

purposes of [the Act].”⁵⁴ Are there additional facts that commenters believe the Commission should consider in order to assess whether the proposal is consistent with Section 6(b)(8)? If so, please provide.

3. Are there any potential competitive advantages that could be realized by an Exchange-affiliated OEMS “facilitating transactions in securities”⁵⁵ that could arise from that OEMS operating outside the Commission review process? If so, please identify these potential advantages. 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 email to rule-comments@sec.gov. Please include File Number SR-CBOE-2024-008 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 SR-CBOE-2024-008. This file number should be included on the subject line if email 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/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to file number SR-CBOE-2024-008 and should be submitted by June 27, 2024. Rebuttal comments should be submitted by July 11, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁶

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-100254; File No. 10-242]

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

May 31, 2024.

I. Introduction

On February 6, 2024, 24X National Exchange LLC (“24X”) 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 March 4, 2024.² The Commission received five comments on the Form 1³ and a letter responding to the comments from 24X.⁴ Two commenters expressed support the 24X Form 1,⁵ one commenter suggested

⁵⁶ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78f.

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

³ The public comment file for 24X’s Form 1 (File No. 10-242) is available on the Commission’s website at: <https://www.sec.gov/comments/10-242/10-242.htm>.

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

⁵ See letters from James J. Angel, Ph.D., CFP, CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, to Commission, dated Apr. 5, 2024 (“Angel Letter I”) (stating that “[t]he 24X Application should be approved” because it will “provide additional convenience to investors and facilitate futures trading,” promote innovation and competition, improve price discovery during regular trading hours, and reduce risks for market participants.) and dated May 13, 2024 (discussing the information provided in the Glover and deHaan Letter, *infra* note 6, and stating that “[s]ince we already have 24-hour trading, it is best that it be on regulated

a “cautious approach to expanding trading hours” because their “research indicates that increasing trading hours has negative consequences for retail investment performance”⁶ and one commenter stated that it “believe[s] there are several aspects of the Application that require careful review and analysis by the Commission, or additional information and clarification from 24X, before the Application is permitted to move forward.”⁷

Section 19(a)(1) of the Act⁸ 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 registration⁹ or institute proceedings to determine whether such registration should be denied.¹⁰ This order is instituting proceedings under Section 19(a)(1)(B) of the Act¹¹ 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

24X proposes to operate a fully automated electronic trading platform for the trading of listed NMS stocks¹² pursuant to unlisted trading privileges (“UTP”) 23 hours per day,¹³ 7 days per week, including certain holidays, subject to certain trading pauses, as

national securities exchanges” because it “will create the highest level of investor protection.” (“Angel Letter II”); letter from Stan Sater, Senior Legal Counsel, Polygon.io, Inc., to Commission, dated Apr. 25, 2024 (“Polygon Letter”).

⁶ See Letter from Andrew Glover, University of Washington and Ed deHaan, Professor of Accounting, Stanford University, to Commission, dated Apr. 22, 2024 (“Glover and deHaan Letter”).

⁷ See Letter from Eun Ah Choi, Senior Vice President, Nasdaq, Inc., to Commission, dated Apr. 25, 2024 (“Nasdaq Letter”) at 2.

⁸ 15 U.S.C. 78s(a)(1).

⁹ 15 U.S.C. 78s(a)(1)(A).

¹⁰ 15 U.S.C. 78a(a)(1)(B).

¹¹ 15 U.S.C. 78s(a)(1)(B).

¹² See 17 CFR 242.600(b)(55) (defining “NMS Stock”).

¹³ Unless otherwise noted, all times referred to in this order are Eastern Time (“ET”). As described further below, 24X proposes to define four different trading sessions. See proposed 24X Rules 1.5(c) (defining the “24X Market Session”); 1.5(l) (defining the “Core Market Session”); 1.5(x) (defining the “Post-Market Session”); and 1.5(y) (defining the “Pre-Market Session”). In addition, 24X proposes, among others, the following terms: “24X Trading Day” (see proposed 24X Rule (1.5(b)); “Exchange Trading Hours other than the 24X Market Session” (see proposed 24X Rule 1.5(q)); “Extended Hours Trading” (see proposed 24X Rule 1.5(r)); “Regular Trading Hours” (see proposed 24X Rule 1.5(cc)); and “U.S. Business Day” (see proposed 24X Rule 1.5(kk)).

⁵⁴ 15 U.S.C. 78f(b)(8).

⁵⁵ 15 U.S.C. 78f(b)(5).

provided in 24X's proposed rules.¹⁴ 24X would not maintain a physical trading floor.¹⁵ Liquidity would be derived from quotes as well as orders to buy and orders to sell submitted to 24X electronically by exchange members.¹⁶ 24X proposes to operate a fully automated electronic limit order book with a continuous matching function¹⁷ and orders resting on the book would be ranked in price/time priority.¹⁸ 24X proposes to accept Market Orders,¹⁹ Limit Orders²⁰ and Pegged Orders²¹ with various modifiers and time-in-force instructions, although subject to certain limitations²² during the 24X Market Session.²³ Specifically, Market Orders would be accepted only during the Core Market Session, Pegged Orders would be accepted only during the Pre-Market

¹⁴ See, e.g., proposed 24X Rule 11.15(c); Exhibit E-1 to 24X's Form 1 at 4. See also *infra* Section III.A.1. (discussing 24X's proposed trading pauses).

¹⁵ See Exhibit E-1 of 24X's Form 1 at 2.

¹⁶ 24X proposes to have one class of membership open to registered broker-dealers. See proposed 24X Rule 2.3 (stating, in part, that "any registered broker or dealer that is and remains a member of a national securities association registered under Section 15A(a) of the Act or a member of another national securities exchange registered under Section 6(a) of the Act or any person associated with such a registered broker or dealer shall be eligible to be, and to remain, a Member").

¹⁷ See Exhibit E-1 of 24X's Form 1 at 2.

¹⁸ See proposed 24X Rule 11.8(a).

¹⁹ 24X proposes to define the term "Market Order," in part, as "[a]n order to buy or sell a stated amount of a security that is to be executed at the NBBO or better when the order reaches the Exchange." See 24X proposed Rule 11.7(a).

²⁰ 24X proposes to define the term "Limit Order" as "[a]n order to buy or sell a stated amount of a security at a specified price or better. A marketable Limit Order is a Limit Order to buy (sell) at or above (below) the lowest (highest) Protected Offer (Protected Bid) for the security." See proposed 24X Rule 11.7(b).

²¹ 24X proposes to define the term "Pegged Order," in part, as "[a] User may indicate to peg an order to a reference price, including an instruction of Primary Peg (the NBB for buy orders and NBO for sell orders, with or without offsets) or an instruction of Midpoint Peg (the midpoint of the NBBO). The System's calculation of the NBBO would not take into account any Pegged Orders that are resting on the 24X Book. A new timestamp is created for a Pegged Order each time it is automatically re-priced." See proposed 24X Rule 11.7(c).

²² See proposed 24X Rule 11.7 (describing, among other things, order types eligible for the various 24X trading sessions).

²³ See, e.g., proposed 24X Rule 11.7; Exhibit B of 24X's Form 1; and proposed 24X Rule 1.5(c) (defining the term "24X Market Session" as "(i) the time between 8:00 p.m. and 4:00 a.m. Eastern Time, (ii) any time that falls on a Saturday or a Sunday Eastern Time, (iii) any time that falls on one of the following U.S. holidays: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Good Friday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day Eastern Time, or such other U.S. holiday(s) as published by the Exchange from time to time; provided, however, it shall not include any trading pauses as described in Rule 11.15(c)").

Session, the Core Market Session, and the Post-Market Session, and Limit Orders would be accepted during all sessions.²⁴ Orders may be submitted in round lots, odd lots or mixed lots.²⁵ 24X proposes to permit orders to be entered, cancelled, modified, executed on or routed away from 24X during the Pre-Market Session, the Core Market Session, and the Post-Market Session.²⁶ 24X would also permit orders to be entered, canceled, modified or executed on the Exchange during the 24X Market Session.²⁷ Market makers would be required to provide continuous two-sided quotes of at least 100 shares during Regular Trading Hours.²⁸

24X proposes certain rules to govern trading during Exchange Trading Hours other than the 24X Market Session,²⁹ while other rules and requirements would apply specifically to trading during the 24X Market Session.³⁰

One novel feature of 24X's Form 1 is that 24X proposes to extend the hours of exchange trading of certain NMS stocks³¹ to include overnight and weekend trading and trading on certain holidays.³² As noted above, 24X proposes certain rules that would apply specifically during its proposed 24X Market Session. For example, 24X proposes to implement certain "24X Price Bands" to moderate risk and volatility during the 24X Market

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

²⁵ See proposed 24X Rule 11.6(q). See also Exhibit E-1 of 24X's Form 1 at 5.

²⁶ See proposed 24X Rule 11.1(b).

²⁷ See proposed 24X Rule 11.1(c) (providing, in part, that "to the extent that other Trading Centers are open during the 24X Market Session, orders may be routed away to such Trading Centers during the 24X Market Session").

²⁸ See proposed 24X Rule 11.20(a)(1). The term "Regular Trading Hours" is defined as "the time between 9:30 a.m. and 4:00 p.m. Eastern Time each U.S. Business Day." See proposed 24X Rule 1.5(cc).

²⁹ See proposed 24X Rule 11.1(a). 24X proposes to define the term "Exchange Trading Hours other than the 24X Market Session" as "the Pre-Market Session, Core Market Session and Post-Market Session." See proposed 24X Rule 1.5(q).

³⁰ See proposed 24X Rule 11.1(a). For example, the proposed rules make specific provisions for the 24X Market Session with respect to matters such as order types permitted and certain volatility moderators that would be in place. See, e.g., Exhibit E-1 to 24X's Form 1; proposed 24X Rules 11.7, 11.15.

³¹ See proposed 24X Rule 11.2 (describing securities eligible for trading on 24X).

³² See proposed 24X Rule 11.1 (setting out the hours of trading and trading days for 24X).

Session.³³ As discussed below,³⁴ 24X proposes certain trading pauses during the 24X Market Session.³⁵ 24X also proposes to require that 24X Members make certain disclosures to investors concerning risks associated with trading during Extended Hours Trading, as discussed below.³⁶ In its Form 1, 24X states that it will join and participate in any applicable plan that other national securities exchanges and/or market centers have joined, including, for example, the three Equity Data Plans³⁷ that currently govern the collection, consolidation, processing, and dissemination of core data.³⁸ 24X further states that it is "working with such [Equity Data Plans] to expand their operation to include the 24X Market Session."³⁹

³³ See, e.g., proposed 24X Rule 11.15; *infra* Section III (discussing proposed Rule 11.15 in greater detail); Exhibit E-1 to 24X's Form 1. As proposed, trade executions occurring during times other than during Extended Hours Trading would be governed by the National Market System Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS. See, e.g., proposed 24X Rules 11.21, 11.22; Exhibit E-1 to 24X's Form 1. 24X proposes to define the term "Extended Hours Trading" as "trading during the Pre-Market Session, Post-Market Session and 24X Market Session." See proposed 24X Rule 1.5(r).

³⁴ See *infra* Section III.

³⁵ See, e.g., *infra* Section III (discussing proposed 24X Rule 11.15(c) in greater detail); proposed 24X Rule 11.15(c); Exhibit E-1 to 24X's Form 1; and 24X proposed Rule 1.5(b) (defining the term "24X Trading Day," in part, as "the 23-hour period commencing at 8:00 p.m. on one calendar day and ending at 7:00 p.m. on the next calendar day . . . [s]ubject to any trading pauses, halts or suspensions as described in 24X's proposed rules.").

³⁶ See proposed 24X Rule 3.21.

³⁷ The three equity data plans that currently govern the collection, consolidation, processing, and dissemination of exclusive Securities Information Processor ("SIP") data are (1) the Consolidated Tape Association Plan ("CTA Plan"), (2) the Consolidated Quotation Plan ("CQ Plan"), and (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("UTP Plan") (collectively, the "Equity Data Plans").

³⁸ See Exhibit E to 24X's Form 1. See also proposed 24X Rule 11.11 (providing, in part, that 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."). On May 1, 2024, 24X submitted a request for temporary conditional exemptive relief from Rules 601 and 602 of Regulation NMS and the Equity Data Plans until such time as the Equity Data Plans can establish a mechanism to collect, consolidate and disseminate quotation and transaction information during the 24X Market Session. See letter from David Sassoon, General Counsel, 24X National Securities Exchange LLC, to Commission, dated May 1, 2024.

³⁹ See Exhibit E to 24X's Form 1. 24X further states that it would "likewise join all other applicable Plans as deemed necessary and in the interest of its Users, including, but not limited to, the NMS Plan to Address Extraordinary Market

Another novel feature of 24X's Form 1 is that 24X proposes to enter into a technology services agreement with MEMX Technologies, LLC ("MEMX Technologies") to license the technology underlying 24X.⁴⁰

A more detailed description of the manner of operation of 24X's proposed system can be found in Exhibit E to 24X's Form 1. The proposed rulebook for 24X can be found in Exhibit B to 24X's Form 1, and the governing documents for 24X, 24X US Holdings, LLC⁴¹ and 24X Bermuda Holdings, LLC⁴² can be found in Exhibit A and Exhibit C. A complete set of forms concerning membership and access can be found in Exhibit F.

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

As required by Section 19(a)(1)(B) of the Act,⁴³ 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.⁴⁴ 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.⁴⁵ 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

Volatility, the NMS Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan"), the NMS Plan for the Selection and Reservation of Securities Symbols, and the 17d-2 Plans for Allocation of Regulatory Responsibilities." See *id.*

⁴⁰ See *infra* Section III (discussing the proposed technical services agreement between 24X and MEMX Technologies in greater detail). See also Exhibit E to 24X's Form 1.

⁴¹ 24X is wholly owned by its direct parent company, 24X US Holdings, LLC, which in turn is wholly-owned by 24X Bermuda Holdings LLC. See, e.g., Exhibits C, E, to 24X's Form 1.

⁴² See *supra* note 41 and accompanying text.

⁴³ 15 U.S.C. 78s(a)(1)(B).

⁴⁴ 15 U.S.C. 78s(a)(1).

⁴⁵ 15 U.S.C. 78f.

Act.⁴⁶ 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.⁴⁷ Section 6(b)(5) of the Act requires that the rules of the exchange be designed, among other things, to prevent fraudulent 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.⁴⁸ 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.⁴⁹

The Commission 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 consistent with Section 6(b)(5) of the Act such that the proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in 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. The Commission is also interested in commenters' views as to whether 24X's proposed technology services agreement is consistent with Section 6(b)(1) of the Act such that 24X would be so organized and have the capacity to be able to carry out the purposes of the Act.

A. 24X Trading Sessions

24X proposes to offer significantly expanded trading outside of regular trading hours for NMS stocks by operating a national securities exchange

23 hours a day,⁵⁰ seven days a week, 365 days a year, including holidays, subject to certain trading pauses, as provided in 24X's proposed rules.⁵¹ While several exchanges offer a pre-market trading session starting as early as 4:00 a.m. ET on each U.S. business day,⁵² and most exchanges offer a post-close trading session until 8:00 p.m. ET on each U.S. business day,⁵³ 24X's proposal would significantly expand exchange trading hours such that exchange trading would be conducted on a largely continuous basis.⁵⁴

24X proposes to offer four trading sessions as follows: a "Core Market Session"⁵⁵ that corresponds with Regular Trading Hours each U.S. Business Day;⁵⁶ a "Post-Market Session"⁵⁷ that would run from 4:00 p.m. to 7:00 p.m. ET on each U.S. Business Day; a "Pre-Market Session"⁵⁸ that would run from 4:00 a.m. to 9:30 a.m. ET on each U.S. Business Day; and a "24X Market Session"⁵⁹ that would run from 8:00 p.m. to 4:00 a.m. ET and any time that falls on weekends and certain holidays,⁶⁰ not including any trading pauses as described in 24X's proposed rules.⁶¹

1. 24X Market Session

24X proposes to apply some, but not all, of the rules that would apply during Exchange Trading Hours other than the 24X Market Session to trading that would occur during the 24X Market Session.⁶² Market Orders and Pegged Orders would not be eligible for execution during the 24X Market

⁵⁰ See *supra* note 14 and accompanying text.

⁵¹ See *id.*

⁵² See, e.g., NYSE Arca, Inc., Cboe EDGX Exchange, Inc. and The Nasdaq Stock Market LLC.

⁵³ 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.

⁵⁴ See, e.g., proposed 24X Rule 11.1; Exhibit E-1 to 24X's Form 1.

⁵⁵ See proposed 24X Rule 1.5(l).

⁵⁶ See *id.* See also proposed 24X Rule 1.5(kk) (defining the term "U.S. Business Day" as "any Monday, Tuesday, Wednesday, Thursday or Friday other than any of the following U.S. holidays if they are celebrated on a Monday, Tuesday, Wednesday, Thursday or Friday: New Year's Day, Martin Luther King Jr. Day, Presidents' Day, Good Friday, Memorial Day, Juneteenth National Independence Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day Eastern Time, or such other U.S. holiday(s) as published by the Exchange from time to time").

⁵⁷ See proposed 24X Rule 1.5(x).

⁵⁸ See proposed 24X Rule 1.5(y).

⁵⁹ See proposed 24X Rule 1.5(c).

⁶⁰ See *id.*

⁶¹ See proposed 24X Rules 1.5(c), 11.15(c). See also *infra* Section III.A.1 (discussing proposed trading pauses during the 24X Market Session in greater detail).

⁶² See, e.g., proposed 24X Rules 11.1, 11.16.

⁴⁶ 15 U.S.C. 78f(b)(1).

⁴⁷ 15 U.S.C. 78f(b)(3).

⁴⁸ 15 U.S.C. 78f(b)(5).

⁴⁹ 15 U.S.C. 78f(b)(8).

Session⁶³ and only Limit Orders would be permitted during the 24X Market Session.⁶⁴ The proposed rules further provide that, to the extent that other Trading Centers are open during the 24X Market Session, orders may be routed away to such Trading Centers during the 24X Market Session.⁶⁵

24X proposes that only certain NMS stocks would be eligible to trade during the 24X Market Session.⁶⁶ Specifically, 24X proposes that “[a]ny security in the Nasdaq-100[®] Index, S&P 500[®] Index, Russell 2000[®] Index and the top 50 exchange-traded funds by average daily volume during a given month”⁶⁷ would be eligible to become designated for trading on 24X during the 24X Market Session.⁶⁸ 24X further proposes rules for allowing Members⁶⁹ to request that 24X designate additional securities for trading during the 24X Market Session.⁷⁰

24X proposes certain pauses in trading during the 24X Market Session. Specifically, 24X proposes to pause trading at 8:00 a.m. ET each Saturday and resume trading at 11:00 a.m. ET each Saturday.⁷¹ Orders outstanding at

7:59:59 a.m. ET each Saturday would be automatically cancelled.⁷² 24X further proposes to pause trading at 7:00 p.m. ET every day and resume trading at 8:00 p.m. ET every day.⁷³ Orders outstanding at 6:59:59 p.m. ET every day would be automatically cancelled.⁷⁴ 24X also proposes that it would have authority to pause trading during the 24X Market Session at such other times as 24X may determine is necessary for technological or other purposes.⁷⁵ Furthermore, 24X proposes to provide that if there are any material corporate actions with respect to a particular security (*i.e.*, corporate actions that may affect a stock price, stock additions and subtractions, and similar actions) during the 24X Market Session, 24X would pause trading in the underlying security until trading resumes on the primary listing market for the security.⁷⁶

24X proposes to require that Members make certain disclosures to investors concerning risks associated with trading during Extended Hours Trading, including the 24X Market Session.⁷⁷

for the UTP Plan conducts testing on weekends during a portion of the 24X Market Session. *See* Nasdaq Letter at 4. In response, 24X stated that proposed 24X Rule 11.15(c)(3) addresses how industry-wide testing would be handled during the 24X Market Session. 24X also stated that proposed 24X Rule 11.15(c)(4) addresses other types of trading pauses and states that 24X would pause trading during the 24X Market Session at “such other times as the Exchange may determine is necessary for technological or other purposes.” *See* 24X Letter at 5.

⁷² *See* proposed 24X Rule 11.15(c)(1).

⁷³ *See, e.g.*, proposed 24X Rule 11.15(c)(2); Exhibit E-1 to 24X’s Form 1.

⁷⁴ *See* proposed 24X Rule 11.15(c)(2).

⁷⁵ *See* proposed 24X Rule 11.15(c)(4). 24X proposes to require that notice of such pause as well as notice of resumption of trading, will be provided. *See, e.g.*, proposed 24X Rule 11.15(c)(4); Exhibit E-1 to 24X’s Form 1.

⁷⁶ *See* proposed 24X Rule 11.15(c)(5); Exhibit E-1 to 24X’s Form 1. 24X proposes other trading halts, pauses, and suspensions. *See, e.g.*, proposed 24X Rule 11.1(e) (providing 24X’s Chief Executive Office with power to halt or suspend trading in any and all securities, and to determine the duration of any such halt “when he deems such action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.”); proposed 24X Rules 11.21, 11.22. One commenter stated that “while 24X provides examples of corporate actions that would be deemed material, it does not explicitly define the term of material corporate action, nor does it provide details on how it would handle material corporate actions that are announced during the 24X Market Session.” *See* Nasdaq Letter at 3. In response, 24X stated that “material corporate action” would include “all actions that the primary listing markets would determine to require a trading halt under their rules.” *See* 24X Letter at 4.

⁷⁷ *See* proposed 24X Rule 3.21. One commenter stated, among other things that “[their] research indicates that increasing trading hours has negative consequences for retail investment performance.” *See* Glover and deHaan Letter. In the 24X Letter, 24X stated that retail trading “outside of regular market hours is not a new phenomenon” and that its proposed disclosures under proposed 24X Rule

Specifically, 24X proposes to require that “[n]o Member may accept an order from a customer for execution during Extended Hours Trading without disclosing to such customer that Extended Hours Trading involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads and any other relevant risk.”⁷⁸ 24X proposes to require that such investor disclosures provide information substantially similar to that provided under the proposed rule and address the following risks: (1) lower liquidity, (2) higher volatility, (3) changing prices, (4) unlinked markets, (5) news announcements, (6) wider spreads, (7) trading during hours in which financial market infrastructure companies are closed, and (8) lack of calculation or dissemination of underlying index value or intraday indicative value.⁷⁹

The proposed 24X Market Session rules relating to risk and volatility moderators would, as noted above,⁸⁰ differ from those applicable during the Core Market Session.⁸¹ During the Core Market Session, 24X would participate in the Plan to Address Extraordinary Market Volatility (“LULD Plan”).⁸² The LULD Plan, however, is currently not effective during the proposed 24X Market Session. 24X proposes a certain “24X Price Band” that would be in effect during the 24X Market Session.⁸³ As proposed, during the 24X Market Session, a 24X Price Band would be calculated for each relevant security by multiplying the “Reference Price,” as specified in 24X proposed Rule 11.15, by the applicable “Percentage Parameter,” also set out in proposed 24X Rule 11.15. This figure (rounded to the nearest \$0.01) would then be added

3.21 “address the additional risks posed by the 24X Market Sessions.” *See* 24X Letter at 6.

⁷⁸ *See* proposed 24X Rule 3.21; Exhibit E-1 to 24X’s Form 1. 24X further proposes the disclosures required pursuant to this proposed 24X Rule 3.21 may take the form provided in or that contains information substantially similar to that provided under proposed 24X Rule 3.21(a)–(h).

⁷⁹ *See, e.g.*, proposed 24X Rule 3.21; Exhibit E-1 to 24X’s Form 1.

⁸⁰ *See supra* Section II.

⁸¹ *See, e.g.*, proposed 24X Rule 11.22; Exhibit E-1 to 24X’s Form 1. 24X also proposes a limit order price protection rule that would reject limit orders that are priced outside of specified thresholds. *See* proposed 24X Rule 11.9(g).

⁸² *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).

⁸³ *See* proposed 24X Rule 11.15. One commenter stated that 24X’s proposed Price Bands “should be sufficient to prevent extremely erroneous trades.” *See* Angel Letter I at 3.

⁶³ *See* proposed 24X Rule 11.16(b). *See also* proposed 24X Rules 11.7(a)(4), 11.7(c)(4).

⁶⁴ *See* proposed 24X Rules 11.7(b)(6), 11.16(b). 24X’s proposed rules would permit orders to be entered, cancelled, modified or executed on 24X during the 24X Market Session. *See* proposed 24X Rule 11.1(c).

⁶⁵ *See* proposed 24X Rule 11.1(c).

⁶⁶ *See* proposed 24X Rule 11.2(a).

⁶⁷ *See* proposed 24X Rule 11.2. *See also* proposed 24X Rule 11.2(g) (setting out, among other things, the proposed methodology for this calculation).

⁶⁸ *See* proposed 24X Rule 11.2(a).

⁶⁹ The term “Member” would be defined under the proposed rules as “any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a ‘member’ of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.” *See* proposed 24X Rule 1.5(t).

⁷⁰ *See* proposed 24X Rule 11.2(h) (setting out, among other things, the proposed rules for such Member requests). One commenter stated that “24X should provide more transparency on the minimum time frame that market participants will receive notice of securities that will be available for trading during the 24X Market Session.” *See* Nasdaq Letter at 3. In response, 24X stated that proposed 24X Rule 11.2(f) would provide sufficient notice of securities that would be made available for trading or that would not be made available for trading in the 24X Market Session and that it “does not anticipate that there would be substantial daily changes in the symbols traded during the 24X Market Session.” *See* 24X Letter at 3.

⁷¹ *See, e.g.*, proposed 24X Rule 11.15(c)(1); Exhibit E-1 to 24X’s Form 1. One commenter stated that the Form 1 “does not sufficiently explain how 24X will coordinate with primary listing exchanges and the SIP to implement regulatory trading halts and pauses during the entirety of the 24X Market Session” and further stated that the exclusive SIP

to the Reference Price to calculate the “Upper 24X Price Band” and subtracted from the Reference Price to calculate the “Lower 24X Price Band.”⁸⁴ No trades would be allowed outside the 24X Price Bands. As further proposed, the Reference Price of a given security would be defined as either the last sale price for the security in the 24X Post-Market Session prior to the start of the 24X Market Session, or if such last sale price is not available, the primary listing market’s most recent closing price for the security during Regular Trading Hours.⁸⁵ 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.⁸⁶ In addition, 24X proposes that 24X may set a new Reference Price under certain circumstances. Specifically, as proposed, 24X would set a new Reference Price as the Upper/Lower 24X Price Band if orders received from three separate and distinct Members are displayed for at least 100 shares on the 24X Book at the Upper 24X Price Band or Lower 24X Price Band for 30 seconds.⁸⁷ As proposed, any such adjustment could be made only once in any 30 second period. 24X proposes that trades executed during the 24X Market Session will only be reviewed under proposed 24X Rule 11.14, Clearly Erroneous Executions, if the trade was executed when the 24X Price Bands and/or Reference Prices under proposed 24X Rule 11.15 were not operating correctly due to technical or other circumstances.⁸⁸

Further, 24X states that it would join and participate in the three Equity Data Plans⁸⁹ that currently govern the collection, consolidation, processing, and dissemination of core data.⁹⁰ The

Equity Data Plans do not operate during the times that cover the 24X Market Session.⁹¹ 24X states that it is “working with such [Equity Data Plans] plans to expand their operation to include the 24X Market Session.”⁹²

24X’s proposal to provide for continuous trading on an exchange outside of Regular Trading Hours, subject to certain trading pauses, raises several issues, many of which have been considered previously in the context of trading in the pre-market and post-market trading sessions. These issues include the need for heightened investor disclosures and consolidated last sale and quotation information in the after-hours market, as well as the potential risks associated with trading outside of regular hours, including, among others, the risk of greater price volatility, reduced liquidity, wider spreads, and fewer investor protections.⁹³ 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.⁹⁴ Such

consolidated transaction reporting system “to the extent required by the Act and the rules and regulations thereunder.”).

⁹¹ One commenter stated that stated that “the SIPs and the other SROs should evolve. Because of the SIPs’ hours . . . 24X [would] transmit quotation and transaction information to the SIPs when the SIPs are not open and, therefore, [could not] transmit this data in real-time to those consuming the SIP Feed.” See Polygon Letter at 2.

⁹² See Exhibit E to 24X’s Form 1. See also *supra* notes 36–38 and accompanying text.

⁹³ 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/investorpubsafterhours.htm>; Investor Bulletin: Extended Hours Trading (June 6, 2022), <https://www.sec.gov/oiea/investor-alerts-and-bulletins/extended-hours-trading-investor-bulletin>. 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.

⁹⁴ See, e.g., Securities and Exchange Act Nos. 77607 (Apr. 13, 2016), 81 FR 23032 (Apr. 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 (Oct. 13, 1999), 64 FR 56554 (Oct. 20, 1999) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 by National

safeguards include, among other things, requiring specific disclosures to investors regarding the heightened risks of after-hours trading,⁹⁵ establishing risk and volatility moderators, and implementing a corresponding expansion of the operational hours of the exclusive SIPs⁹⁶ to help ensure the availability of consolidated last sale and quotation information.

a. Extended Hours Investor Disclosures

The Commission is considering whether 24X’s application to operate as an exchange that permits continuous trading, subject to certain proposed trading pauses, 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 during the 24X Market Session. One commenter suggested a “cautious approach to expanding trading hours” because their research “indicates that increasing trading hours has negative consequences for retail investment performance.”⁹⁷ In response, 24X stated that the proposed disclosures “provide investors with the information to understand the potential risks of trading in the 24X Market Session.”⁹⁸ The Commission is considering and requests comment on whether 24X’s proposed investor disclosures⁹⁹ are sufficient to highlight what appear to be the unique risks associated with continuous trading, subject to certain trading pauses, during the 24X Market Session.

Association of Securities Dealers, Inc. Relating to the Extension of Certain Nasdaq Services and Facilities Until 6:30 p.m. Eastern Time); 42004 (Oct. 13, 1999), 64 FR 56548 (Oct. 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).

⁹⁵ See, e.g., FINRA Rule 2265; Investors Exchange Rule 3.290; NYSE American Exchange Rule 7.34E; Cboe BYX Exchange Rule 3.21.

⁹⁶ The exclusive SIPs, which collect, consolidate, and disseminate consolidated data, including the NBBO, in the equity markets are currently governed by the Equity Data Plans. See *supra* note 37 and accompanying text.

⁹⁷ See Glover and deHaan Letter.

⁹⁸ See 24X Letter at 5.

⁹⁹ See proposed 24X Rule 3.21.

⁸⁴ See, e.g., proposed 24X Rule 11.15; Exhibit E–1 to 24X’s Form 1.

⁸⁵ Proposed 24X Rule 11.15(a)(2). As further proposed, if neither of those prices are available, the initial Reference Price for the 24X Price Band for the security would be the previous day’s closing price for the security on the primary listing market for the security. If none of those prices are available, the initial Reference Price for the 24X Price Band for the security would be the previous day’s last sale price for the security on the primary listing market for the security during Regular Trading Hours. See *id.*

⁸⁶ See, e.g., proposed 24X Rule 11.15(a)(2); Exhibit E–1 to 24X’s Form 1.

⁸⁷ See proposed 24X Rule 11.15(a)(4).

⁸⁸ See proposed 24X Rule 11.14(d)(4).

⁸⁹ See *supra* note 3737 and accompanying text.

⁹⁰ See Exhibit E to 24X’s Form 1. See also proposed 24X Rule 11.11 (providing that 24X proposes to report executions to the appropriate

Specifically, the Commission is evaluating whether these disclosures are sufficient to inform investors of the potentially greater risks associated with what would constitute a significant expansion of afterhours trading during the proposed 24X Market Session.

b. Trading Pauses, Halts, Suspensions

In addition, the Commission is considering whether 24X's proposal to implement certain trading pauses during the 24X Trading Day,¹⁰⁰ in light of 24X's proposed model for trading 23 hours a day, including weekends and holidays, subject to certain trading pauses,¹⁰¹ is consistent with 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 during the 24X Market Session. One commenter stated that the 24X Form 1 did not explain how 24X would coordinate with the primary listing exchanges and the exclusive SIPs with regard to implementing regulatory trading halts and pauses during the 24X Market Session.¹⁰² In response, 24X stated that its proposed rules address trading halts and pauses, including those that may occur during the 24X Market Session.¹⁰³ Among other things, the Commission is evaluating whether the proposed pauses and resumption of trading would be conducted in a manner that would both further the objectives of the proposed rule with respect to system maintenance and participation in industry-wide testing, as well as facilitate transactions in securities and promote the maintenance of fair and orderly markets and the protection of investors, consistent with Section 6(b)(5) of the Act. The Commission requests commenters' views on 24X's proposed rules on trading pauses and resumptions of trading during the 24X Market Session.

c. Volatility Moderators, Risk Controls

The Commission is also considering whether the proposed 24X rules to

address certain risks associated with trading during the 24X Market Session—and, specifically, the proposed risk and volatility moderators—are consistent with the Act. Certain mechanisms that address volatility in individual symbols and the equities market are not available during the after-hours sessions.¹⁰⁴ Currently, the exchanges have adopted rules to determine whether an execution is clearly erroneous that apply to their after-hours sessions.¹⁰⁵ As noted above, subject to certain exceptions, 24X proposes to utilize its volatility moderator in place of the clearly erroneous execution rules in the 24X Market Session.¹⁰⁶ The Commission is considering whether the risk and volatility moderators proposed¹⁰⁷ for use during the 24X Market Session only on 24X, are consistent with Section 6(b)(5) of the Act which requires 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. The Commission requests commenters' views on 24X's proposed risk and volatility moderators during the 24X Market Session.

d. Equity Data Plans, Consolidated Data

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. While 24X commits to "working with such [Equity Data Plans] to expand their operation to include the 24X Market Session,"¹⁰⁸ at this time, the Equity Data Plans do not operate during the times that cover the 24X Market Session. One commenter stated that the 24X trading sessions should align with the operational hours for the exclusive SIPs to avoid potential risks related to a lack of transparency.¹⁰⁹ In response, 24X stated that it has been actively working with the exclusive SIPs to effect changes necessary to accommodate the 24X Market Session, and that it has requested temporary exemptive relief with regard to the reporting of certain quoting and transaction activity during the 24X Market Session until the exclusive SIPs are ready.¹¹⁰ 24X stated that it would publish the same information that would be required to be reported to the exclusive SIPs during the 24X Market Session at no cost to investors during the time any such exemption were in effect.¹¹¹ The Commission requests commenters' views on 24X's proposed operation during the 24X Market Session when the Equity Data Plans are not operating.

e. Market Surveillance

Further, the Commission is considering and requests comment on other issues raised by commenters about 24X's proposal to substantially extend 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. Specifically, one commenter questioned the impact that proposal may have on market surveillance and stated that 24X's Form

¹⁰⁴ Specifically, LULD trading pauses and market wide circuit breakers are unavailable during after-hours trading.

¹⁰⁵ See, e.g., MEMX Rule 11.15; Nasdaq Rule 11890; NYSE Rule 7.10; CboeEDGX Rule 11.15.

¹⁰⁶ One commenter stated that 24X's proposed system "should be sufficient to prevent extremely erroneous executions." See Angel Letter I at 3.

¹⁰⁷ See, e.g., proposed 24X Rule 11.15 (setting out rules governing, among other things, operation of the proposed "24X Price Band"); Exhibit E-1 to 24X's Form 1.

¹⁰⁸ See Exhibit E to 24X's Form 1.

¹⁰⁹ See Nasdaq Letter at 3. See also Polygon Letter at 2.

¹¹⁰ See 24X Letter at 2-3. 24X stated that such relief would facilitate competition "without adversely affecting the regulatory goals of Rule [sic] 601 and 602." See *id.*

¹¹¹ See *id.*

¹⁰⁰ See *supra* note 14 and accompanying text.

¹⁰¹ See *id.*

¹⁰² See Nasdaq Letter at 4.

¹⁰³ See 24X Letter at 4 and 5.

1 is unclear with respect to (1) how 24X will manage real-time surveillance during the 24X Market Session, (2) how the existing surveillance, trading halt and trade review infrastructure will work in the context of the 24X Market Session, including how 24X will coordinate with self-regulatory organizations (“SROs”), and (3) the impact such extended trading would have on investors, listed companies, and other market participants.¹¹² The commenter also raised concerns in connection with market-wide surveillance more broadly, including how 24X would propose to integrate itself into the national market system and coordinate with primary listing exchanges to perform its regulatory surveillance obligations during the 24X Market Session.¹¹³ In response, 24X stated that it “will surveil the trading in the 24X Market Session as it does with the other 24X trading sessions.”¹¹⁴ 24X further stated that it expects that listed companies will continue to follow applicable requirements of the primary listing market, including those of significant events, and that 24X will coordinate with the primary listing markets with regard to their regulatory roles to their listed companies.¹¹⁵

f. Issuer Disclosures

A commenter stated that listed companies disclose material information outside of Regular Trading Hours and questioned how the 24X Market Session would affect the current processes for listed companies to disclose, and for investors to consider, material information.¹¹⁶ The commenter also stated that the proposed 24X rules did not provide details on how material corporate actions announced during the 24X Market Session would be handled.¹¹⁷ 24X stated that proposed 24X Rule 11.15(c) would address those circumstances in which a listed company may have significant events during the 24X Market Session, and that, as provided under that rule, 24X

proposes to pause trading in the relevant security until trading resumes on the primary listing market.¹¹⁸ 24X stated that “material corporate action” would include all actions that the primary listing markets would determine to require a trading halt under their rules.¹¹⁹

B. Technology Services Agreement With MEMX Technologies, LLC

24X proposes to enter into an technology services agreement with MEMX Technologies, to license the technology underlying 24X.¹²⁰ Specifically, 24X states that, pursuant to this agreement, MEMX Technologies would provide technology support services to 24X, including “(1) the development and testing of software and hardware necessary to operate the matching engine and connectivity to other exchanges via a third-party routing broker(s) and third party-developed functions (including clearing, custody and client connectivity); (2) the provision of technical support in order for [24X] to operate and monitor the [exchange]; and (3) the provision of ongoing system availability commitments, updates, fixes, and technology support.”¹²¹

The Commission is evaluating whether the proposed technical services agreement between 24X and MEMX Technologies would raise concerns under Section 6(b)(1) of the Act,¹²² including Regulation SCI thereunder.¹²³ The Commission is considering whether, under the terms of the technology services agreement between 24X and MEMX Technologies, as described in the 24X Form 1, 24X would be so organized and have the capacity to be able to carry out the purposes of the Act and to comply and enforce compliance by its members and persons associated with its members with the Act and the rules thereunder. Specifically, the Commission is considering, and requests commenters’ views on, whether 24X would be capable of exercising sufficient control

over the operation of 24X, and be sufficiently independent from MEMX Technologies, to enable 24X to comply with requirements under the Act and applicable rules, including, among other things, Regulation SCI, which requires an SCI entity to have written policies and procedures reasonably designed to ensure that its SCI systems have levels of capacity, integrity, resilience, availability and security adequate to maintain the SCI entity’s operation capability.¹²⁴

IV. Request for Written Comment

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. 10–242 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 No. 10–242. This file number should be included on the subject line if email 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 (<https://www.sec.gov/rules/other>). 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 a.m. and 3 p.m. Do not include personal identifiable information in submissions; you should submit only information that you wish

¹¹² See Nasdaq Letter at 3. The commenter further stated that 24X’s Form 1 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 exchanges, which proposal “poses a series of surveillance questions and a burden on listing exchange.” See *id.*

¹¹³ See Nasdaq Letter at 2.

¹¹⁴ See 24X Letter at 4.

¹¹⁵ 24X stated that, for example, in recognition of the primary listing market’s role, 24X proposes to pause trading in the event of a material corporate action that occurs during the 24X Market Session and only resume trading once trading resumes on the primary listing market, as described in 24X proposed Rule 11.15(c). See 24X Letter at 4.

¹¹⁶ See Nasdaq Letter at 4.

¹¹⁷ *Id.*

¹¹⁸ See 24X Letter at 4–5.

¹¹⁹ *Id.*

¹²⁰ See Exhibit E to 24X’s Form 1.

¹²¹ 24X’s Form 1 further provides, in part, that “[a]ll services provided to the Exchange by MEMX Technologies will be based upon requirements and instructions determined by the Exchange.” 24X further states that, although MEMX Technologies would provide the technology support services, the Exchange would be responsible for operating and monitoring its Exchange-related systems and administering Exchange Rules and other rules and regulations applicable to the Exchange. See Exhibit E to 24X’s Form 1.

¹²² 15 U.S.C. 78f(b)(1).

¹²³ 17 CFR 242.1000–1007; Securities Exchange Act Release No. 73639 (Nov. 19, 2014), 79 FR 72252 (Dec. 5, 2014) (“SCI Adopting Release”).

¹²⁴ 17 CFR. 242.1000–1007. An SCI entity is responsible for having in place policies and procedures to ensure that it is able to satisfy the requirements of Regulation SCI for SCI systems operated on its behalf by a third party. See SCI Adopting Release, 79 FR at 72275–76.

to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File No. 10–242 and should be submitted on or before June 27, 2024.

By the Commission.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–12377 Filed 6–5–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100253; File No. SR–MEMX–2024–23]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Related to the Options Regulatory Fee ("ORF")

May 31, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b–4 thereunder,² notice is hereby given that on May 28, 2024, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members³ and non-Members of the Exchange (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c) to extend the current sunset date of May 31, 2024 applicable to the Options Regulatory Fee ("ORF") to October 31, 2024. The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Exchange Rule 1.5(p).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Options Fee Schedule related to the ORF to extend the current sunset date of May 31, 2024 to October 31, 2024, and thus continue charging the previously established ORF in the amount of \$0.0015 per contract side through October 31, 2024. As discussed herein, the ORF sunset date of May 31, 2024 was initially proposed to provide time for the Exchange to discuss alternative ORF models with its Members. However, those discussions have made clear that there is not yet consensus among market participants on a path forward that would address industry concerns in a manner that would effect change broadly across all U.S. options exchanges. Thus, the Exchange proposes to extend the automatic sunset date of May 31, 2024 until October 31, 2024 in order to provide it additional time to inform its approach to the ORF after the sunset date while continuing to fund a portion of its regulatory program via ORF so that it may operate on equal footing with each of the sixteen (16) other options exchanges that charge similar regulatory fees in amounts that far exceed the relatively modest amounts collected by the Exchange.

As background, MEMX previously filed a proposal to establish an ORF in the amount of \$0.0015 per contract side that would automatically sunset on September 30, 2024 (the "Initial ORF Filing").⁴ The Initial ORF Filing was published for comment in the **Federal Register** on October 4, 2023.⁵ The Commission received no comments on

⁴ See Securities Exchange Act Release No. 98585 (September 28, 2023), 88 FR 68692 (October 4, 2023) (SR–MEMX–2023–25).

⁵ See *supra* note 4.

the Initial ORF Filing before November 24, 2023. On that date, the Commission issued a Suspension of and Order Instituting Proceedings to Determine whether to Approve or Disapprove a Proposed Rule Change to Amend its Fee Schedule to Establish an Options Regulatory Fee ("the OIP") and requested public comment and additional information on various aspects of the Initial ORF Filing.⁶ To date, the Commission has received no comment letters in response to the OIP. The Exchange withdrew the Initial ORF Filing on December 1, 2023 and submitted a new proposal for immediate effectiveness ("Second ORF Filing").⁷

The Second Filing and Subsequent Filings proposed the same fee as in the Initial ORF Filing, but with a modified sunset date of May 31, 2024, which was four months prior to the proposed sunset date in the Initial ORF Filing. On May 1, 2024, the Exchange proposed to remove the automatic sunset date of May 31, 2024 altogether,⁸ however, as described more fully below, the Exchange withdrew that filing and replaced it with a new filing that proposed a new sunset date of October 31, 2024 in order to provide more time to attempt to reach a consensus on ORF moving forward, while also operating on a level playing field with incumbent options exchanges that are allowed to recoup a portion of their regulatory costs via the ORF.⁹ In order to make certain clarifying changes, on May 23, 2024, the Exchange withdrew that proposal and replaced it with SR–MEMX–2024–22. Lastly, in order to correct an inadvertent error, on May 28,

⁶ See Securities Exchange Act Release No. 99017 (November 24, 2023), 88 FR 83590 (November 30, 2023) (SR–MEMX–2023–25). Additionally, on November 24, 2023, solely for the purposes of consistent billing for the entire month of November 2023, the Exchange filed SR–MEMX–2023–31 with the Commission, which proposed to keep the Initial ORF rate of \$0.0015 per contract side that had been charged since September 27th in place for November 24 through November 30, 2023. See Securities Exchange Act Release No. 99112 (December 7, 2023) (SR–MEMX–2023–31).

⁷ See SR–MEMX–2023–33. In order to make certain clarifying changes, the Exchange withdrew the Second ORF Filing on December 13, 2023, and submitted a third proposal for immediate effectiveness ("Third ORF Filing"). See SR–MEMX–2023–34. Again, in order to make certain clarifying changes, the Exchange withdrew the Third ORF Filing on December 19, 2023, and submitted a fourth proposal for immediate effectiveness ("Fourth ORF Filing"). See SR–MEMX–2023–36. On December 20, 2023, in order to correct an inadvertent administrative error, the Exchange withdrew the Fourth ORF Filing and submitted a fifth proposal for immediate effectiveness ("Fifth ORF Filing" and together with the Third ORF Filing and Fourth ORF Filing, the "Subsequent Filings"). See SR–MEMX–2023–38.

⁸ See SR–MEMX–2024–17.

⁹ See SR–MEMX–2024–20.