

March 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”) thanks the U.S. Securities and Exchange Commission (“Commission” or “SEC”) 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”). CHX submits this letter in response to various comments² that have been submitted to the Commission since proceedings were instituted with respect to the proposed rule change.³

I. Background

Founded in 1882, CHX is a U.S. national securities exchange that operates as a self-regulatory organization (“SRO”) and is a wholly-owned direct subsidiary of CHX Holdings. As an SRO, CHX operates and regulates its market in a manner consistent with the requirements of the Securities Exchange Act of 1934⁴ (“Exchange Act”) and the rules and regulations thereunder.

In NACH, CHX Holdings has identified a diverse and strategic ownership group that embraces CHX’s commitment to innovation, fairness and transparency. Under the Notice, CHX provided a comprehensive description of the Proposed Transaction.⁵

In sum, upon the closing of the Proposed Transaction, CHX Holdings will become a wholly-owned direct subsidiary of NACH, which will, in turn, be owned by a consortium of 13 U.S. and

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 may be found at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

³ See Securities Exchange Act Release No. 79781 (January 12, 2017), 82 FR 6669 (January 19, 2017).

⁴ 15 U.S.C 78.

⁵ See generally Notice, *supra* note 1.

Chinese investors (“Prospective Owners”).⁶ Pursuant to the governance documents of NACH, CHX Holdings and CHX (collectively, “CHX Rules”), as amended or to be adopted pursuant to the proposed rule change, each Prospective Owner will be required to comply with various requirements, including, but not limited to, maintaining books and records related to the activities of CHX within the U.S.,⁷ making such books and records available for inspection by the Commission and CHX,⁸ submitting to U.S. regulatory jurisdiction and adhering to the Ownership and Voting Limitations,⁹ as well as other requirements that will preserve the independence of the SRO function of CHX.¹⁰

CHX previously submitted two comment letters with respect to the proposed rule change,¹¹ both of which summarized key points described in detail under the Notice. In the First CHX Letter, CHX (1) emphasized that the proposed ownership structure of CHX would be consistent with the Ownership and Voting Limitations, (2) clarified that the scope of the Commission’s review of the Proposed Transaction was limited to whether the CHX Rules were consistent with the Exchange Act and would permit the Proposed Transaction and (3) notified the Commission that the Committee on Foreign Investment in the United States (“CFIUS”) had concluded its review of the Proposed Transaction and found no unresolved national security concerns. In the Second CHX Letter, CHX (1) emphasized that the CHX Rules and Exchange Act provide the Commission and CHX with adequate oversight and enforcement mechanisms to monitor, compel and enforce compliance by the Prospective Owners with CHX Rules, the Exchange Act and the rules and regulations thereunder and (2) responded to various misrepresentations made in a comment letter that was fraudulently submitted on behalf of the Global Investigative Journalism Network.¹²

CHX is grateful for the favorable comment letters that were submitted in support of the Proposed Transaction. CHX continues to believe that consummation of the Proposed Transaction will enhance cooperation between market participants from the two largest economies in the world, encourage additional international trading and listings here in the U.S. and enhance the

⁶ See Notice, supra note 1, at 89544-89545.

⁷ See Notice, supra note 1, at 89554-89556.

⁸ See id.

⁹ In sum, the ownership limitation is that no person and its Related Persons 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) and 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. See Notice, supra note 1, at 89552-89554.

¹⁰ See Notice, supra note 1, at 89555-89556.

¹¹ See Letter to Brent J. Fields, Secretary, Commission, from John K. Kerin, President and CEO, CHX (January 5, 2017) (“First CHX Letter”); see also Letter to Brent J. Fields, Secretary, Commission, from Albert J. Kim, Vice President and Associate General Counsel, CHX (January 6, 2017) (“Second CHX Letter”).

¹² See Letter to Brent J. Fields, Secretary, Commission, from David E. Kaplan, Executive Director, Global Investigative Journalism Network (January 4, 2017) (“GIJN Letter”); see also Letter to Brent J. Fields, Secretary, Commission, from John Ciccarelli (January 2, 2017) (“Ciccarelli Letter”).

ability of CHX to continue to provide innovative trading functionalities that deemphasize speed as a key to trading success and to offer new capital formation opportunities for emerging growth companies.¹³

CHX would also like to respond to certain comment letters (“Comments”) that contain misrepresentations virtually identical to those made under the fraudulent Ciccarelli Letter, as well as other false accusations that reflect, at best, a gross misunderstanding of the proposed rule change, U.S. securities laws and the regulatory review process associated with the Proposed Transaction.¹⁴ CHX notes that the Comments include misrepresentations too numerous to address individually. Instead, CHX will address certain recurring themes found in the Comments and incorporates herein by reference the Notice, CHX First Letter and CHX Second Letter in response thereto.

II. Prospective Owners

The Comments are replete with false accusations regarding the identity, ownership, relationships and business activities of certain Prospective Owners,¹⁵ much of which resemble misrepresentations made in the fraudulent Ciccarelli Letter.¹⁶ Based on these claims, the Comments conclude, without basis in fact, that the proposed ownership structure would violate the Ownership and Voting Limitations and that monitoring and enforcing compliance with the limitations would not be possible.¹⁷

Contrary to these claims, CHX agrees with NACH that the “[Prospective Owners] are all reputable businesses owned by reputable businessmen and businesswomen who have been clearly identified to [CFIUS] and “[a]llegations that the ownership of NACH is somehow ‘mysterious’ or ‘opaque’ are simply incorrect.”¹⁸ The NACH Letter clearly rebuts the false accusations made in the Comments regarding the Prospective Owners.

Moreover, as described under the Notice,¹⁹ the opinion of counsel provided to the

¹³ See First CHX Letter, supra note 11, at 2-3 and 5; see also Notice, supra note 1, at 89557-89559.

¹⁴ See Letter to Brent J. Fields, Secretary, Commission, from William Park (February 21, 2017) (“Park Letter”); see also Letter to Brent J. Fields, Secretary, Commission, from Lawrence Bass (February 20, 2017) (“Bass Letter”); see also Letter from Steven Mayer (February 20, 2017) (“Mayer Letter”); see also Letter to the Commission, from David Ferris (February 16, 2017) (“Ferris Letter”).

¹⁵ See, e.g., Ferris Letter, id., at 1-3; see also, e.g., Bass Letter, id., at 1-4; see also, e.g., Park Letter, id., at 4; see also, e.g., Brennan Letter, id., at 2.

¹⁶ See Ciccarelli Letter, supra note 12, at 1-4.

¹⁷ See, e.g., Brennan Letter, supra note 14, at 1; see also, e.g., Mayer Letter, supra note 14, at 1.

¹⁸ Letter to Brent J. Fields, Secretary, Commission, from Yong Xiao, CEO, NACH, at 1 (March 1, 2017) (“NACH Letter”).

¹⁹ See Notice, supra note 1, at 89544-89545.

Commission,²⁰ the First CHX Letter²¹ and the Second CHX Letter,²² 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; no single Prospective Owner will maintain an ownership interest in excess of 20% of the outstanding voting shares of CHX Holdings; the only Related Persons among the Prospective Owners are Castle YAC Enterprises LLC and North America Casin Group, Inc.; and 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.²³ Thus, contrary to the Comments, the proposed ownership structure is consistent with the Ownership and Voting Limitations in that (1) no Prospective Owner and its Related Persons will maintain an equity interest in NACH in excess of the 40% ownership limitation and (2) no Prospective Owner and its Related Persons will be permitted to exercise voting power in excess of the 20% voting limitation.²⁴

In addition, CHX Rules and the Exchange Act provide the Commission and CHX with the ability to effectively monitor, compel and enforce compliance by the Prospective Owners with the Ownership and Voting Limitations. Specifically, the requirements that the Prospective Owners submit to U.S. jurisdiction,²⁵ maintain books and records related to the activities of CHX in the U.S.²⁶ and make such books and records available for inspection by the Commission and CHX²⁷ will permit the Commission and CHX to effectively monitor any changes to the upstream ownership of the Prospective Owners. Also, as an SRO, CHX is subject to direct and rigorous oversight by the Commission, and through this oversight, the Commission would be able to verify, at its discretion, compliance with the relevant CHX Rules by CHX and the Prospective Owners. In the event that CHX or a Prospective Owner fails to meet any requirement under CHX Rules or the Exchange Act, the Commission 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.²⁸

²⁰ See Notice, supra note 1, at n. 16.

²¹ See First CHX Letter, supra note 11, at 2-3.

²² See generally Second CHX Letter, supra note 11.

²³ See Notice, supra note 1, at 89545.

²⁴ CHX Rules require NACH and CHX Holdings to take certain actions to enforce the Ownership and Voting Limitations. In the event a Prospective Owner and its Related Persons were to acquire 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. See Notice, supra note 1, at 89553. Furthermore, any purported transfer of shares in violation of the relevant ownership limitation will not be registered by the corporation. See id. In addition, 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. See id.

²⁵ See Notice, supra note 1, at 89554-89556.

²⁶ See id.

²⁷ See id.

²⁸ 15 U.S.C. 78s(h)(1).

CHX would also like to address an allegation made by one commenter that Anthony Saliba's membership on the CHX Holdings and CHX boards and ownership of a Prospective Owner, Saliba Venture Holdings, LLC, poses an unresolved conflict of interest.²⁹ This claim is without merit.

There is no CHX Rule or law that absolutely prohibits a CHX Holdings or CHX board member from maintaining, or seeking to obtain, an equity interest in CHX Holdings. In fact, the CHX Holdings and CHX boards currently include several members that either maintain or represent entities that maintain ownership interests in CHX Holdings and, moreover, CHX Rules currently require a CHX board position be reserved for certain CHX Holdings shareholders.³⁰ Also, Mr. Saliba has recused himself from all material CHX Holdings and CHX board votes related to the Proposed Transaction. As such, CHX submits that no conflict of interest exists with respect to Mr. Saliba's membership on the CHX Holdings and CHX boards and ownership of a Prospective Owner.

Accordingly, CHX submits that the various misrepresentations in the Comments regarding the Prospective Owners and the enforceability of the Ownership and Voting Limitations should be dismissed as baseless.

III. CFIUS

The Comments mischaracterize the scope and rigor of CFIUS's examination of the Proposed Transaction. According to one comment, "[p]resumably CHX or Casin is not producing a nuclear bomb, therefore their CFIUS approval is a foregone conclusion."³¹ Other comments speculated, without any basis, about the information that CFIUS did or did not review,³² or imply that CFIUS did not closely examine the foreign Prospective Owners.³³ Such comments reflect a gross misunderstanding of the nature of the national security review CFIUS conducts.

CFIUS reviews and investigations are not limited to an assessment of the defense or military-related implications of a transaction. CFIUS closely scrutinizes investments in a wide array of sectors, including the financial services sector. Indeed, the law governing CFIUS requires the Committee to pay particular attention to investments in "critical infrastructure,"³⁴ which includes investments in the financial services sector.³⁵

²⁹ See Park Letter, supra note 14, at 4.

³⁰ See Article II, Sec. 3(a) of the current Bylaws of CHX.

³¹ Bass Letter, supra note 14, at 5.

³² Brennan Letter, supra note 14, at 2.

³³ Ferris Letter, supra note 14, at 3.

³⁴ 50 U.S.C. 4565(f)(6).

³⁵ Presidential Policy Directive/PPD-21 ("Critical Infrastructure Security and Resilience"), dated February 12, 2013, designated financial services one of sixteen critical infrastructure sector. The

CFIUS examines the vulnerabilities that might exist with respect to the U.S. business being acquired and the risks posed by any foreign investor. With respect to financial services, CFIUS examines such vulnerabilities as potential disruptions to U.S. stock markets or the U.S. financial system as a whole, cybersecurity vulnerabilities, and the vulnerabilities associated with the fact that the U.S. business obtains and preserves personal information.

With respect to potential risks posed by a foreign investor, CFIUS conducts a full and detailed assessment of the foreign investing entities, including all of their individual senior executives and major shareholders, and investigates the extent of any foreign government control over the investor. U.S. national intelligence agencies also examine the foreign investor, and their conclusions are captured in a classified report that the Director of National Intelligence prepares for CFIUS.

CFIUS conducted a thorough, deep, and wide-ranging investigation of the Proposed Transaction and the Prospective Owners, and concluded that there were no unresolved national security concerns.

Accordingly, CHX submits that the various misrepresentations in the Comments regarding the nature and result of the CFIUS review of the Proposed Transaction should also be dismissed as baseless.

* * *

Department of Homeland Security has further elaborated on these designations, including the designation of financial services as a critical infrastructure sector. See, e.g., <https://www.dhs.gov/critical-infrastructure-sectors>.

Contrary to the Comments, which are replete with conjecture, distortions of fact and incredible misrepresentations, CHX believes that the Proposed Transaction is consistent with CHX Rules and the requirements of the Exchange Act. CHX firmly believes that consummation of the Proposed Transaction will benefit the national market system by enhancing the ability of CHX to effectively compete with other markets, which will further drive innovation and fairness. CHX looks forward to continuing to work with the Commission and its staff in furtherance of the protection of investors and the public interest.

During the course of the last several months, the Proposed Transaction has been subject to thorough regulatory review by CFIUS and the Commission, during which time the investor group and CHX have voluntarily disclosed detailed information, promptly agreed to every requirement and request set forth by the government and at all times remained forthright and transparent.

Accordingly, CHX respectfully requests that the Commission approve the proposed rule change without further delay.

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 Michael S. Piowar, Acting Chair, SEC
The Honorable Kara M. Stein, Commissioner, SEC