FIA PTG
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October 11, 2024

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File No. 10-242; In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange.

Dear Ms. Countryman:

The FIA Principal Traders Group ("FIA PTG")[1] appreciates the opportunity to submit a second letter to the Securities and Exchange Commission ("SEC" or the "Commission") in response to the above-referenced Application of 24X National Exchange (the "Application")[2] and the August 21, 2024 Letter (the "Response").[3] As we stated in our first letter,[4] FIA PTG is generally supportive of innovation and markets evolving in response to participant demands. However, approval of this Application will have significant implications for the regulatory, technological, and operational underpinnings of the equity securities markets, not to mention the associated costs, all of which must be carefully considered before approval of the Application.

First, 24X National Exchange ("24X") has not appropriately justified its proposed limitation of liability. Proposed Rule 11.13 (d) limits the exchange's liability for "any loss, damages, claim or expense" arising out of any use of the exchange or the exchange's error or malfunction, except the exchange "may" compensate members for losses up to: (i) $100,000 of claims from a single member for a single day; (ii) $250,000 aggregated of all claims made by all members during a single calendar day; or (iii) a total of $500,000 by all members during a single calendar month.

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1 FIA PTG is an association of firms, many of whom are broker-dealers, who trade their own capital on exchanges in futures, options and equities markets worldwide. FIA PTG members engage in manual, automated and hybrid methods of trading, and they are active in a wide variety of asset classes, including equities, fixed income, foreign exchange and commodities. FIA PTG member firms serve as a critical source of liquidity, allowing those who use the markets, including individual investors, to manage their risks and invest effectively. The presence of competitive professional traders contributing to price discovery and the provision of liquidity is a hallmark of well-functioning markets. FIA PTG advocates for open access to markets, transparency and data-driven policy.

2 https://www.sec.gov/files/rules/other/2024/34-99614.pdf.

3 https://www.sec.gov/comments/10-242/10242-509515-1478562.pdf.

4 *See* Letter from Joanna Mallers to Vanessa Countryman dated July 26, 2024 ("First Letter").

24X appears to have modeled its limitation of liability on a cap established in 2005.[5] In the nearly two decades since the introduction of this cap, technology, competition and regulation have resulted in a sweeping transformation of equity market structure. In 2005, floor-based auctions for NYSE stocks dominated and the average speed of execution for small, immediately executable orders was 10.1 seconds.[6] Today's markets, in contrast, are predominantly electronic, with latency measured in microseconds. Transaction volume in listed equities has significantly increased, doubling in the last five years and tripling in the last seventeen.[7]

24X provides no support for the Commission to find that its proposed liability caps are consistent with the Exchange Act or the public interest. Assuming for arguments sake that such caps were reasonable in 2005, there is no reason to believe that is the case today. Recent events demonstrate that an exchange failure can cause significant harm and disruption to exchange members that trivializes such a minimal cap. In one recent example, an exchange member reported that an exchange malfunction resulted in potentially $48 million in losses.[8] Unfortunately, this is not an isolated occurrence.[9]

The Exchange Act places the burden on an applicant to demonstrate its rules meet the requirements of the Act.[10] This includes the requirement that an exchange demonstrate that its rules are designed to "remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest."[11] Inappropriately low limitations of liability fail this requirement for several reasons. Among those, unreasonably low liability caps shift the costs of an exchange malfunction to members who are not responsible for the malfunction. This increases the costs and risks not only to exchange members, but to all market participants who access the national market system and who may bear costs associated with an exchange's malfunction. Importantly, low liability caps also disincentivize exchanges from spending resources to increase the resiliency of their systems because they are insulated from material risks of loss associated with a malfunction.

An even greater level of scrutiny regarding the proposed 24X limitation of liability is warranted due to the additional operational risks associated with operating a near 24x7 market center. For example, in the event of a technological error during the 24X Market Session, there may be limited

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5 *See* File No. SR-NASD-2005-034, 70 Fed. Reg. 17492 (Apr. 6, 2005).

6 *See* Division of Trading and Markets Letter to SEC Market Structure Advisory Committee (Apr. 30 ,2015) available at https://www.sec.gov/spotlight/emsac/memo-rule-611-regulation-nms.pdf.

7 *See* Cboe, "Historical Market Volume Data," available at https://www.cboe.com/us/equities/market_statistics/historical_market_volume/.

8 *See* Interactive Brokers reveals $48 million loss from NYSE glitch, CNBC (Jun 26, 2024), available at https://www.cnbc.com/2024/06/26/interactive-brokers-reveals-48-million-loss-from-nyse-glitch.html

9 *See* Nasdaq resolves system error affecting stock orders, Reuters (Dec. 13, 2023) available at https://www.reuters.com/markets/us/nasdaq-hit-by-system-error-affecting-thousands-stock-orders-bloomberg-news-2023-12-14/; NYSE glitch leads to busted trades, prompts investigation, Reuters (Jan. 24, 2023) https://www.reuters.com/markets/us/some-nyse-listed-stocks-briefly-halted-trading-after-market-open-2023-01-24/.

10 *See* Section 19(a)(1) of the Exchange Act.

11 *See* Section 6(b)(5) of the Exchange Act.

staff available to quickly resolve a critical issue, increasing the likelihood a malfunction will cause harm and persist over an extended period of time. 24X must justify its proposed limitation of liability provisions as part of this Application. Additionally, considering the recent outages across the industry, now would be an appropriate time for the Commission to require all exchanges to provide transparency into their processes around loss requests, including the number received, the percentage paid, the percentage prorated due to caps, as well as trends over time.

Second, we continue to believe that fundamental issues remain that make approval of the Application inappropriate at this time. In our First Letter we identified, among others, issues related to price bands, post-trade transparency and reporting, and the allocation of costs arising from the 24X Market Session. Unfortunately, the 24X Response does not resolve our concerns. With respect to price bands, we questioned the risks and complexity caused by differently calibrated price bands in the 24X Market Session. Instead of considering the effects of discordant price bands, 24X states it will remove the proposed 24X Price Bands and instead will rely exclusively on its proposed clearly erroneous rule. Price bands serve as an important investor protection, particularly during periods of extreme volatility, whereas busting trades under an Exchange's clearly erroneous rules can give rise to increased risks and uncertainty. Once again, we urge the Commission to take a holistic view of the regulations in place during a 24X Market Session to determine whether the regulatory framework and market functionality are in place to support 24x7 trading (including, for example, whether extending the LULD plan to cover non-core hours is appropriate).

We also described in our First Letter that an exchange facilitating 24x7 trading will likely result in significant costs to the industry. For example, extending the SIP and TRF operations to accommodate the 24X Market Session will likely result in significant costs. Overnight on-exchange trading will also require additional resources and personnel across regulators, exchange members, and third-party service providers. These costs should be allocated in a fair and transparent manner, rather than offloaded to the industry to accommodate a specific application. To the extent the Commission believes that extending on-exchange trading to 24x7 is reasonable or appropriate, the Commission should consider such an evolution in a holistic manner and ensure the transition is orderly and efficient.

Finally, FIA PTG continues to encourage the Commission to confer with the industry through roundtables and other open forums and to withhold making any decision on the Application until such broader market engagement has taken place. We believe these novel issues are best addressed through thoughtful policy and rulemaking rather than through exemptions. The decision to significantly extend the trading hours of a regulated exchange is a significant one and should not be made without thorough analysis and a detailed implementation plan.

If you have any questions, please do not hesitate to contact Joanna Mallers at jmallers@fia.org.

Respectfully,

FIA Principal Traders Group

Joanna Mallers
Secretary

cc: Gary Gensler, Chair
Hester M. Peirce, Commissioner
Caroline A. Crenshaw, Commissioner
Mark T. Uyeda, Commissioner
Jaime Lizárraga, Commissioner