

August 25, 2017

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

Re: Release No. 34-81435; In the Matter of the Chicago Stock Exchange, Inc. (“CHX”) - For an Order Granting the Approval of Proposed Rule Change Regarding the Acquisition of CHX Holdings, Inc. (“CHX Holdings”) by North America Casin Holdings, Inc. (“NACH”) (File No. SR-CHX-2016-20)

Dear Mr. Fields:

On behalf of CHX, I would like to thank the U.S. Securities and Exchange Commission (“Commission”) for the opportunity to comment on its pending review¹ of the recent approval² of CHX’s proposed rule change, as amended,³ (“Proposal”) regarding the acquisition of CHX Holdings by NACH (“Proposed Transaction”). I would also like to thank the Commission staff for the many hours they had spent over the past 14 months analyzing the Proposal, the result of which was the issuance of a comprehensive and clear Approval Order explaining precisely why the corporate governance, operational and oversight mechanisms described in the Proposal, as well as the unprecedented public disclosures and direct representations made by the NACH investors (“Prospective Owners”) to the Commission, would protect investors and the public interest, in furtherance of the objectives of Section 6 of the Securities Exchange Act of 1934⁴ (“Exchange Act”).⁵ In light of the Commission staff’s fulsome review of the Proposed Transaction, I urge the Commission to promptly affirm the Approval Order.

In its review of the Approval Order, I respectfully request that the Commission be mindful of its obligations under Section 3(f) of the Exchange Act,⁶ which requires the Commission to consider, in addition to the protection of investors, whether its action will promote efficiency, competition and capital formation. In so doing, I hope that the Commission will come to the only

¹ See Securities Exchange Act Release No. 81435 (August 18, 2017).

² See Securities Exchange Act Release No. 81366 (August 9, 2017), 82 FR 38734 (August 15, 2017) (“Approval Order”).

³ See Securities Exchange Act Release No. 79474 (December 6, 2016), 81 FR 89543 (December 12, 2016) (SR-CHX-2016-20) (“Notice”); see also id.

⁴ 15 U.S.C. 78f.

⁵ See Approval Order, supra note 2, at 38744-38745.

⁶ 15 U.S.C. 78c(f).

conclusion that the law and the facts could bear – that the Approval Order must be affirmed.

While there is little to add to what has already been explained and disclosed under the Approval Order, the Proposal and CHX's four previous comment letters,⁷ all of which are part of the record before the Commission, I would like to take this opportunity to reiterate and expand on the following four points as they relate to the Commission's obligations under Section 3(f) of the Exchange Act.

1. *Protection of Investors - The Proposed Transaction has been subject to thorough and comprehensive regulatory review by each of the Commission staff and the Committee on Foreign Investment in the United States ("CFIUS"), both of which have approved the Proposed Transaction.*

Since the merger agreement was executed on February 4, 2016, the Proposed Transaction has been subject to nearly continuous regulatory review. With respect to the Proposal, CHX provided Commission staff with initial drafts of the Proposal in June 2016. From June 2016 to December 6, 2016, CHX and Commission staff engaged in several informal discussions regarding the Proposal, pursuant to which multiple iterations of the Proposal were drafted and scrutinized. In addition, as noted in the Proposal,⁸ CHX provided the Commission with an Opinion of Counsel related to the Prospective Owners, based in part on Investor Certificates signed by each of the Prospective Owners, updated copies of which are publicly available and attached to the partial amendment to the Proposal ("Amendment") filed on August 8, 2017.⁹

After the Proposal was published in the Federal Register on December 12, 2016, the Proposal was subject to 240 days of formal review by the Commission, for the maximum amount of time permitted by Section 19 of the Exchange Act.¹⁰ During this period, the Commission initiated two separate public comment periods and received 32 letters,¹¹ both critical and supportive of the Proposal, including four response letters from CHX.¹² Many of the critical comments came from dubious sources that followed a recognizable pattern of bizarre misrepresentations and baseless

⁷ 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"); see also Letter to Brent J. Fields, Secretary, Commission, from John K. Kerin, President and CEO, CHX (March 6, 2017) ("Third CHX Letter"); see also Letter to Brent J. Fields, Secretary, Commission, from Albert J. Kim, Vice President and Associate General Counsel, CHX (August 8, 2017) ("Fourth CHX Letter").

⁸ See Notice, *supra* note 3, at n. 16.

⁹ See Fourth CHX Letter, *supra* note 8. Copies of the Investor Certificates and Investor Statements may be found at http://www.chx.com/posts/rule-filings/ProposedFilings/CHX-2016-20_amendment1.pdf.

¹⁰ 15 U.S.C. 78s.

¹¹ All comment letters may be found at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

¹² See *supra* note 7.

claims.¹³ In response to certain other critical comments, on August 8, 2017, CHX filed the Amendment to propose additional corporate governance, compliance, audit and operational requirements not found in the rules of the other national securities exchanges. At the conclusion of nearly 14 months of review and after CHX and NACH complied with every one of its requests, requirements and restrictions, the Commission staff issued the Approval Order, on behalf of the Commission, agreeing with CHX that the Proposal is consistent with the requirements of the Exchange Act.

While Commission staff was conducting its informal review of the Proposal, on September 21, 2016, CHX Holdings and NACH submitted a joint voluntary notice to CFIUS. During the course of the following three months, CHX Holdings and NACH provided CFIUS with thousands of pages of documents, which included confidential information regarding the identity and associates of the Prospective Owners, as well as the operational and security protocols of CHX.

As I have noted before,¹⁴ 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. 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, on December 12, 2016, concluded that there were no unresolved national security concerns. As a result of this fulsome review, CHX agreed to outsource the vast majority of its regulatory function to one or more third-party Regulatory Services Providers, by a date certain, in the event the Proposed Transaction were to close. Notwithstanding the Commission's pending review, CHX continues to work with several U.S. self-regulatory organizations ("SROs") towards this goal.

A frequent criticism of the Proposed Transaction is that it has not been adequately vetted. I disagree. As described above, the Proposed Transaction has been subject to thorough vetting by numerous federal agencies, including the Commission, over the course of the past 14 months. CFIUS itself is comprised of the heads of nine federal agencies, including the Departments of Treasury, Justice, Homeland Security, Commerce, Defense and State. Any claim that the Proposed Transaction has not been subject to a robust and multi-faceted review is simply

¹³ See generally Second CHX Letter and Third CHX Letter, supra note 7.

¹⁴ See Third CHX Letter, supra note 7, at 5-6.

incorrect.

2. *Protection of Investors - No single or group of Prospective Owner(s), including the Chinese Prospective Owners, will be able to effect any material change to the operation or strategic direction of CHX without the approval of the CHX board, which will be subject to certain independence requirements, and without Commission approval and oversight.*

Some critics have claimed that the Proposed Transaction will permit the Chinese government to exert undue influence on CHX, suggesting that such undue influence could be leveraged to the detriment of the national market system. Such statements represent a lack of understanding of CHX rules and how CHX is regulated by the Commission.

Initially, as noted in the Proposal and the Investor Certificates, 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, including the Chinese government. This representation has been made by each of the Prospective Owners to the Commission under the Investor Certificates, and therefore potential liability for misrepresentations would attach.¹⁵

With respect to regulation, in the event the Proposed Transaction closes, CHX will outsource the vast majority of its regulatory function to one or more third-party Regulatory Services Providers, as noted above. To the extent that CHX maintains any regulatory functions or provides oversight of regulatory functions that have been outsourced, the Proposal clearly provides that only CHX regulatory, legal and compliance staff will have access to Consolidated Audit Trail data and that NACH personnel, as well as all Prospective Owners that are not authorized CHX staff, will be prohibited from accessing such data. Moreover, compliance with this restriction will be monitored by the CHX Chief Compliance Officer and audited by a Public Company Accounting Oversight Board certified independent auditor.

With respect to effecting any material change to the operation or strategic direction of CHX, CHX procedures require approval of the change by the CHX board, the composition of which must meet certain independence requirements, including that at least half of the board be comprised of Non-industry Directors.¹⁶ When considered with other provisions requiring the Prospective Owners not interfere with the SRO function of CHX,¹⁷ the CHX board composition requirements will enable the CHX board to objectively analyze the merits of any proposed material change, including those requested by the Prospective Owners.

In the event a material change is approved by the CHX board, CHX staff is required to seek Commission approval for the change through a proposed rule change prior to its implementation. In addition, CHX staff is obligated to monitor compliance with any operative rules and Commission staff regularly examine various CHX functions to ensure compliance with CHX rules and federal securities laws. In the event that the Commission staff were to discover that

¹⁵ See e.g., 18 U.S.C. 1001.

¹⁶ See Notice, supra note 3, at 89546-89548.

¹⁷ See Notice, supra note 3, at 89555-89556.

CHX or the Prospective Owners failed to meet the requirements of the Exchange Act, or the rules and regulations thereunder, the Commission has broad authority and recourse 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.¹⁸ When considered with the ownership and voting limitations applicable to all national securities exchanges, CHX rules, as amended by the Proposal, are designed to prevent undue influence on CHX.¹⁹

3. Promote Efficiency and Capital Formation – *The Proposed Transaction will inure benefits to the American public.*

An important point that is frequently ignored by critics of the Proposed Transaction are the material benefits that the Proposed Transaction will bring to the American public. To be clear, the Proposed Transaction represents an investment in CHX by U.S. and Chinese investors, the objective of which is to empower CHX to meet its strategic goals and enhance its participation in the national market system. The Proposed Transaction will not result in CHX being shut down or its functions being outsourced abroad. Rather, CHX will use funds from this investment to execute on its strategic goal of creating a primary listing program focused on U.S. and foreign emerging growth companies. This listing program will specifically target those companies that the JOBS Act of 2012 was designed to assist and will provide an avenue for qualified emerging growth companies to graduate to the next step in the capital formation process: a public listing on a national securities exchange. By picking up where the JOBS Act leaves off, CHX's listing program will provide such companies with access to the additional capital they require to fund operations, hire staff and grow their businesses. Therefore, the closing of the Proposed Transaction will promote both efficiency and capital formation in the U.S. market.

In addition, I anticipate that the Proposed Transaction and the execution of CHX's strategic plan will require CHX to triple its staff within three years, which equates to approximately 150 new jobs here in Chicago. Moreover, the additional foreign listings on CHX will bring international business to the U.S. and thereby create more demand for the services of U.S. broker-dealers, as well as consulting, legal, investment banking and accounting firms.²⁰ In fact, the Chicago City Council recognized this potential when it approved a resolution in support of the Proposed Transaction on December 16, 2016.

4. Promote Competition – *Affirming the Approval Order will promote fair competition and reaffirm the U.S. as the torchbearer for the rule of law.*

I believe that one of the factors that makes the U.S. the gold standard for investment security is the thoroughness and predictability of U.S. law and its regulatory regime. That is, a prospective investor that complies with every requirement set forth by U.S. law and who cooperates with every request made by U.S. regulators should feel confident that he or she will

¹⁸ 15 U.S.C. 78s(h)(1).

¹⁹ See Approval Order, supra note 2, at 38744-38745.

²⁰ See Letter to Brent J. Fields, Secretary, Commission, from Yong Xiao, CEO, NACH, at 7-8 (March 1, 2017).

be permitted to make that investment. The Prospective Owners have complied with every applicable law, complied with all regulatory requests and accepted every unprecedented restriction and condition on their investment. U.S. law permits, and the SEC has previously approved, foreign investments in, or acquisitions of, national securities exchanges.²¹ If our country is to lead by example, that the rule of law rises above all interests, the Commission must affirm the Approval Order, in furtherance of fair competition.

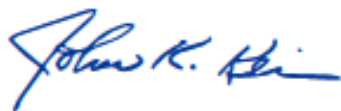
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²¹ See Approval Order, supra note 2, at n. 154.

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In light of the foregoing and the Commission's mandate to enhance efficiency, competition and capital formation, pursuant to Section 3(f) of the Exchange Act, I respectfully request that the Commission affirm the Approval Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "John K. Kerin". The signature is fluid and cursive, with the first name "John" being the most prominent.

John K. Kerin

cc: Chairman Jay Clayton
Commissioner Michael S. Piwowar
Commissioner Kara M. Stein