



June 27, 2024

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

Re: File No. 10-242, 24X National Exchange LLC

Dear Ms. Countryman:

Better Markets<sup>1</sup> appreciates the opportunity to comment on the application filed by 24X National Exchange LLC (“24X”) seeking registration as a national securities exchange under Section 6 of the Securities Exchange Act of 1934 (“Application”). 24X seeks to operate a trading platform 23 hours per day, seven days per week, including certain holidays. We believe the application should be denied because such a platform would pose a risk to retail investors.

Our securities markets are already extremely fragmented. The SEC now oversees 24 national securities exchanges, 103 alternative trading systems, 15,400 investment advisers, 13,000 registered funds, and 3,400 broker-dealers.<sup>2</sup> The consequence, and too often the goal, of this complexity and fragmentation has been the transformation of our financial markets from a wealth creation system for the many into a wealth extraction system for the few.<sup>3</sup> Market fragmentation has created opportunities for predatory market participants, such as high-frequency trading firms, to take advantage of retail investors.<sup>4</sup> One of the most pernicious ways that high-frequency trading firms take advantage of retail investors is through the practice of payment for order flow (“PFOF”), whereby these firms give brokers a small amount per share for

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<sup>1</sup> Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans’ jobs, savings, retirements, and more.

<sup>2</sup> Better Markets, *Despite Growing Responsibilities SEC Continues to be Severely Underfunded, Threatening Markets and Investors* (June 12, 2024), <https://bettermarkets.org/wp-content/uploads/2024/06/Better-Markets-SEC-Funding-Fact-Sheet-6.12.24.pdf>, at 1.

<sup>3</sup> Better Markets, Comment Letter re: Regulation Best Execution (Mar. 31, 2023), [https://bettermarkets.org/wp-content/uploads/2023/03/Better\\_Markets\\_Comment\\_Letter\\_SEC\\_Regulation\\_Best\\_Execution.pdf](https://bettermarkets.org/wp-content/uploads/2023/03/Better_Markets_Comment_Letter_SEC_Regulation_Best_Execution.pdf), at 6.

<sup>4</sup> *Id.*

every order routed to the firms by the brokers, thereby preventing these retail customer orders from being routed to the national securities exchanges.<sup>5</sup> This practice directly reduces liquidity.<sup>6</sup>

The approval of 24X’s application for a trading venue that operates 23 hours per day, seven days per week would only exacerbate the problems that already exist in light of our fragmented securities markets and introduce new risks for retail investors. Liquidity will further deteriorate with the advent of overnight trading, and predatory market participants will have a new avenue for extracting wealth from retail investors. The SEC also must seriously consider the consequences of having trading take place at a time of day when retail investors may be more inclined to engage in risky behavior, but regulators would be literally asleep at the switch.

## **COMMENTS**

### **I. The lack of liquidity in around-the-clock trading would threaten retail investors.**

The Commission asks whether the Application’s proposal to “extensively expand” the hours that stocks trade is consistent with the requirement in Section 6(b)(5) of the Securities Exchange Act of 1934 that the rules of an exchange be designed to protect investors and the public interest.<sup>7</sup> Around-the-clock trading would not protect investors or the public.

The problem is that “off-hours markets can be treacherous places for investors.”<sup>8</sup> As it is, off-hours stock market trading is a “gambler’s paradise, featuring low volumes and wide spreads.”<sup>9</sup> A move to 24-hour trading would “spread volumes even more thinly.”<sup>10</sup>

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<sup>5</sup> Better Markets, Comment Letter re: Order Competition Rule (Mar. 31, 2023), [https://bettermarkets.org/wp-content/uploads/2023/03/Better\\_Markets\\_Comment\\_Letter\\_SEC\\_Order\\_Competition\\_Rule.pdf](https://bettermarkets.org/wp-content/uploads/2023/03/Better_Markets_Comment_Letter_SEC_Order_Competition_Rule.pdf), at 2-3.

<sup>6</sup> *Id.*; see also Dennis Kelleher, Jason Grimes, and Andres Chovil, *Securities-Democratizing Equity Markets With and Without Exploitation: Robinhood; GameStop, Hedge Funds, Gamification, High Frequency Trading, and More*, 44 W. NEW ENG. L. REV. 51, 75, 76 (2022) (“Specifically, PFOF ‘threatens the structure of the equity-trading market’ because PFOF-related ‘fragmentation may erode crucial aspects of a healthy capital market, such as liquidity, price discovery, pricing efficiency, public confidence, competitiveness, and price stability.’ The primary reason for this is that orders routed to HFTs that make PFOF payments are by and large executed off public exchanges, either through internalization (i.e., executed against the HFT’s own inventory) or after being routed to other non-public trading venues or so-called ‘alternative trading systems,’ also known as ‘ATSS’ or ‘dark markets.’ This has a number of concerning second-order effects: it fragments liquidity, segments retail order flow such that a significant portion of retail orders are executed in dark markets—where they never have a chance to interact with orders on public exchanges, and creates competitive pressure for public exchanges to offer inducements to attract order flow—which further fragments the markets while creating additional conflicts of interest. Moreover, because it contributes to market fragmentation and reduces liquidity in the public markets, the spreads are wider and, therefore, the cost of capital for companies raising capital in the public markets is higher than it otherwise would be, undermining efficient capital formation and allocation. In short, PFOF is both a cause and a consequence of the needless fragmentation of the U.S. securities markets . . .”).

<sup>7</sup> Exchange Act Release No. 100253 (May 31, 2024), <https://www.sec.gov/files/rules/other/2024/34-100254.pdf> at 8.

<sup>8</sup> Felix Salmon, *What would happen if stock trading was available around the clock?*, Axios (Apr. 23, 2024), <https://www.axios.com/2024/04/23/nyse-24-hour-stock-market-trading>.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

So one of the biggest concerns about 24-hour trading is that, there may not be enough liquidity in the overnight hours, when people are asleep and when institutions have shut down for the day. . . . Ideally, in a marketplace, you want to have a lot of traders who are out there, ready to trade, to buy and sell. If you don't have enough people, then you get these weird effects, where prices are just kind of volatile and behave in sort of a funny way. Currently, in the pre-market and post-market sessions that exist today, liquidity is not great, and prices tend to be somewhat volatile as a result. You can imagine that if you pioneered overnight trading after 8:00 PM, or trading over the weekends, you might have similar problems with liquidity.<sup>11</sup>

Retail investors are the ones likely to suffer the consequences of this lack of liquidity.<sup>12</sup> Institutional investors would likely migrate even more towards the opening and closing sessions, “the only times when stocks are available in the kind of quantity that big investors require.”<sup>13</sup> So 24-hour trading might not have that much of an impact on institutional investors. But retail investors are “less concerned with volume and liquidity, and much more likely to value convenience and immediacy.”<sup>14</sup> Retail investors are therefore likely to “trade these markets uniformed, and that would likely lead to a transfer of money from retail to professionals.”<sup>15</sup> So the upshot of 24-hour trading is likely to be to “creat[e] a whole new revenue stream for brokers like Virtu Financial and Citadel Securities that specialize in trading against retail investors.”<sup>16</sup>

## II. Gamification combined with around-the-clock trading would threaten retail investors.

Around-the-clock trading would also harm retail investors due to the fact that the financial industry now uses “gamification” techniques to prompt retail investors to trade.

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<sup>11</sup> Podcast, *Could 24/7 Stock Trading Be On the Way?*, The Wall Street Journal (Oct. 6, 2021), <https://www.wsj.com/podcasts/google-news-update/could-247-stock-trading-be-on-the-way/be98d4a0-16c8-4084-a07c-46ddc8d84882>.

<sup>12</sup> See James Royal, Ph.D., *24-hour stock trading: Here are the brokers with overnight trading*, Yahoo Finance (Apr. 19, 2024) (stating that the lack of liquidity in overnight trading sessions means that “the bid-ask spread will likely be wider than in the regular session, costing [investors] money”), <https://finance.yahoo.com/news/24-hour-stock-trading-brokers-155038233.html>.

<sup>13</sup> Salmon, supra note 8.

<sup>14</sup> *Id.*

<sup>15</sup> *Pro Traders React to Robinhood Extending Trading Hours: ‘Caveat Emptor’*, Business Insider (Mar. 30, 2022), <https://markets.businessinsider.com/news/stocks/pro-traders-react-to-robinhood-extending-trading-hours-caveat-emptor-1031319458>; see also Salmon, supra note 8 (noting that the availability of around-the-clock exchange trading would likely draw the attention of high-frequency traders and hedge funds who would perceive an opportunity to “try and make money from nocturnal market anomalies”).

<sup>16</sup> Salmon, supra note 8; see also Kelleher, 44 W. NEW ENG. L. REV. at 94 (“[T]he stock trading industry is by and large populated by very wealthy, highly sophisticated, professional traders and investors, many of whom have advanced degrees in complex fields such as math and computer science, and who, on top of that, also get the benefit of using the most advanced technology money can buy. Those already decided advantages are multiplied by those traders also having an unmatched information advantage from ‘seeing’ in real time the flows from multiple markets . . . . It is beyond reasonable doubt that the vast majority of retail investors, no matter how smart or how much research they do, cannot compete against those financial professionals. That is why retail traders consistently significantly underperform the market.”).

Brokers use these gamification techniques, which are features on their platform that are used to attract customers and keep them trading frequently, to encourage retail investors “to engage in trading as often and riskily as possible.”<sup>17</sup> But investing in individual stocks during off-hours trading is already “a risky gamble.”<sup>18</sup> And human nature dictates that risky gambles are more popular at night.<sup>19</sup> So imagine what the consequences would be if stock market “gambling,” combined with the gamification techniques that induce trading, was available 24 hours a day.

The unfortunate reality is that we don’t have to imagine the consequences. In 2018, the Supreme Court legalized sports gambling. Sports gambling addiction is now approaching a “national epidemic to rival the opioid crisis.”<sup>20</sup> This is due to the techniques sports betting companies use to induce people to bet and the ability of bettors to place bets at any time of day or night. As with stocks, sports betting apps use “sophisticated AI, data, and engineering” to “entice[ ] fans to make snap bets, not just on games, but on every play within games.”<sup>21</sup> The “AI-powered odds on every snap,” as well as the “tailored push notifications,” are “engineered to keep bettors betting.”<sup>22</sup> And people “can bet online, 24 hours a day, on multiple different types of sports.”<sup>23</sup> The use of these technologies, combined with the ability to place bets at any time, including in the middle of the night, has “given rise to a surge in young gambling addicts.”<sup>24</sup>

It is easy to envision the same thing happening to retail investors. Although it is “hardly surprising” that the financial industry is trying to replicate the success that the gambling industry has had with the availability of around-the-clock sports betting,<sup>25</sup> the SEC must focus on investor protection and not the industry’s profit maximization. The fact that traders “might get hooked to screens for even more hours if 24/7 trading is available” means that such trading is not consistent with the public interest or the protection of investors.<sup>26</sup> Unlike with legalizing sports betting, the effect on traders’ mental health must be taken into consideration.<sup>27</sup> The “ability to trade 24 hours

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<sup>17</sup> Kelleher, 44 W. NEW ENG. L. REV. at 56, 95.

<sup>18</sup> Salmon, *supra* note 8.

<sup>19</sup> *Id.*

<sup>20</sup> Daniel De Vise, *Sports betting has risen tenfold in three years. Addiction experts fear the next opioid crisis*, The Hill (Feb. 10, 2023), <https://thehill.com/business/3851713-sports-betting-has-risen-tenfold-in-three-years-addiction-experts-fear-the-next-opioid-crisis/>.

<sup>21</sup> Jon Wertheim, *Technology has fueled a sports betting boom and a spike in problem gambling, addiction therapist warns*, 60 Minutes, CBS News (Feb. 4, 2024), <https://www.cbsnews.com/news/technology-fuels-sports-betting-boom-and-problem-gambling-spike-addiction-therapist-warns-60-minutes-transcript/>.

<sup>22</sup> *Id.*

<sup>23</sup> Philip Drost, *Sports betting is easier than ever and gambling addiction experts are worried*, CBC Radio (May 19, 2023), <https://www.cbc.ca/radio/whitecoat/sports-betting-addiction-ads-1.6630686>.

<sup>24</sup> Wertheim, *supra* note 21; *see also* Katherine Sayre, *A Psychiatrist Tried to Quit Gambling. Betting Apps Kept Her Hooked*, The Wall Street Journal (Feb. 18, 2024) (describing how a psychiatrist became addicted to gambling due to the ability to gamble late into the night and the incentives DraftKings gave her to keep gambling), <https://www.wsj.com/business/hospitality/gambling-addiction-sports-betting-apps-4463cde0>.

<sup>25</sup> Salmon, *supra* note 8.

<sup>26</sup> Mohit Oberoi, CFA, *Some Platforms Already Allow 24-Hour Trading, Chorus Grows for Parity*, Market Realist (Apr. 4, 2022), <https://marketrealist.com/p/what-platforms-allow-24-hour-trading/>.

<sup>27</sup> *Id.*

a day may be just too tempting for some who are apt to trade on a whim and ‘need action,’” so the “fact that ‘the casino is open all night’ may seriously hurt the bankrolls of many traders.”<sup>28</sup>

### III. The fact that cryptocurrencies trade around the clock militates against, not for, the Application.

Despite these obvious drawbacks of around-the-clock trading, proponents argue that one reason to allow stock trading 24 (or 23) hours a day, seven days a week is “parity since many assets, especially cryptos, trade throughout the day.”<sup>29</sup> But the fact that crypto trades at all hours of the day is a reason to reject, not approve, the Application. Cryptocurrencies are unregulated.<sup>30</sup>

As a result of weak or nonexistent regulation, investors in cryptocurrencies have suffered major losses due to fraud, theft, market manipulation, conflicts of interest, misappropriation of customer funds, malicious hacks, and operational failures.<sup>31</sup>

Indeed, “Binance is largely unregulated even though it operates the world’s largest cryptocurrency exchange and controls more than half of global trading in cryptocurrencies.”<sup>32</sup> And Binance recently pleaded guilty to anti-money laundering violations.<sup>33</sup> Because trading in cryptocurrencies is rife with fraud,<sup>34</sup> the fact that crypto trades at all hours of the day is not a justification for approving an exchange to trade stocks at all hours of the day; on the contrary, rather than having stock trading mirror crypto trading, the SEC should do everything in its power to prevent stock trading from emulating crypto trading so that the U.S. stock markets remain the envy of the world.<sup>35</sup>

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All of these problems with around-the-clock trading are exacerbated by the fact that regulators are unlikely to be able to pay as close attention to the markets overnight or on the weekends as they are during normal, pre-market, or post-market trading sessions. As one institutional investor said, “Things already happen outside regular hours and you need to keep on top of that to some degree—but that’s very different to something happening to,

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<sup>28</sup> Royal, *supra* note 12.

<sup>29</sup> Oberio, *supra* note 26; *see also* Helene Braun, *NYSE Asks Market Participants About 24/7 Trading for Stocks*, Yahoo Finance (Apr. 22, 2024) (quoting 24X’s CEO as saying that “‘Anyone who wants to trade crypto 24/7 would also like to trade Apple or Microsoft 24/7’”), <https://finance.yahoo.com/news/nyse-asks-market-participants-24-154816261.html>.

<sup>30</sup> *See* Arthur E. Wilmarth, Jr., *We Must Protect Investors and Our Banking System From the Crypto Industry*, 101 WASH. U. L. REV. 235, 247 (2023).

<sup>31</sup> *Id.* (citing reports of the Financial Stability Oversight Counsel, Treasury Department, and White House).  
<sup>32</sup> *Id.* at 248.

<sup>33</sup> Press Release, Binance and CEO Plead Guilty to Federal Charges in \$4B Resolution, DOJ (Nov. 21, 2023), <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution>.

<sup>34</sup> Jonathan R. Macey, *Fraud in a Land of Plenty*, 118 NW. U. L. REV. 227, 243 (2023).

<sup>35</sup> *See* Robert Post, *Compelled Commercial Speech*, 117 W. VA. L. REV. 867, 844 (2015) (so describing the U.S. stock markets).

say, Apple at 2 am or even 4 pm on a Saturday.”<sup>36</sup> The risks of allowing extensive exchange trading at a time when regulators will literally be asleep cannot be ignored.

## CONCLUSION

We hope these comments are helpful as the Commission considers the Application.

Sincerely,

*Benjamin Schiffrin*

Benjamin L. Schiffrin  
Director of Securities Policy

Better Markets, Inc.  
2000 Pennsylvania Avenue, NW  
Suite 4008  
Washington, DC 20006  
(202) 618-6464

[bschiffrin@bettermarkets.org](mailto:bschiffrin@bettermarkets.org)  
<http://www.bettermarkets.org>

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<sup>36</sup> Jennifer Hughes, *New York Stock Exchange tests views on round-the-clock trading*, Financial Times (Apr. 22, 2024), <https://www.ft.com/content/31c3a55b-9af9-4158-8a49-4397540571bf>; see also Jeremy Chan, *NYSE's move to longer trading hours leaves European traders cold*, Financial News London (Apr. 24, 2024) (noting that a main concern with around-the-clock trading is whether regulators have the ability to have people monitoring the markets around the clock to give them comfort that governance can continue), <https://www.fnlonon.com/articles/nyses-move-to-longer-trading-hours-leaves-european-traders-cold-7bcfl18a>.