



April 25, 2024

***VIA ELECTRONIC SUBMISSION***

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

**Re: 24X National Exchange LLC Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934 (Securities Exchange Act Release No. 34-99614; File No. 10-242).**

Dear Ms. Countryman,

Polygon.io, Inc. (“Polygon,” “we,” or “our”)<sup>1</sup> submits this letter to the U.S. Securities and Exchange Commission (the “Commission”) to comment on the Form 1 application (the “Application”) that 24X National Exchange LLC (“24X”) has filed with the Commission for registration as a national securities exchange pursuant to Section 6 of the Securities Exchange Act of 1934 (the “Act”).<sup>2</sup> Polygon supports the Application and 24X’s overarching goal of allowing trading of U.S. equities twenty-four hours per day, seven days per week, including holidays and non-business days but excluding brief operational and maintenance pauses.<sup>3</sup> In a globally connected world where investors have come to expect on-demand services from all technology services, the ability to trade on lit markets should go beyond 9:30 am ET to 4 pm ET (“Normal Market Hours”). Today, depending on your broker, you can trade outside Normal Market Hours through alternative trading systems (“ATSs”) and other dark pools. Innovation shouldn’t just happen in dark pools where everyday market participants cannot gain from the transparency and interconnectedness that lit markets or national securities exchanges provide. National securities exchanges must compete and adapt based on market demands.

We believe the Application should be approved and 24X be allowed to become a national securities exchange. As a national securities exchange, 24X would become a participant in the three existing national market system (“NMS”) plans (collectively, the “Equity Data Plans”) that govern the collection, consolidation, and dissemination of real-time equity market data for NMS stocks (“Consolidated Data”) by the exclusive securities information processors (the “SIPs”) pursuant to Regulation NMS (“Reg NMS”).<sup>4</sup> In our review of the Application, rather than finding flaws with 24X, we instead scrutinize how the existing national securities exchanges and the Financial Industry Regulatory Authority (collectively, the “SROs”) that act jointly to operate the SIPs have defied the rules passed by the Commission like the Market Data Infrastructure Rules (the “MDI Rules”) that require them to reform how core data is collected, consolidated, and disseminated and the content that is included in such data feeds.<sup>5</sup>

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<sup>1</sup> [Polygon.io](https://polygon.io) is a market data vendor offering access to market data for retail and institutional market participants alike. We consume and redistribute real-time equities data from the SIPs as well as various proprietary exchange data feeds to our customers based on their needs. In addition, we intend on registering to become a competing consolidator should it be economically viable once the details surrounding the competing consolidator model are finalized.

<sup>2</sup> Securities Exchange Act Release No. 34-99614 (Feb. 27, 2024), 89 FR 15621 (Mar. 4, 2024) (“Application”); [See also](#) 15 U.S.C. 78f.

<sup>3</sup> [See](#) Application at Exhibit B-1.

<sup>4</sup> [See](#) 17 CFR 242.601, 602.

<sup>5</sup> [See](#) Securities Exchange Act Release No. 34-90610 (December 9, 2020), 86 FR 18596 (April 9, 2021) (“MDI Rules”).

## **Reporting Quotations and Transactions to the SIPs**

24X proposes permitting trading in fractional shares and trading outside Normal Market Hours. Regarding reporting trades in fractional shares, 24's previous application to become a national securities exchange drew comments from Blue Ocean, Nasdaq, and NYSE on its handling of trading in fractional shares.<sup>6</sup> This is not of much concern anymore from the trade reporting side. This past March, FINRA announced a future update to its trade reporting guidance to support the reporting of fractional shares to FINRA's trade reporting facilities and that the SIPs will follow suit with the expectation that the change will be live no earlier than the first quarter of 2025.<sup>7</sup> We are pleased to see this update to the data feeds since trading in fractional shares first became a practice in or around 1999 and popularized over the last few years with the rise of brokerages like Robinhood and commission-free trading.

Regarding how 24X will report quotations and transactions to the SIPs based on their trading hours, we believe that the SIPs and the other SROs should evolve. Because of the SIPs' hours, exchanges may transmit quotation information to the SIPs between 4:00 a.m. and 8:00 p.m. ET Monday through Friday, excluding U.S. holidays. This means that 24X will transmit quotation and transaction information to the SIPs when the SIPs are not open and, therefore, cannot transmit this data in real-time to those consuming the SIP Feed. So, if you want a complete picture of top-of-book data across the market when all venues are open, you must consume 24X's proprietary data feeds in addition to the SIP Feed, which means more costs. SROs are forced to consume another proprietary data feed perpetuating the two-tier market data access system in place that the Commission is trying to counteract with the MDI Rules that the SROs are dragging their feet to implement fully.<sup>8</sup> The problem is not that one securities exchange would be responsible for 24/7 trading. It is likely that it would attract greater liquidity outside Normal Market Hours as the only game in town. Liquidity tends to breed liquidity. In addition, if successful, other national securities exchanges would likely follow suit to capture some of the liquidity and the revenue derived from reporting such transactions to the SIPs, further adding competition to the market. The issue, from our point of view as a market data vendor, lies in the Consolidated Data feed and how the SROs are preventing the Consolidated Data feed's evolution to become more content-rich at the expense of their lucrative proprietary data feeds.

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<sup>6</sup> See Letter from Brian Hyndman, President and Chief Executive Officer, Blue Ocean ATS, LLC to Vanessa Countryman, Secretary, Commission, dated July 21, 2022, available at <https://www.sec.gov/comments/10-239/10239-20134573-305126.pdf>; See also Letter from Hope Jarkowski, General Counsel, NYSE Group, Inc. to Vanessa Countryman, Secretary, Commission, dated July 29, 2022, available at <https://www.sec.gov/comments/10-239/10239-20135250-306135.pdf>; See also Letter from Eun Ah Choi, Senior Vice President, General Counsel, Nasdaq to Vanessa Countryman, Secretary, Commission, dated July 21, 2022, available at <https://www.sec.gov/comments/10-239/10239-20134564-304956.pdf>.

<sup>7</sup> See "Advance Notice: Upcoming Trade Reporting Enhancements for Fractional Share Transactions," available at <https://www.finra.org/rules-guidance/notices/trade-reporting-notice-032224>; See also "SIP Fractional Share Reporting Enhancements," available at [https://www.ice.com/publicdocs/ctaplan/notifications/trader-update/110000940946/SIP%20Fractional%20Shares%20Reporting%20Enhancements\\_032824.pdf](https://www.ice.com/publicdocs/ctaplan/notifications/trader-update/110000940946/SIP%20Fractional%20Shares%20Reporting%20Enhancements_032824.pdf).

<sup>8</sup> MDI Rules, supra note 5 at 18600. ("[T]he Commission is concerned that a two-tiered system has developed in which certain market participants who are able to afford, and choose to pay for, the exchanges' proprietary DOB data feeds and associated connectivity and transmission offerings receive more content-rich data faster than those who do not receive these data feeds, such as market participants that face higher barriers to entry from data and other exchange fees.").

## **The Commission Needs to Force the SROs to Implement the MDI Rules**

In 2020, the Commission put forward two initiatives concerning the SIPs and Consolidated Data: (1) issuing a governance order directing the SROs to consolidate the Equity Data Plans into one<sup>9</sup> and (2) passing the MDI Rules to, among other things, expand the definition of “core data” that is a component of Consolidated Data to add certain odd lot, depth-of-book, and auction information to the data disseminated by the SIPs and establish a competitive environment for the consolidation and dissemination of Consolidated Data thereby dismantling the current monopoly that the SROs enjoy by consolidating and disseminating Consolidate Data through the SIPs.<sup>10</sup>

On May 6, 2020, the Commission issued an order (the “Governance Order”) directing the SROs to submit a new NMS plan consolidating the Equity Data Plans into one plan.<sup>11</sup> A group of SROs challenged the Governance Order by petitioning the D.C. Circuit Court.<sup>12</sup> On July 5, 2022, the D.C. Circuit granted the SROs’ petition in part requiring the Commission to amend the Governance Order, which the Commission did over one year later on September 1, 2023.<sup>13</sup> On October 23, 2023, the SROs filed with the Commission a Proposed National Market System Plan Regarding Consolidated Equity Market Data (the “Proposed NMS Plan”) consolidating the Equity Data Plans into a single plan with a single administrator to which 24X would become a member of should the Application be approved by the Commission.<sup>14</sup> As the SROs have outlined, the Proposed NMS Plan is expected to take at least three years to fully implement or seven years from the date the Commission first proposed such a change. Seven years minimum for arguably an incremental change that does not address the MDI Rules at all and a change that, at least, Nasdaq, as the administrator of one of the SIPs, has proposed before as a means to modernize the SIPs.<sup>15</sup> To put this into perspective, it took roughly eight years from President John F. Kennedy’s speech to Congress in 1961, stating his goal to put a man on the moon, to Neil Armstrong’s making one small step for man on the moon in 1969. Going to the moon for the first time might take less time than the SROs implementing changes to the SIPs that they have been operating for decades.

On December 9, 2020, the Commission adopted the MDI Rules, which among other things, amended Reg NMS to include more data content to be included in the definition of Consolidated Data currently provided by the SIPs and to replace the SIP model with a decentralized competing consolidator and self-aggregator model.<sup>16</sup> The SROs have continued to thwart progress in implementing the MDI Rules through litigation led by a select group of SROs where the D.C. Circuit sided with the Commission upholding the MDI Rules and then by filing a non-conforming fee amendment to the Equity Data Plans that, if conforming, would have begun the implementation of the MDI Rules.<sup>17</sup> The first key step in implementing the MDI Rules in this regard was for the SROs to file an amendment with the Commission

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<sup>9</sup> See Order Directing the Exchanges and the Financial Industry Regulatory Authority to Submit a New National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 88827 (May 6, 2020), 85 FR 28702 (May 13, 2020) (File No. 4-757) (“Order”).

<sup>10</sup> MDI Rules, supra note 5.

<sup>11</sup> Order, supra note 8.

<sup>12</sup> See The Nasdaq Stock Market LLC, et al. v. Securities and Exchange Commission, 38 F.4th 1126, 1131 (D.C. Cir. 2022).

<sup>13</sup> Id.; See also Securities Exchange Act Release No. 98271, 88 FR 61630 (September 7, 2023).

<sup>14</sup> See Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Securities Exchange Act Release No. 99403 (January 19, 2024), 89 FR 5002 (January 25, 2024) (File No. 4-757).

<sup>15</sup> See Jeff Kimsey, “A Blueprint for SIP Modernization” (April 25, 2023), available at <https://www.nasdaq.com/articles/a-blueprint-for-sip-modernization>.

<sup>16</sup> MDI Rules, supra note 5.

<sup>17</sup> See The Nasdaq Stock Market LLC, et al v. SEC, 34 F.4th 1105, 1114 (D.C. Cir. 2022).

that conforms the Equity Data Plans to reflect the competing consolidator and self-aggregator model and includes the fees to be charged by the competing consolidators and self-aggregators in light of the expanded information to be provided under the MDI Rules. On November 19, 2021, the Equity Data Plans proposed such amendments to the Commission without the unanimous support of the SROs.<sup>18</sup> After a review of the proposed amendments, the Commission disapproved them as inconsistent with the Act as the SROs failed to prove that the fees proposed were fair, reasonable, and not unreasonably discriminatory.<sup>19</sup> Since the Commission's disapproval, the SROs have not filed another amendment resulting in the implementation of the MDI Rules in a purgatory state. Meanwhile, the Commission has proposed to accelerate the odd lot and round lot changes on the SIPs separately.<sup>20</sup> The Commission must order the SROs to establish and put forth a conforming fee amendment to begin the multi-year implementation of the MDI Rules. The Participants' failure to implement the MDI Rules not only disadvantages investors by depriving them of more data, but also blatantly ignores the Commission's rulemaking authority.

If vendors like Polygon were allowed to become competing consolidators, they could consume the 24X proprietary data feeds and redistribute them in real-time 24/7 as part of the Consolidated Data feed. Unlike the SIPs, Polygon's platform is not time-bound. Data is transmitted over the internet 24/7/365. The Commission must act to add odd lot, depth-of-book, and auction information to the data disseminated by the SIPs and push forward with the competing consolidator and self-aggregator model as contemplated by the MDI Rules. As Fidelity suggested in its comment letter on the Proposed NMS Plan, the Commission should include the MDI fee amendment to an adopting release for the Commission's Minimum Pricing Increments Proposal and begin the multi-year process of moving to the competing consolidator and self-aggregator model.<sup>21</sup> Having rules on the books that go unfollowed by the SROs because they can drag their feet capitalizing on technicalities with fee proposals that go against guidance from the Commission is nonsensical.<sup>22</sup> The MDI Rules were unanimously adopted by the Commission and the select group of SROs that brought forward litigation against the Commission following the adoption of the MDI Rules lost in a court of law. The Commission and the courts have weighed in on the matter. It's time the SROs serve the market participants as intended by the Act. It is clear by the MDI Fee Amendment that they cannot be trusted to do so voluntarily. Charlie Munger said, "Show me the incentive, and I'll show you the outcome." The SROs are not incentivized to add more data to the Consolidated Data feed since it impacts their revenue on their proprietary data products nor are they incentivized to cede their monopoly over the SIPs in favor of the competing consolidator and self-aggregator model, so there will continue to be no outcomes in this area absent Commission action.

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<sup>18</sup> See Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) ("Notice")

<sup>19</sup> See Securities Exchange Act Release No. 34-95849 (September 21, 2022), 87 FR 58592 (September 27, 2022) ("Disapproval Order").

<sup>20</sup> See Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266 (December 29, 2022) (S7-30-22).

<sup>21</sup> See Letter from Holly Grotnik, Head of Consolidated Market Data, Fidelity Investments and Krista Ryan, SVP Deputy General Counsel, Fidelity Investments to Vanessa Countryman, Secretary, Commission, dated February 24, 2024, available at <https://www.sec.gov/comments/4-757/4757-435979-1080382.pdf>.

<sup>22</sup> The Commission has stated in the past that one method for ensuring that fees charged by the SIPs are fair and reasonable is a cost-based approach. Instead of a cost-based approach, the SROs chose to use a flawed methodology in creating a value-based approach that failed to meet the statutory standard of being fair, reasonable, and not unreasonably discriminatory thereby further delaying the implementation of the competing consolidator model. See U.S. Securities and Exchange Commission, "Staff Guidance on SRO Rule Filings Relating to Fees" (May 21, 2019), available at <https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees>; See also Disapproval Order, *supra* note 19, at 58592, 58603.



**Conclusion**

Based on the Application, 24X would bring a current practice of trading 24/7 onto a lit exchange, and the market should be left to decide whether this is a valuable endeavor. However, the Application highlights structural flaws concerning how Consolidated Data is collected, consolidated, and disseminated through the SIPs as operated by the SROs, which 24X proposes to join. With the addition of 24X as a national securities exchange and a participant to the plan that governs the SIPs whether it be the Equity Data Plans or the Proposed NMS Plan, market participants using the Consolidated Data feed or those that cannot afford multiple feeds would be left in the dark during the hours that the SIPs are not open and then left using stale data once the SIPs are open. This limits their ability to participate in the markets by relying on a data feed that ceases to serve the purpose intended by Congress. It stacks the deck further against the average market participant in favor of those who can pay for multiple exchange proprietary data feeds. The solution here is to permit 24X to move forward with the Application and for the Commission to force the SROs to implement the MDI Rules by adding more detailed trading information to Consolidated Data and switching to a competing consolidator and self-aggregator model over the SIP model as the Commission unanimously decided under the MDI Rules. The SROs will not change unless forced to because it is not in their financial interest to change. Therefore, it is the job of the Commission to force the SIPs to move forward with the Commission's market reforms through additional rules as it is doing with the round-lot and odd-lot data proposals.

Polygon would be pleased to provide further information, participate in any direct outreach efforts the Commission undertakes, or respond to questions the Commission may have about our comments.

Sincerely,

/s/ Stan Sater

Stan Sater  
Senior Legal Counsel  
Polygon.io, Inc.