October 29, 2024

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

RE: 24X National Exchange LLC; Notice of Filing of Amendment No. 2 to an Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934 (File No. 10-242)

Dear Ms. Countryman:

The Securities Industry and Financial Markets Association ("SIFMA")[1] respectfully submits this comment letter to the U.S. Securities and Exchange Commission (the "Commission") in response to the Commission's institution of proceedings to determine whether to grant or deny an application by 24X National Exchange LLC (the "24X Application") to register as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 (the "Exchange Act").[2] 24X Exchange initially sought Commission approval to extend the availability of on-exchange trading to 23 hours per day, seven days per week, 365 days per year.[3] 24X Exchange recently amended its application to operate 23 hours per day (8:00 p.m. ET to 7:00 p.m. ET) five days per week (Sunday through Friday) and excluding holidays.[4]

---

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

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

[3] Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934, Exchange Act Release No. 99614, File No. 10-242 (Feb. 27, 2024), 89 Fed. Reg. 15621 (Mar. 4, 2024). 24X filed an amendment on August 27, 2024. Notice of Filing of Amendment No. 1 to an Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934, Release No. 34-100839, File No. 10-242 (Aug. 27, 2024), 89 Fed. Reg. 71471 (Sept. 3, 2024).

[4] Notice of Filing of Amendment No. 2 to an Application for Registration as a National Securities Exchange under Section 6 of the Securities Exchange Act of 1934, Release No. 34-101431, File No. 10-242 (Oct. 24, 2024).

Prior to approving the 24X Application, which would result in significant changes to the current structure of equity exchange markets, the Commission should undertake a broader review of the possible benefits, risks, and costs such an expansion would introduce to the national market system, market integrity and resiliency, and investors.[5] As noted in SIFMA's previous letter, it is well recognized that retail investors already face increased risks when trading outside of core market hours due to wider spreads, reduced liquidity, and higher volatility.[6] In addition, as discussed in more detail below, the clearance and settlement risks associated with the 24X Application have not been fully explored, and based on what we have gleaned so far, could potentially lead to systemic risks in the market that need further consideration. SIFMA is attaching an appendix to this comment letter documenting a list of outstanding questions and issues that need to be addressed prior to expanding exchange trading hours.

I. Need for Broad Feedback

In the past, when the Commission considered fundamental changes to equity or fixed income market structures or the infrastructure supporting those markets, it routinely sought and considered input from a wide range of stakeholders, such as through hosting public roundtables or issuing detailed concept releases soliciting comment on such changes.[7] The concept of expanding exchange trading to 23 hours per day/five days per week (and potentially in the future a further expansion to 24x7) is a fundamental change to the equity market structure that warrants careful Commission consideration through a similar process. The Commission should carefully weigh whether current investor demand for expanding on-exchange trading is significant enough to justify such a drastic change at this time given the market-wide costs and as-yet unaddressed issues discussed in this letter, SIFMA's prior comment letter, and other comment letters in the file. For example, statistics from the third quarter of 2024 indicate that current demand for trading is very limited from 4:00 a.m. to 8:00 a.m. (1.3% of total consolidated market volume) and 5:00 p.m. to 8:00 p.m. (1.31% of total consolidated market volume), the segments of

---

[5] Another national securities exchange has announced its intention to expand to virtually full-time trading, which bolsters the need for broader dialogue regarding the concerns SIFMA raises in this letter. The exchange's proposed operating hours would be from 1:30 a.m. to 11:30 p.m. ET, excluding holidays. ICE Press Release, *The New York Stock Exchange Plans to Extend Weekday Trading on its NYSE Arca Equities Exchange to 22 Hours a Day* (Oct. 25, 2024), *available at* https://ir.theice.com/press/news-details/2024/The-New-York-Stock-Exchange-Plans-to-Extend-Weekday-Trading-on-its-NYSE-Arca-Equities-Exchange-to-22-Hours-a-Day/default.aspx.

[6] For example, on July 31, 2024, FINRA published an "Investor Insights" article entitled "Extended-Hours Trading: Know the Risks," which noted in part that "while placing an order to trade outside of regular trading hours might seem simple, this market can be complex and risky."

[7] See, e.g., Roundtable on Market Data and Market Access (Oct. 25-26, 2018), press release available at https://www.sec.gov/newsroom/press-releases/2018-210; Roundtable on Market Structure for Thinly Traded Securities (Apr. 23, 2018), Commission statement available at https://www.sec.gov/files/rules/policy/2019/34-87327.pdf (noting that "[t]he Commission is issuing this Statement to facilitate the ability of market participants to develop innovative proposals for changes in equity market structure that are designed to improve trading in thinly traded securities"); Concept Release on Equity Market Structure, Release No. 34-61358, File No. S7-02-10 (Jan. 14, 2010), available at https://www.sec.gov/files/litigation/litreleases/2010/34-61358.pdf.

extended hours trading sessions not directly leading up to the open or coming out of the close.[8] The lack of significant trading volumes at the beginning and end of the current 16 hours of daily exchange availability calls into question the demand for additional expansion. However, while the potential volume may be low at this point, industry participants would still need to plan for idiosyncratic volume spikes caused by, for example, natural disasters or individual company-related events that may occur when the equity clearinghouse National Securities Clearing Corporation ("NSCC") and its parent the Depository Trust and Clearing Corporation ("DTCC") are not open.

As part of a broader review process, the Commission should solicit feedback from a variety of stakeholders so that it can determine whether such an expansion is consistent with the national market system after it reviews the potentially far-reaching impacts on equity market structure and its infrastructure, rather than allowing such sweeping changes to be implemented indirectly via a review of the sufficiency of an exchange applicant's Form 1. Through this process, the Commission should assess whether steps need to be taken to facilitate enhancements to the current equity market infrastructure that would enable the equity markets to transition to 23 hours per day/five days per week, and potential additional future expansions, with minimal disruption.

To gather information as part of its decision-making process and address uncertainty about transparency, clearance, settlement, margin, and other important issues (further discussed below) *prior to* any expansion of exchange trading hours, the Commission could emulate the approach of the Commodity Futures Trading Commission ("CFTC"), which recently held a "Staff Roundtable Discussion on New and Emerging Issues in Clearing" consisting of a "public roundtable . . . to discuss existing, new, and emerging issues in clearing," including 24/7 trading.[9] The roundtable discussion "includ[ed] participants from derivatives clearing organizations, futures commission merchants (FCM), FCM customers, end-users, custodians, proprietary traders, public interest groups, state regulators, and others."[10] Participants in the roundtable generally supported a future expansion to 24/7 trading in CFTC-regulated markets, but also expressed reservations and raised "questions around risk management [such as] how to margin positions that are open on a 24/7 basis, or how to transfer value when banks are not open."[11] Furthermore, participants also noted that "[f]utures commission merchants (FCMs) and CFTC-regulated derivates clearing organizations (DCOs) currently work together to manage risk within the ecosystem, and extending trading hours would likely require additional work, and

---

[8] Source: IEX (NYSE TAQ data of total consolidated market volume from 3Q2024).

[9] CFTC Press Release, *Division of Clearing and Risk Announces Staff Roundtable Discussion on New and Emerging Issues in Clearing* (Sept. 27, 2024), available at https://www.cftc.gov/PressRoom/PressReleases/8985-24.

[10] Id.

[11] See Basar, Shanny, *Is 24/7 Trading Inevitable?*, MarketsMedia (Oct. 17, 2024), *available at* https://www.marketsmedia.com/is-24-7-trading-inevitable/.

involve additional risks, for both of them."[12] One central clearing party ("CCP") participant noted that "the key is risk management . . . includ[ing] having a robust pre-trade risk regime in place and real-time position monitoring across the whole portfolio to ensure participants have the appropriate trading capacity."[13] By soliciting and listening to diverse viewpoints about the benefits, risks, operational challenges, and structural limitations surrounding 24/7 trading, the CFTC is attempting to reduce uncertainty and eliminate barriers to an eventual expansion of trading hours for its markets. The Commission should do the same for U.S. equity market participants.

II. Need to Comprehensively Consider Clearance and Settlement Risks

SIFMA members are very concerned that the potentially significant clearance and settlement issues posed by a potential expansion to 23 hours, five days per week exchange trading have not been fully considered. This is a critical area where information is lacking with respect to the preparedness of several market participants, including CCPs, that should be integrally involved in planning for such an expansion because of their critical role in carrying out the basic operational functions needed to successfully facilitate 23x5 exchange trading (and potentially 23x7 trading in the future). Therefore, prior to approving the 24X Application, the Commission should engage in a more deliberate assessment of whether the current operational infrastructure is sufficient to support essentially full-time equity exchange trading.[14]

It is SIFMA's preliminary understanding, gleaned from discussions with various market participants (and not based on the very general information in the 24X Application),[15] that because the NSCC and DTCC systems are not operational between 9:00 p.m. ET and 1:30 a.m. ET, 24X would submit to NSCC for central clearing all trades executed during those times via the Universal Trade Capture ("UTC") system at 1:30 a.m. ET the following trade date, and those trades would settle on the subsequent settlement day. Therefore, for trades executed on 24X between 9:00 p.m. ET and 1:30 a.m. ET, there would be no CCP guaranteeing any aspect of the trades for more than five hours, and all default risks (and related clearance, settlement, payment,

---

[12] Id.

[13] Id.

[14] This is required by Section 6(b)(5) of the Exchange Act, which states that "[t]he rules of the exchange are designed . . . to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities." 15 U.S.C. § 78f(b)(5).

[15] For example, Exhibit E to the 24X Application states: "Clearance and Settlement of Exchange Trades. The Exchange will require each Member to be a member of a registered clearing agency or clear its transactions through a Member that is a member of a registered clearing agency." Proposed 24X Rule 11.12(a), Clearance and Settlement; Anonymity, states: "All transactions through the facilities of the Exchange shall be cleared and settled through a registered clearing agency using a continuous net settlement system. Trades executed during hours in which the continuous net settlement system is open will be automatically processed for clearing and settlement, whereas trades executed during hours in which the continuous net settlement system is closed will be processed for clearing and settlement as soon as the relevant clearing agency reopens the continuous net settlement system."

and delivery risks) associated with such executions would be borne by the broker-dealers whose customers are on either side of the trades, until the trades were transferred to DTCC for novation at or around 1:30 a.m. ET.

This approach would impose significant counterparty risk on broker-dealers for extended periods on a daily basis and would stand in stark contrast with the long-standing NSCC real-time trade guarantee for trades in U.S. equities, which is designed to eliminate the risk that customers are on the hook for losses if a counterparty broker-dealer or clearing firm fails after a trade has been executed. For this segment of trades on 24X, broker-dealers would be exposed to counterparty default risk on every trade. Moreover, because of the anonymous nature of exchange trading, broker-dealers would not know the counterparty broker-dealer to whom they are exposed.

This would be a significant step backward and is not in line with the recent changes at NSCC and DTCC to address such risks. In the event a broker-dealer failed between 9:00 p.m. ET and 1:30 a.m. ET prior to submitting trades to NSCC, those trades would not be guaranteed by any CCP, and the broker-dealer's customers could experience unrecoverable losses. Yet this scenario is not addressed in any proposed 24X rule, in the rules or disclosures of NSCC, or the Commission's OIP. Therefore, retail customers trading during the 24X Market Session apparently would be unaware that their executed trades are excluded from the protections provided by NSCC and DTCC's real-time guarantee model that operates at all other times national securities exchanges are open.

As discussed above, although overall volumes generally may be low during the 24X Market Session, it is not difficult to envision a scenario where heightened retail investor interest takes hold in a stock during these times, when news or other events drive volatility. If volumes in one or more securities spike after hours, individual broker-dealers, and ultimately their customers, rather than a CCP that is designed to handle such risks, would be solely responsible for the systemic risks posed by the activity. Assuming that there is a minimal chance of a systemic event during the 24X Market Session because volumes might initially be lower than regular trading hours is not a sound basis on which to base a decision to allow 24-hour trading, given the potential market-wide risks that may exist. Leaving broker-dealers and their customers exposed on their trades for extended periods does not seem consistent with the Commission's approach to on-exchange trading as part of the national market system for U.S. equity securities. This approach also appears to be inconsistent with the Commission's recent efforts to shorten the settlement cycle from T+2 to T+1, which the Commission stated "can promote investor protection, reduce risk, and increase operational and capital efficiency."[16] To the extent that trading were expanded to weekends and holidays when DTCC is not open, these risks would be greatly magnified.

---

[16] See Shortening the Securities Transaction Settlement Cycle, Release No. 34-96930 (Feb. 15, 2023), 88 Fed. Reg. 13872, 13873 (Mar. 6, 2023).

Delays in submission of overnight (and potentially in the future weekend/holiday trades) to NSCC also would impact margin requirements. But this is another area where there has been no collaboration to identify a plan to address the increased systemic risks posed by this activity. For example, for trades that take place during these times, there are unanswered questions about when NSCC would receive such trades for "value-at-risk" and margin calculations, as well as whether firms would be required to settle margin calls during these times. There are also unanswered questions about how trading limits would be applied to prevent significant counterparty risk exposure if NSCC and DTCC are not operating. These questions and details are too important to address in the context of an exchange application. However, on the current trajectory with respect to the 24X Application, these issues apparently will be left for various market participants to sort out after expanded exchange-trading hours are already in place.

In connection with the Commission's consideration of the 24X Application, SIFMA notes that three listed index options are currently traded on the Cboe Options exchange overnight five days per week.[17] To address the additional risks posed by this limited expansion, the Options Clearing Corporation ("OCC") implemented a series of changes, including a special additional margin charge on clearing members "that is the lesser of $10 million or 10% of net-capital."[18] It is unclear whether NSCC would impose a similar add-on margin charge or take other steps to address the potential risks it would face from overnight on-exchange trading in equities. In its recent comment letter, 24X stated: "[I]t is the Exchange's understanding from DTCC that the operational and clearance and settlement risks related to overnight and weekend trading are manageable using DTCC's existing risk management rules and protocols."[19] But this general statement does not provide market participants with any insight, guidance, or certainty regarding an approach to margining exchange trades that take place during the 24X Market Session. If the Commission were to pursue a roundtable discussion or concept release approach, it could invite DTCC to provide its expertise as to how the risks of overnight and weekend/holiday exchange trading would be managed.

---

[17] https://go.cboe.com/24x5.

[18] Order Approving Proposed Rule Change Concerning Extended and Overnight Trading Sessions, File No. SR-OCC-2014-024, Release No. 34-74268 (Feb. 12, 2015), 80 Fed. Reg. 8383 (Feb. 17, 2015). ("OCC has recently observed an industry trend whereby exchanges are offering overnight trading sessions beyond traditional hours. Exchanges offering overnight trading sessions have indicated to OCC that such sessions benefit market participants by providing additional price transparency and hedging opportunities for products traded in such sessions, which, in turn, promotes market stability. In light of this trend, OCC proposed to implement a framework for clearing trades executed in such sessions that includes: 1) qualification criteria used to approve clearing members for overnight trading sessions, 2) systemic controls to identify trades executed during overnight trading sessions by clearing members not approved for such sessions, 3) enhancements to OCC's overnight monitoring of trades submitted by exchanges during overnight trading sessions, 4) enhancements to OCC's credit controls with respect to monitoring clearing members' credit risk during overnight trading sessions, including procedures for contacting an exchange offering overnight trading sessions in order to invoke use of the exchange's kill switch, and 5) taking appropriate disciplinary action against clearing members who attempt to clear during the overnight trading sessions without first obtaining requisite approvals.").

[19] 24X Letter at 18.

Furthermore, exchange trading during times when NSCC is not operational would have additional downstream effects, including having overnight and weekend/holiday trades excluded from the continuous net settlement ("CNS") system until the trades are submitted to NSCC. This would eliminate position netting and could affect compliance with regulatory obligations such as the short sale order marking and close-out requirements in Reg SHO.[20]

There also are outstanding questions impacting compliance with broker-dealer obligations to facilitate clearance and settlement of transactions by T+1. For example, SEC Rule 15c6-2[21] requires broker-dealers to ensure allocation, confirmation, affirmation, or any combination thereof, for a transaction as soon as technologically practicable and no later than the end of the day on trade date, in such form as necessary to achieve settlement. It is unclear how broker-dealers would comply with these requirements if exchanges eventually expanded to a 23-hour, 7-day-a-week trading environment. While the Commission's final rule[22] and FAQs[23] addressed compliance with trade date affirmation in circumstances where "certain obstacles" exist—such as end-of-day trading, transactions across multiple time zones, and variations in holiday schedules—the Commission was dealing with those issues in the current environment. However, there appears to be limited (if any) discussion around how the trade date affirmation requirement would apply to trades executed on weekends or holidays if the U.S. transitions to a full 23-hour/7-day trading model. While volumes generally may not be large during the 24X Market Session, a large influx of trades executed during the time when NSCC is closed may present difficulties for firms in allocating, confirming, and issuing a confirmation in compliance with the trade date requirements, potentially creating increased risks in the industry. These are questions that need further exploration. The Commission should consider the broader impacts such as these on market structure and the settlement and clearance process before approving such an expansive change.

III. Other Concerns with the 24X Application

SIFMA members remain concerned that additional aspects of the current equity market structure and its infrastructure are not ready for the national market system to expand to 23-hour

[20] If NSCC eventually expanded its hours such that trades were able to settle on weekends or holidays, it would require increased staffing levels at NSCC and potentially additional rules/procedures for a likely limited volume of trading activity. Furthermore, if settlement is expected to take place at a time when the Fedwire Funds Service is not operational, payments could be affected, potentially requiring firms to build new systems as a workaround. For example, although the Federal Reserve Board is proposing to expand the Fedwire Funds Service to weekends and holidays, currently it is only open Monday through Friday. See https://app.frbservices.org/resources/financial-services/wires/operating-hours.html.

[21] See 88 Fed. Reg. supra n. 16 at 13872.

[22] Id. at 13894.

[23] *See* Frequently Asked Questions Regarding the Transition to a T+1 Standard Settlement Cycle (Mar. 27, 2024), *available at* https://www.sec.gov/exams/educationhelpguidesfaqs/t1-faq.

exchange trading every day of the year. For example, as discussed in SIFMA's prior comment letter, the exclusive securities information processors ("SIPs") do not currently operate overnight. 24X has indicated it "has been actively working with the Equity Data Plans to assist with the changes necessary to accommodate the 24X Market Session."[24] 24X further notes that if the SIPs are not expanded prior to 24X's launch, it "has requested temporary conditional exemptive relief with regard to the reporting of certain quoting and transaction activity during the 24X Market Session until the Equity Data Plans are ready."[25] SIFMA questions whether it would be consistent with the requirements of the Exchange Act or the national market system for a national securities exchange to operate when the SIPs are not available to disseminate exchange market data. In addition, as discussed in SIFMA's prior comment letter, if the SIPs' operating hours are expanded to accommodate the 24X Market Session, the operating hours for the FINRA trade reporting and display facilities ("TRFs") also should be expanded so that on-exchange and off-exchange trading taking place overnight are treated similarly from a transparency perspective. If the SIPs' hours are expanded but the TRFs' hours are not, overnight trades executed on exchanges Sunday through Thursday would be reported in real-time, while trades at the same time executed on ATSs would not be reported to the TRFs until 8:00 a.m. ET the next day. This would lead to a significant disparity in price transparency for on- versus off-exchange trading.

Before approving changes to expand exchange trading hours, the Commission should reiterate that broker-dealers will continue to have discretion regarding whether to connect to these venues during extended hours.[26] While overnight and weekend trading are currently available via ATSs, market participants have wide latitude regarding whether to trade during these times or offer such connectivity to customers.

Furthermore, unlike ATSs, national securities exchange rulebooks include blanket disclaimers on any exchange liability for damages resulting from exchange system errors or malfunctions. 24X's proposed rulebook includes a limitation of liability provision copied from other equity exchange rulebooks.[27] Like other exchanges, 24X proposes to include a limited exception in its rulebook that would provide an aggregate total of up to $500,000 monthly for all member losses caused by an exchange error or system malfunction.[28] The amounts included in proposed 24X Rule 11.13(d) are the same amounts introduced by other equity exchanges in the

---

[24] Letter from David Sassoon, General Counsel, 24X Exchange to Vanessa Countryman, Secretary, Securities and Exchange Commission, at 7 (Aug. 21, 2024) ("24X Letter"), available at https://www.sec.gov/comments/10-242/10242-509515-1478562.pdf.

[25] Id.

[26] For example, as noted in SIFMA's June 27, 2024 comment letter, key aspects of Reg NMS apply only during "regular trading hours," which are currently 9:30 a.m. ET to 4:00 p.m. ET.

[27] See 24X Proposed Rule 11.13.

[28] See proposed Rule 11.13(d).

early 2000s and SIFMA does not believe these liability caps remain set at reasonable levels. Based on the exponential increases in automation and trading volumes in the past 15-plus years, exchange malfunctions can and do result in tens or hundreds of millions of dollars in losses.[29] Notably, 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. To the extent exchange rulebooks include liability caps, they should be rationally related to current equity trading, which is not currently the case.

Finally, as part of a broader review of 23x7x365 on-exchange trading and whether it is compatible with the national market system as currently constructed, the Commission also would be able to consider the costs associated with adding significantly more trading days to the trading calendar.[30] Specifically, unlike prior incremental changes to add pre- and post-market sessions, which expanded the traditional trading day by a total of 9.5 hours (currently 16 total hours), the 24X Application would expand the traditional trading day by an additional 8 hours (a 50% increase). Such a significant expansion in trading hours will undoubtedly raise costs on the industry and on investors. To accommodate the additional trading hours, such broker-dealers will be required to hire and train additional staff, expand systems capacities, and stand ready to respond to customer inquiries and service customer accounts 24 hours per day, five-plus days per week. These additional measures will significantly raise costs for broker-dealers even though trading volumes may not reflect significant demand for overnight exchange trading.[31] Therefore, the Commission should carefully consider whether the significant cost increases associated with such an expansion of exchange trading outweigh any incremental benefits the expansion would have on the national market system.

* * *

[29] <u>See</u>, <u>e.g.</u>, *Interactive Brokers reveals $48 million loss from NYSE glitch*, CNBC (June 26, 2024), *available at* <u>https://www.cnbc.com/2024/06/26/interactive-brokers-reveals-48-million-loss-from-nyse-glitch.html</u>.

[30] <u>See</u> SEC OIP, <u>supra</u> n. 2 at 48468 (noting that "[w]hile several exchanges offer a pre-market trading session starting as early as 4:00 a.m. ET <u>on each U.S. business day</u>, and most exchanges offer a post-close trading session until 8:00 p.m. ET <u>on each U.S. business day</u>, 24X's proposal would significantly expand exchange trading hours such that exchange trading would be conducted on a largely continuous basis.") (emphasis added).

[31] These additional costs could have outsized effects on smaller broker-dealers and also could raise the barrier to entry to becoming a broker-dealer, both of which would diminish competition.

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

Sincerely,

Ellen Greene

Ellen Greene
Managing Director
Equities & Options Market Structure

Appendix A

The following list of questions and issues remain outstanding and must be fully addressed prior to a finding that the 24X Application satisfies the requirements of Section 6 of the Exchange Act. This list is non-exhaustive and should be used as a starting point in reviewing whether an expansion of exchange trading hours is feasible.

Investor Protection and Disclosures

- Extended-hours trading generally involves higher levels of risk to investors through reduced liquidity, wider spreads, and higher volatility. These risks likely would be enhanced during overnight hours and will lead to worse execution quality, especially for retail investors who often lack tools to manage these risks. Are the risks to investor protection and market integrity associated with expanding exchange trading hours to 23x5 supported by the potential demand, which appears to be limited?
- Are existing investor disclosures regarding extended hours trading sufficient to notify investors of the heightened risks of trading during significantly expanded times if the 24X Application is approved?
- Has the Commission considered the effect of the reduction in the minimum pricing increment, which likely will result in even wider spreads, less displayed liquidity, and lower quality executions, on trading during the 24X Market Session?
- Would 24X Exchange publicly disclose that trades executed on its exchange when NSCC is closed would not be subject to NSCC's real-time trade guarantee and that investors could be exposed to significant risks during this time?

Clearing and Settlement

- Delays in settlement of trades executed between 9:00 p.m. ET and 1:30 a.m. ET would introduce potential systemic risks if a broker-dealer or its customer had a default event prior to the submission of the trades to NSCC for clearance and settlement. These risks are not explained or otherwise addressed in the 24X Application. Has the Commission considered these risks in connection with its evaluation of the 24X Application and its consistency with the requirements for national securities exchanges under the Exchange Act?
- The 24X Application does not address the operational aspects of clearance and settlement of trades that take place when DTCC/NSCC are not open. What are the steps, the timing of each step, and who are the party or parties responsible for each step for a trade executed on 24X overnight (or during a weekend or holiday if exchanges eventually expand even further) to move from execution to clearance and settlement?
- Who does the NSCC member have exposure to on 24X for overnight trades that NSCC has not matched for settlement?

- What happens if a 24X member declares default overnight before the NSCC processes the overnight activity?
- What remedies would a broker-dealer (and its customers) have if its counterparty to overnight (or eventually weekend or holiday) trades failed prior to the time the trade was submitted to NSCC?
- If the NSCC's CNS system is not operational during exchange trading hours, how would broker-dealers calculate net positions in securities?
- How would overnight trading impact broker-dealers' calculation of short sale delivery, fails to deliver, and close out requirements under Rule 204 of Regulation SHO?
- Is the planned approach for clearing and settlement of overnight trading consistent with Commission and industry efforts to shorten the settlement cycle to T+1?
- How would broker-dealers comply with recently adopted Rule 15c6-2, which requires allocations, confirmations, and affirmations to occur on trade date?
- Will NSCC have to file rule changes to accommodate an expansion of exchange trading hours? If so, what are they?
- Will clearing firms be able to opt out of clearing during the overnight sessions?

Margin

- Is NSCC/DTCC going to make changes to accommodate a move to overnight exchange trading, such as requiring clearing members to post additional margin?
- If so, how much additional margin will be required and how will the amount be calculated?
- When would NSCC receive overnight trades for "value-at-risk" and margin calculations?
- Would firms be required to settle margin calls overnight?
- How would margin calls issued overnight work?

Expansion of SIP Hours

The Commission's OIP states: "The Commission also is considering whether 24X's application to operate as an exchange during the 24X Market Session, in light of the fact that the Equity Data Plans currently do not operate during this time, 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."

- If a national securities exchange operated during a time when the SIPs are closed, such that quotations and transactions on the exchange were not included in a national market

system plan disseminating consolidated market data, how would that comply with Section 6(b)(5) of the Exchange Act?
- How would a national securities exchange operating when the exclusive SIPs are closed comply with Rules 601, 602, and 603 of the Regulation NMS?
- If one or more of the exclusive SIPs expanded their hours of operation, who bears the costs of the expansion?
- If another exchange(s) subsequently expanded its hours of operation to overnight, weekend, and/or holiday hours, how will the costs to operate the exclusive SIPs during those times be allocated?
- If the SIPs' hours are expanded, will the SIPs have enough downtime to perform required periodic testing and maintenance?

Expansion of TRF Hours

- If the exclusive SIPs' hours are expanded to accommodate overnight exchange trading, would the trade reporting facilities ("TRFs") also expand their hours to support overnight trade reporting of over-the-counter ("OTC") trades?
- If the exclusive SIPs' hours are expanded but the TRFs' hours are not, have the resulting risks of a two-tiered system of market and price transparency—where exchange trades would be publicly disseminated in real time but OTC trades in the same securities would be reported the next day—been considered? If so, how will these risks be mitigated?

Varying Regulatory Obligations

If certain regulatory obligations vary based on the time of day—regular market hours, pre-market, post-market, and 24X Market Session—the Commission should articulate the obligations that apply in each market session. For example, the Commission needs to specifically address the application of the following rules during all such time periods:

- Reg SHO Rule 201(b)
- Reg SHO Rule 204
- Reg NMS Rule 605
- Reg NMS Rule 610(d)
- FINRA Rule 5320.08

Recently Adopted Amendments to Reg NMS

Confirm whether the following aspects of the recently adopted amendments to Reg NMS would apply during the 24X Market Session:

- Tick Size increment of $0.05 for tick constrained stocks above $1.00.

    - Under the recent amendments, calculation of TWAQS will take place during regular trading hours. Assuming the updated minimum pricing increment of \$0.05 for "tick constrained" stocks above \$1.00 also will apply during the 24X Market Session, is that an appropriate approach during a time when spreads are expected to be wider and therefore the stocks may not be tick constrained?
    - Will utilizing the smaller pricing increment in certain stocks lead to even further decreases in displayed liquidity and aggregate quoted depth and increased potential for pennying in those stocks during the 24X Market Session?
- Access fee cap of 10 mils.
- Updated round-lot and odd-lot definitions.
- Requirement to publish quotations for the best odd-lot orders.

<u>Limitation of Liability</u>

- The Commission should address whether it is appropriate for the proposed 24X Rules to include a limitation of liability rule copied from other exchanges that implemented the rules, and the corresponding liability caps, nearly 20 years ago. From SIFMA's perspective, the liability caps are woefully inadequate and do not protect against the losses broker-dealers and customers experience from exchange system errors or other malfunctions. The Commission should require 24X to determine its own approach to liability supported by analysis that accounts for the fact that the exchange intends to be operational 23 hours per day, which is significantly more than any other current exchange.

<u>Costs</u>

Pursuant to Section 6(b)(5) of the Exchange Act, the Commission must evaluate and address the anticipated costs full-time exchange trading will impose on market participants, investors, regulators, clearing firms and agencies, and the public.

- If the exclusive SIPs expand their hours of operation, who bears the costs of the expansion?
- If one or both of the TRFs expand their hours of operation, who bears the costs of the expansion?
- Overnight on-exchange trading will require additional staffing at regulators, firms, and third-party service providers to monitor systems and trading activity and respond to customers and constituents at all times. Exchange trading on a 23x5 basis (or eventually a 23x7 basis) also could strain technology systems and lead to outages. Who pays for these increased costs?
- Is there a plan to fairly allocate the costs associated with expanding to 23x5 or 23x7 exchange trading?

Primary Listing Exchange Obligations/Coordination

- If listing exchange rules do not currently require monitoring of issuer material news events during the 24X Market Session, will such exchanges need to update their rules to ensure they are monitoring for material news and potentially pause trading during these times?

Resiliency Concerns

- The 24X Exchange proposes to pause for one hour each weekday. Is this enough time for maintenance, testing, and participation in market-wide testing? Given recent concerns over market-wide outages, will the exchange be able to perform routine system maintenance without interruptions to its proposed schedule?
- Will the limited downtimes enable 24X to comply with the system testing required by Reg SCI?