

January 5, 2017

Brent J. Fields  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: File No. SR-CHX-2016-20; Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change in Connection with the Proposed Transaction involving CHX Holdings, Inc. and North America Casin Holdings, Inc. (Release No. 34-79474; File No. SR-CHX-2016-20)**

Dear Mr. Fields:

The Chicago Stock Exchange, Inc. ("CHX") thanks the U.S. Securities and Exchange Commission ("SEC" or "Commission") for the opportunity to comment on its proposed rule change<sup>1</sup> in connection with the proposed transaction ("Proposed Transaction") involving CHX Holdings, Inc. ("CHX Holdings") and North America Casin Holdings, Inc. ("NACH"). CHX respectfully submits this letter to emphasize key facts regarding the Proposed Transaction and to notify the public that the Committee on Foreign Investment in the United States ("CFIUS") recently concluded its review of the Proposed Transaction finding no unresolved national security concerns.

#### Background

CHX is a U.S. national securities exchange and self-regulatory organization ("SRO") that was founded in 1882 and is a wholly-owned direct subsidiary of CHX Holdings. As an SRO, CHX must regulate and operate its market in a manner consistent the Securities Exchange Act of 1934<sup>2</sup> ("Exchange Act") and the rules and regulations thereunder. Accordingly, CHX is subject to direct and rigorous oversight by the SEC, which entail, among other things, frequent examinations of various aspects of CHX operations by SEC staff, including security and trading protocols, as well as SEC approval of certain regulatory, operational and strategic initiatives prior to implementation by CHX. In the event that CHX fails to meet the requirements of the Exchange Act, the SEC has broad authority to compel compliance or mitigate non-compliance, including suspending, censuring or deregistering CHX as an SRO pursuant to Section 19(h)(1) of the Exchange Act.<sup>3</sup>

CHX is committed to providing innovative trading functionalities that promote transparency and fairness and facilitating capital formation for companies that meet SEC-approved listing standards. Recently, CHX introduced a unique on-demand auction functionality,

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<sup>1</sup> See Securities Exchange Act Release No. 79474 (December 6, 2016), 81 FR 89543 (December 12, 2016) (SR-CHX-2016-20) ("Notice").

<sup>2</sup> 15 U.S.C 78.

<sup>3</sup> 15 U.S.C. 78s(h)(1).

CHX SNAP,<sup>4</sup> which levels the playing field among various market participants by deemphasizing speed as a key to trading success.<sup>5</sup> Similarly, the SEC is currently evaluating a proposal submitted by CHX to adopt an asymmetric speed bump, the Liquidity Taking Access Delay, designed to enhance displayed liquidity by minimizing the effectiveness of certain predatory trading strategies.<sup>6</sup> Moreover, CHX intends on implementing a primary listing program focused on capital formation for emerging growth companies consistent with the goals of the Jumpstart Our Business Startups (“JOBS”) Act.<sup>7</sup>

In NACH, CHX Holdings has identified a diverse and strategic ownership group that embraces CHX’s commitment to innovation, fairness and transparency. With NACH’s support, the Exchange will be able to accelerate implementation of its strategic plan, which will promote the protection of investors and the public interest in furtherance of the objectives of Section 6(b)(5) of the Exchange Act.<sup>8</sup>

### Prospective Owners

As discussed in detail in the Notice,<sup>9</sup> upon the closing of the Proposed Transaction, NACH will be owned by a consortium of 13 U.S. and Chinese investors (“Prospective Owners”), which include various investment companies, certain members of the CHX management team and a U.S. broker-dealer. After the closing, CHX will continue to be a wholly-owned direct subsidiary of CHX Holdings and, in turn, CHX Holdings will become a wholly-owned direct subsidiary of NACH, a Delaware company. The result is that 50.5% of CHX will be indirectly owned by U.S. citizens and 49.5% of CHX will be indirectly owned by Chinese citizens.

The Exchange also wishes to emphasize a point made clear in the Notice that has been subject to repeated public distortion: no prospective investor controls, or is controlled by, or is under common control with, a governmental entity or any political subdivision thereof, including the Chinese government.<sup>10</sup>

In addition, the Exchange submits that the proposed ownership structure of CHX is consistent with the ownership and voting limitations applicable to all national securities exchanges. Specifically:

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<sup>4</sup> <http://www.chx.com/snap/>.

<sup>5</sup> See “A New Approach to Stock Market Execution,” Chicago Fed Letter, No. 343, 2015, <https://www.chicagofed.org/publications/chicago-fed-letter/2015/343>.

<sup>6</sup> See Exchange Act Release No. 79608 (December 20, 2016), 81 FR 95238 (December 27, 2016); see also Exchange Act Release No. 79216 (November 1, 2016), 81 FR 78228 (November 7, 2016); see also Exchange Act Release No. See Exchange Act Release No. 78860 (September 16, 2016), 81 FR 65442 (September 22, 2016) (SR-CHX-2016-16).

<sup>7</sup> See H.R. 3606 (April 5, 2012).

<sup>8</sup> See 15 U.S.C 78f(b)(5).

<sup>9</sup> See Notice, supra note 1, at 89544-89545.

<sup>10</sup> See Notice, supra note 1, at 89545.

- No Prospective Owner and its Related Persons<sup>11</sup> will maintain an equity interest in NACH in excess of the 40% ownership limitation.<sup>12</sup>
- No Prospective Owner and its Related Persons will be permitted to exercise voting power in excess of the 20% voting limitation.<sup>13</sup>

Moreover, the proposed governance documents of NACH and CHX Holdings provide robust enforcement mechanisms for the ownership and voting limitations. Specifically, in the event a person and its Related Persons acquires an ownership interest in excess of the ownership limitation, NACH or CHX Holdings, as applicable, must call shares of stock from that person and its Related Persons that number of shares in excess of the relevant ownership limitation.<sup>14</sup> Furthermore, any purported transfer of shares in violation of the relevant ownership limitation will not be registered by the corporation.<sup>15</sup> Also, in the event a person and its Related Persons purport to vote in excess of the voting limitation, NACH or CHX Holdings, as applicable, will disregard the votes in excess of the voting limitation.<sup>16</sup>

CHX also notes that the composition of the CHX board will have to meet certain independence requirements that have been previously approved by the SEC for another national securities exchange, which include requiring that at least half of the CHX board be comprised of Non-industry Directors.<sup>17</sup> When considered with other provisions requiring the Prospective Owners not interfere with the SRO function of CHX,<sup>18</sup> the proposed CHX board composition requirements will permit CHX to continue to meet its SRO obligations without conflict.

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<sup>11</sup> The term “Related Persons” is a defined term approved by the SEC for the purposes of determining ownership concentration and voting power among the various owners of a national securities exchange. See Notice, supra note 1, at 89545. As discussed in detail under the Notice, an individual is not a “Related Person” of another individual solely by reason of (1) being part of the same ownership group with the other individual; (2) entering into an agreement with the other individual that protects the individual’s investment (e.g., put agreements); or (3) soliciting the other individual to join an investment group. See Notice, supra note 1, at 89544-89545.

<sup>12</sup> Generally, the ownership limitation is that no person and its Related Persons may beneficially own more than 40% of the outstanding voting shares of the holding company, whereas (1) no member of the relevant exchange and its Related Persons or (2) a person subject to statutory disqualification and its Related Persons may own more than 20% of the outstanding voting shares of the holding company. See Notice, supra note 1, at 89552-89554.

<sup>13</sup> Generally, the voting limitation is that no person and its Related Persons may vote more than 20% of the outstanding voting shares of the holding company. See id.

<sup>14</sup> See Notice, supra note 1, at 89553.

<sup>15</sup> See id.

<sup>16</sup> See id.

<sup>17</sup> See Notice, supra note 1, at 89546-89548.

<sup>18</sup> See Notice, supra note 1, at 89555-89556.

### Commission Review of the Proposed Rule Change

Pursuant to Section 19(b) of the Exchange Act,<sup>19</sup> the Commission must review proposed rule changes submitted by CHX and approve a proposed rule change if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder. In particular, Section 6(b)(5) of the Exchange Act<sup>20</sup> requires, in pertinent part, that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Thus, the scope of the Commission's review of the Proposed Transaction is limited to whether CHX rules are consistent with the objectives of the Exchange Act and would permit the Proposed Transaction. As described in detail in the Notice, CHX believes that CHX rules, as proposed, are consistent with, among other sections, the requirements of Section 6(b)(5) of the Exchange Act, in that the amended CHX rules clearly outline the ownership and voting limitations applicable to all national securities exchanges and would facilitate SEC and CHX monitoring of compliance thereof by, and jurisdiction over, the Prospective Owners.<sup>21</sup> Specifically, the Prospective Owners will be required to:

- adhere to the ownership and voting limitations;<sup>22</sup>
- submit to U.S. regulatory jurisdiction and maintain agents in the U.S. for the service of process;<sup>23</sup>
- maintain open books and records related to their ownership of CHX and keep such books and records in the U.S.;<sup>24</sup> and
- refrain from interfering with, and give due consideration to, the SRO function of CHX.<sup>25</sup>

Moreover, as noted in the previous section, the proposed ownership structure of CHX is consistent with the ownership and voting limitations applicable to all national securities exchanges and CHX rules include mechanisms to rectify any purported transfer or voting of shares in violation of the ownership and voting limitations. Thus, the Exchange submits that CHX rules, as proposed, would permit the Proposed Transaction.

CHX notes that while the Notice was published in the Federal Register on December 12, 2016, CHX has been in regular contact with SEC staff regarding the details of the Proposed

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<sup>19</sup> 15 U.S.C. 78s(b).

<sup>20</sup> 15 U.S.C. 78f(b)(5).

<sup>21</sup> Id.

<sup>22</sup> See Notice, supra note 1, at 89552-89554.

<sup>23</sup> See Notice, supra note 1, at 89554.

<sup>24</sup> See Notice, supra note 1, at 89555.

<sup>25</sup> See Notice, supra note 1, at 89555-89556.

Transaction since the merger agreement was executed in February 2016. Therefore, any statements from third-parties suggesting that the timing of the Notice was meant to somehow circumvent thorough SEC review of the Notice and Proposed Transaction are without merit.

CHX further notes that the responsibility of addressing national security concerns related to the Proposed Transaction is not within the purview of the Commission's review pursuant to the Exchange Act, but rather, falls squarely within the mandate of CFIUS.

### CFIUS

CFIUS is comprised of representatives from various federal agencies, including the Department of Treasury, the Department of Justice and the Department of Homeland Security, and is tasked with reviewing certain transactions that could result in control of a U.S. business by a foreign person.<sup>26</sup> CFIUS has the authority to investigate such covered transactions and to, among other things, issue a no-action letter with respect to a covered transaction or recommend that the President block a covered transaction based on national security grounds.<sup>27</sup>

On September 21, 2016, NACH and CHX Holdings voluntarily notified CFIUS of the Proposed Transaction. In the subsequent months, CFIUS conducted a comprehensive investigation into the Proposed Transaction, during which time NACH and CHX Holdings provided CFIUS with detailed information and made various representations regarding, among other things, the Prospective Owners and the current and future operational security of CHX.

Based on its review and investigation, on December 12, 2016, CFIUS determined that there were no unresolved national security concerns with respect to the Proposed Transaction, thereby concluding the CFIUS investigation.

### Conclusion

The Proposed Transaction has been subject to exhaustive and comprehensive regulatory review processes by CFIUS and the SEC, which has thus far resulted in CFIUS finding no unresolved national security concerns with the Proposed Transaction. Moreover, for the reasons described in the Notice and summarized above, CHX believes that CHX rules, as proposed, are consistent with the requirements of the Exchange Act and would, thus, permit the Proposed Transaction.

CHX also believes that consummation of the Proposed Transaction will enhance cooperation between market participants from the two largest economies in the world and will encourage additional international trading and listings here in the U.S. Thus, the Proposed Transaction will serve to perfect the mechanisms of a free and open market and protect investors and the public interest.

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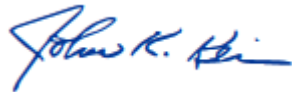
<sup>26</sup> See generally 31 CFR Part 800; see also 50 U.S.C. 4565.

<sup>27</sup> See id.

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Accordingly, CHX respectfully requests that the Commission approve the proposed rule change in connection with the Proposed Transaction.

Sincerely,

A handwritten signature in blue ink, appearing to read "John K. Kerin".

John K. Kerin  
President and Chief Executive Officer  
CHX

cc: The Honorable Mary Jo White, Chair, SEC  
The Honorable Michael S. Piowar, Commissioner, SEC  
The Honorable Kara M. Stein, Commissioner, SEC