

January 6, 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") again thanks the U.S. Securities and Exchange Commission ("SEC" or "Commission") for the opportunity to comment on its proposed rule change¹ in connection with the proposed transaction ("Proposed Transaction") involving CHX Holdings, Inc. ("CHX Holdings") and North America Casin Holdings, Inc. ("NACH").²

On January 5, 2017, CHX submitted a comment letter regarding the proposed rule change that emphasized key facts regarding the Proposed Transaction and notified the public that the Committee on Foreign Investment in the United States ("CFIUS") recently concluded its review of the Proposed Transaction and found no unresolved national security concerns.³ CHX now respectfully submits this response to a comment letter attributed to "John Ciccarelli,"⁴ which was recently found to have been fraudulently submitted on behalf of the Global Investigative Journalism Network ("GIJN").⁵

Background

On January 3, 2017, CHX first learned of the publication of the Ciccarelli Letter. Based on the bizarre claims and arguments made in the Ciccarelli Letter, CHX staff questioned its authorship and contacted GIJN to verify its origin. On January 4, 2017, CHX was informed by the GIJN that the Ciccarelli Letter was fraudulent and that the GIJN had no cause or interest to comment on the Proposed Transaction. Later that day, David Kaplan, Executive Director of GIJN, submitted a comment letter confirming that the Ciccarelli Letter was fraudulently

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

² All comment letters related to 34-79474 may be found at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

³ See Letter to Brent J. Fields, Secretary, SEC, from John K. Kerin, President and Chief Executive Officer, CHX (January 6, 2017) ("First CHX Letter").

⁴ See Letter to Brent J. Fields, Secretary, SEC, from John Ciccarelli (January 2, 2017) ("Ciccarelli Letter").

⁵ See Letter to Brent J. Fields, Secretary, SEC, from GIJN (January 4, 2017) ("GIJN Letter").

submitted on behalf of GIJN.⁶

While CHX believes that comment letters that are discovered to be fraudulent should be removed from the SEC's website, CHX certainly appreciates that the Ciccarelli Letter warrants a response in light of the fact that it has already been made public. In the interest of truth and preserving the integrity of all disparaged persons, CHX would like to respond to certain claims made in the Ciccarelli Letter. As summarized immediately below and discussed in detail in the following sections, CHX submits the following:

- **The Ownership and Voting Limitations⁷ are Enforceable.** The proposed governance documents of NACH and CHX Holdings ("CHX Rules"), as well as the Securities Exchange Act of 1934 ("Exchange Act"), provide adequate mechanisms for the SEC and CHX to monitor, compel and enforce compliance with CHX Rules, including the ownership and voting limitations.
- **Majority Ownership of CHX will be maintained by U.S. citizens.** Upon the closing of the Proposed Transaction, 50.5% of CHX will be indirectly owned by U.S. citizens and 49.5% of CHX will be indirectly owned by Chinese citizens. Contrary to the spurious claims made in the Ciccarelli Letter, CHX has never misrepresented any facts regarding the Proposed Transaction.

I. Ownership and Voting Limitations

All of the U.S. national securities exchanges have adopted materially similar ownership and voting limitations that are codified in the governance documents of the respective holding companies.⁸ As applied to CHX, the ownership limitation is that no person and its Related Persons⁹ may beneficially own more than 40% of the outstanding voting shares of CHX Holdings or NACH (whereas no member of the relevant exchange and its Related Persons or a person subject to statutory disqualification and its Related Persons may own more than 20% of the outstanding voting shares of CHX Holdings or NACH).¹⁰ The voting limitation is that no person and its Related Persons may vote more than 20% of the outstanding voting shares of CHX Holdings or NACH.¹¹

Ciccarelli claims that "effective SEC oversight of CHX's Chinese owners is impossible" and that "without the ability to 'trust, but verify,' U.S. investors and regulators cannot take it at face value that CHX capital stock is being voted in a manner that fully complies with U.S. laws

⁶ See GIJN Letter, supra note 5, at 1.

⁷ See infra Section I.

⁸ See, e.g., Article IV, Section 4(b) of the Fourth Amended and Restated Certificate of Incorporation of NYSE Group, Inc.; see also, e.g., Article FOURTH, Section C of the Second Amended and Restated Certificate of Incorporation of National Stock Exchange Holdings, Inc.; see also, e.g., Notice, supra note 1, at 89551-89554.

⁹ 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.

¹⁰ See Notice, supra note 1, at 89552-89554.

¹¹ See id.

and poses no conflict of interest to fair markets.”¹² Ciccarelli also claims that “there are little to no controls in place at the upstream corporate ownership.”¹³ These are misguided statements at best and are directly refuted by the facts as set forth in the Notice.

The CHX Rules and the Exchange Act contain various provisions that will facilitate the ability of U.S. regulators, including the SEC, to monitor, compel and enforce compliance by each of the 13 U.S. and Chinese investors (“Prospective Owners”) that will own NACH upon the closing of the Proposed Transaction with CHX Rules, including the ownership and voting limitations. Specifically, the proposed CHX Rules require the Prospective Owners to:

- adhere to the ownership and voting limitations;¹⁴
- submit to U.S. regulatory jurisdiction and maintain agents in the U.S. for the service of process;¹⁵
- maintain open books and records related to their ownership of CHX and keep such books and records in the U.S.;¹⁶ and
- refrain from interfering with, and give due consideration to, the SRO function of CHX.¹⁷

In the event a Prospective Owner does not comply with the ownership and voting limitations, CHX Rules enable the relevant holdings companies to rectify noncompliance. 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.¹⁸ Furthermore, any purported transfer of shares in violation of the relevant ownership limitation will not be registered by the corporation.¹⁹ 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.²⁰

Also, pursuant to the Exchange Act, 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. Through this oversight, the SEC would be able to verify compliance by the Prospective Owners with the

¹² See Ciccarelli Letter, supra note 4, at 2.

¹³ See id.

¹⁴ See Notice, supra note 1, at 89552-89554.

¹⁵ See Notice, supra note 1, at 89554.

¹⁶ See Notice, supra note 1, at 89555.

¹⁷ See Notice, supra note 1, at 89555-89556.

¹⁸ See Notice, supra note 1, at 89553.

¹⁹ See id.

²⁰ See id.

relevant CHX Rules at its discretion. In the event that the SEC were to discover that CHX or the Prospective Owners have failed 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.²¹

Accordingly, CHX submits that the CHX Rules, as proposed, would provide the SEC with adequate oversight and enforcement mechanisms to compel, ensure and enforce compliance by the Prospective Owners with CHX Rules, the Exchange Act and the rules and regulations thereunder.

II. Prospective Owners

As described in detail under the Notice,²² the Prospective Owners 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. Specifically, upon the closing of the Proposed Transaction, all of the outstanding and issued shares of NACH will be held by the following Prospective Owners in the following percentages:

- Non-U.S. Prospective Owners:
 - NA Casin Group, a corporation incorporated under the laws of the State of Delaware and wholly-owned by Chongqing Casin – 20%
 - Chongqing Jintian Industrial Co., Ltd. (“Chongqing Jintian”), a corporation incorporated under the laws of the PRC – 15%
 - Chongqing Longshang Decoration Co., Ltd. (“Chongqing Longshang”), a corporation incorporated under the laws of the PRC – 14.50%
- U.S. Prospective Owners:
 - Castle YAC Enterprises, LLC (“Castle YAC”), a limited liability company organized under the laws of the State of New York, the sole member of which is Mr. Jay Lu, a U.S. citizen and Vice President of NA Casin Group – 19%
 - Raptor HoldCo LLC (“Raptor”), a limited liability company organized under the laws of the State of Delaware – 11.75%
 - Saliba Ventures Holdings, LLC (“Saliba”), a limited liability company organized under the laws of the State of Illinois – 11.75%
 - Xian Tong Enterprises, Inc. (“Xian Tong”), a corporation incorporated under the laws of the State of New York – 6.94%
 - Equity Incentive Shares to five members of the CHX Holdings management team, all U.S. citizens – 0.88%

²¹ 15 U.S.C. 78s(h)(1).

²² See Notice, supra note 1, at 89544-89545.

- Cheevers & Co., Inc. (“Cheevers”), a corporation incorporated under the laws of the State of Illinois – 0.18%

Moreover, under the Notice, CHX made the following representations,²³ each one of which is supported by an opinion of counsel (“Opinion”) provided to the SEC by outside counsel for CHX:²⁴

- The only Related Persons among the Prospective Owners are Castle YAC and NA Casin Group.
- There are no other Related Persons among the Prospective Owners.
- None of the Prospective Owners directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a governmental entity or any political subdivision thereof.

Furthermore, NACH and CHX Holdings provided CFIUS with detailed information regarding the Prospective Owners, which recently concluded its investigation into the Proposed Transaction and found no unresolved national security concerns.²⁵

Notwithstanding these facts, Ciccarelli claims that the closing of the Proposed Transaction will result in 99% of CHX being controlled by Chinese entities.²⁶ In support, Ciccarelli makes misrepresentations and fabrications too numerous to list individually here. Most of the allegations made under Section II of the Ciccarelli Letter are directly refuted by the Notice, the Opinion and information provided to CFIUS, whereas the remaining more bizarre claims do not merit repeating or discussion as they are simply untrue. Nevertheless, CHX would like to confirm the following facts:

- Castle YAC is wholly-owned by Jay Lu, a U.S. citizen and Vice President of NA Casin Group, and not “Jing Chen from Chinatown.”²⁷ The Operating Agreement of Castle YAC, a copy of which was provided to the Commission as an attachment to the Opinion, provides that Jay Lu owns 100% of the membership interest in Castle YAC. The ownership of the house located at the Oyster Bay, New York address of Castle YAC is immaterial to the ownership of Castle YAC. Given that Jay Lu is a U.S. citizen, Castle YAC is clearly not directly owned by a Chinese entity.
- Other than Castle YAC and NA Casin Group,²⁸ none of the Prospective Owners are Related Persons. As “Related Persons” is a defined term,²⁹ two or more persons are not

²³ See id.

²⁴ See Notice, supra note 1, at n. 16.

²⁵ See First CHX Letter, supra note 3, at 5.

²⁶ See Ciccarelli Letter, supra note 4, at 1.

²⁷ See Ciccarelli Letter, supra note 4, at 3 and 4.

²⁸ See Notice, supra note 1, at n. 18.

²⁹ See supra note 9.

Related Persons solely by reason of being part of the same investor group or maintaining offices in the same city.³⁰

- Quiling Luo, owner of Xian Tong, is a U.S. citizen.
- Saliba and Raptor are owned by well-known U.S. investors that are independent of one another and the other Prospective Owners. The Saliba and Raptor Put Agreements, attached to the proposed rule change as Exhibits 5J and 5K, respectively, grant Saliba and Raptor the right to exercise put options in return for a preferred return. NACH could not compel Saliba or Raptor to exercise their put options pursuant to the respective put agreements. Moreover, in the event the put agreements are exercised, CHX rules would require the resulting ownership structure to comport with the ownership and voting limitations.

In light of the above, it is completely incorrect to claim that NA Casin is 99% owned by Chinese investors

III. Conclusion

The Ciccarelli Letter is nothing more than “fake news” masquerading as investigative journalism. In lieu of actual arguments and substance, the author employs deception and xenophobia. In addition to insulting the intelligence of the investing public, the author attempts to undermine the SEC rule filing process and the integrity of the Government, the staff of which have spent countless hours analyzing this transaction.

Accordingly, CHX respectfully requests that the Commission consider the Ciccarelli Letter absolutely unpersuasive and approve the proposed rule change in connection with the Proposed Transaction.

Sincerely,



Albert J. Kim
Vice President and Associate General Counsel
CHX

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

³⁰ See Ciccarelli Letter, supra note 4, at 3.