make prior to the launch of the Exchange, through its U.S. bank account, a cash contribution to the Exchange of \$5 million, in addition to any previously provided in-kind contributions, such as legal, regulatory, and infrastructure-related services,”¹⁶³ the Commission is considering whether the financial statements filed for US Holdings under Exhibit D show US Holdings has the financial resources to make a \$5 million U.S. Dollar cash infusion, as 24X states, such that the Exchange would be organized and have the capacity to carry out the purposes of the Act, including the ability 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.

¹⁶² See Exhibit D of 24X’s Form 1.

¹⁶³ See Exhibit I of 24X’s Form 1.

In addition, the Commission is considering whether the financial statements for the US Holdings filed under Exhibit D for the Form 1 show that US Holdings would be able to provide the financial support that 24X describes in its Form 1. In its Form 1 application, 24X states that it is not filing audited financial statements for itself as applicant, as required under Exhibit I, because “24X National Exchange LLC has been formed but has not commenced operations and does not yet have audited financial statements for any fiscal year.”¹⁶⁴ Moreover, 24X further states that, “[i]f the Commission approves the Exchange’s Form 1 Application for Registration as a national securities exchange, 24X US Holdings LLC (“Parent”), as the controlling owner of the membership interests in the Exchange, will allocate sufficient assets to the Exchange to enable its operation.”¹⁶⁵ Given the applicant’s stated reliance on US Holdings for sufficient financial support to enable its operation, the Commission is considering whether the unaudited financial statements filed for the applicant’s parent, US Holdings, show that the Exchange would be organized and have the capacity to carry out the purposes of the Act, including the ability 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.

D. Location of Exchange Trading Platform

24X proposes to locate its primary trading platform in the Equinix data center located in New York (“NY4”). 24X also proposes to locate a “mirrored” primary platform in London (“LD4”).¹⁶⁶ 24X did not describe how the LD4 platform would operate along with the platform

¹⁶⁴ Id.

¹⁶⁵ Id.

¹⁶⁶ See Exhibit E-1 of 24X’s Form 1 at 1.

in NY4. The Commission is considering whether the proposal is consistent with the requirements under Section 6(b)(1) of the Act, which among other things, requires the exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with provisions of the Act. The Commission also is considering whether the proposal is consistent with Section 6(b)(5) of the Act, which requires the rules of the exchange to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged with regulating, clearing, settling, processing, information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

One commenter expressed concern over this aspect of 24X's proposal.¹⁶⁷ The commenter stated that no other U.S. exchange operates a mirrored primary U.S. trading platform outside of the United States and stated that 24X does not explain this structure in its proposal.¹⁶⁸ Further, the commenter stated that the Commission should consider the proposed structure's jurisdictional and operational implications and whether such a structure "would open the door to foreign markets to operate mirrored markets within the United States."¹⁶⁹

IV. Request for Written Comment

¹⁶⁷ See Nasdaq Letter at 4.

¹⁶⁸ Id.

¹⁶⁹ Id.

The Commission requests that interested persons provide written views and data with respect to 24X's Form 1 and the questions included above or other relevant issues. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 10-239 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number 10-239. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to 24X's Form 1 filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

All submissions should refer to File Number 10-239 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

J. Matthew DeLesDernier
Deputy Secretary