

December 15, 2017

Eduardo A. Aleman  
Assistant Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**Re: Release No. 34-82077;<sup>1</sup> Notice of Filing of Amendment No. 2 to Proposed Rule Change in Connection with the Proposed Transaction involving CHX Holdings, Inc. (“CHX Holdings”) and North America Casin Holdings, Inc. (“NACH”)**

Dear Mr. Aleman:

The Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) thanks the U.S. Securities and Exchange Commission (“SEC” or “Commission”) for the opportunity to comment on Amendment No. 2 and the pending review<sup>2</sup> of the Commission staff’s approval<sup>3</sup> of a proposed rule change<sup>4</sup> (“Proposal”) related to the Proposed Transaction. Certain comment letters received by the Commission have claimed or suggested that the Proposed Transaction has not been subject to adequate financial reviews<sup>5</sup> or that the proposed put agreements<sup>6</sup> are improper.<sup>7</sup> In response, the Exchange is submitting this letter to clarify that (1) the Proposed Transaction has been subject to thorough financial wherewithal and source of funds reviews of the prospective investors by both the Commission staff and the Financial Industry Regulatory Authority (“FINRA”) and (2) the Put Agreements are consistent with Commission precedence. For the reasons described below and under the Exchange’s Rule 19b-4 filings<sup>8</sup> and prior comment letters,<sup>9</sup> the Exchange respectfully

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<sup>1</sup> Exchange Act Release No. 82077 (November 14, 2017), 82 FR 55141 (November 20, 2017) (“Amendment No. 2”).

<sup>2</sup> See Securities Exchange Act Release No. 81435 (August 18, 2017), 82 FR 49187 (August 24, 2017) (“Review Order”).

<sup>3</sup> See Securities Exchange Act Release No. 81366 (August 9, 2017), 82 FR 38734 (August 15, 2017) (“Approval Order” or “Amendment No. 1”).

<sup>4</sup> See id.; see also Securities Exchange Act Release No. 79474 (December 6, 2016), 81 FR 89543 (December 12, 2016) (SR-CHX-2016-20) (“Initial Filing”).

<sup>5</sup> See e.g., Letter to Eduardo A. Aleman, Assistant Secretary, Commission, from Marc Gresack (November 21, 2017) (“Gresack Letter”) at 2. All comment letters related to the Proposal may be found at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

<sup>6</sup> Amendment No. 2, supra note 1, at Exhibits 5J-L (“Put Agreements”).

<sup>7</sup> See e.g., Gresack Letter, supra note 4, at 2.

<sup>8</sup> See Initial Filing, supra note 4; see also Amendment No. 1, supra note 3; see also Amendment No. 2, supra note 1.

<sup>9</sup> 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

requests that the Commission promptly approve Amendment No. 2 and affirm the Approval Order.

**1. The Commission is conducting a review of the Proposed Transaction, which has included, among other things, a comprehensive investigation into the financial wherewithal and source of funds of each prospective investor.**

In particular, in response to a request from the SEC's Division of Trading and Markets during its review of the Initial Filing and Amendment No. 1, the Exchange provided Commission staff with various financial statements and other evidence of financial wherewithal and source of funds for all of the prospective investors, including the three prospective investors that had withdrawn from the investor group in October 2017. Soon thereafter, the Commission staff issued the Approval Order on August 9, 2017.

In addition, after the Review Order was issued on August 18, 2017, the SEC's Office of Compliance, Inspections and Examinations ("OCIE") requested additional financial wherewithal and source of funds information for the prospective investors. In response, the Exchange provided Commission staff with additional financial statements for all current prospective investors, as well as descriptions and supporting documentation regarding how each of the current prospective investors will be funding their financial commitments with respect to the Proposed Transaction. As of the date of this letter, there are no outstanding Commission requests for information related to the Proposed Transaction.

Accordingly, the Exchange believes that Commission staff have conducted a comprehensive investigation into the financial wherewithal and source of funds of each prospective investor.

**2. FINRA is also conducting a review of the Proposed Transaction, as it relates to the Exchange's affiliated routing broker-dealer, CHXBD LLC ("CHXBD"), which has included, among other things, an investigation into the financial wherewithal and source of funds of each prospective investor.**

On July 11, 2017, CHXBD filed a Form CMA with FINRA, pursuant to FINRA Rule 1017, regarding the Proposed Transaction, which was deemed "substantially complete" on July 28, 2017. Since the Form CMA was filed, CHXBD provided FINRA with several large document

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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"); see also Letter to Brent J. Fields, Secretary, Commission, from John K. Kerin, President and CEO, CHX (August 25, 2017) ("Fifth CHX Letter"); see also Letter to Brent Fields, Secretary, Commission, from James G. Ongena, Executive Vice President and General Counsel, CHX (October 1, 2017) ("Sixth CHX Letter"); see also Letter to Brent J. Fields, Secretary, Commission, from Albert J. Kim, Vice President and Associate General Counsel, CHX (November 6, 2017) ("Seventh CHX Letter"); see also Letter to Eduardo A. Aleman, Assistant Secretary, Commission, from John K. Kerin, President and CEO, CHX (December 15, 2017) ("Eighth CHX Letter"). All comment letters related to the Proposal may be found at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

productions in response to seven separate information requests from FINRA staff, which included, among other things, financial statements, evidence of funds transfers, corporate governance documents and descriptions of business activities, as applicable, for all current prospective investors. The three former prospective investors also provided all requested documents and information prior to their withdrawal from the investor group. As of the date of this letter, there are no outstanding FINRA requests for information related to the Proposed Transaction.

Accordingly, the Exchange believes that the prospective investors have been “rigorously checked-out and sources of their funds [...] thoroughly reviewed and vetted,”<sup>10</sup> pursuant to FINRA Rule 1017.

**3. The Put Agreements are appropriate and consistent with Commission precedence, and the proposed CHX Rules will permit the Commission to effectively monitor and review changes to CHX ownership.**

The Put Agreements would provide certain prospective investors with a put option on their NACH shares that, if exercised, would require NACH or a third-party to buy back all or a portion of the prospective investor’s NACH shares at a premium to the average original purchase price.<sup>11</sup> The Exchange notes that another national securities exchange, the Miami International Securities Exchange, LLC (“MIAX”), has offered similar put options as an incentive to its prospective shareholders. In particular, in 2015, the Commission approved the MIAX equity rights program through which MIAX offered shares and warrants for shares in MIAX International Holdings, Inc. (“MIH”) to MIAX members that met certain financial and order flow requirements.<sup>12</sup> Notably, the 2015 MIAX equity rights program included a provision whereby all MIAX members that received equity through the program retained a put option (“MIAX Put Option”) exercisable on a future date to require MIH to buy back shares at a fixed percentage of the fair market value,<sup>13</sup> which, if exercised, could result in a MIAX member receiving a premium above the original fair market value of its MIAX shares. Given the similarities between the MIAX Put Options and the put options under the Put Agreements, as well as the legitimate and well-established business purposes of the Put Agreements,<sup>14</sup> the Exchange submits that the Put Agreements are appropriate and consistent with Commission precedence.

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<sup>10</sup> Gresack Letter, supra note 5, at 2.

<sup>11</sup> See Put Agreements, supra note 6, at Section 2.

<sup>12</sup> See Exchange Act Release No. 74095 (January 20, 2015), 80 FR 4011 (January 26, 2015) (SR-MIAX-2015-02) (“2015 MIAX Notice”). The Commission also approved a similar program for MIAX in 2013. See Exchange Act Release No. 70498 (September 25, 2013), 78 FR 60348 (October 1, 2013) (SR-MIAX-2013-43).

<sup>13</sup> See 2015 MIAX Notice, id., at 4012-4013.

<sup>14</sup> See Letter to Eduardo A. Aleman, Assistant Secretary, Commission, from Yong Xiao, Chief Executive Officer, NACH (December 13, 2017) (“NACH Letter”) at 2-3; see also Letter to Brent J. Fields, Secretary, Commission, from Anthony J. Saliba, Saliba Ventures Holdings (December 1, 2017) (“Saliba Letter”) at 3. All comment letters related to the Proposal may be found at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

With respect to Commission oversight of the Put Agreements, the following provisions under the proposed corporate governance documents of CHX Holdings and NACH will facilitate the ability of the Commission and the Exchange to ensure that the put options are exercised in a manner consistent with CHX Rules and the Securities Exchange Act of 1934 (“Act”):

- Notice to Commission Prior to Material Change in Ownership. Each person involved in an acquisition for shares of stock of the corporation will be required to provide the corporation (i.e., NACH or CHX Holdings, as applicable) with written notice fourteen (14) days prior, and the corporation shall provide the Commission with written notice ten (10) days prior, to the closing date of any acquisition that would result in a person having voting rights or beneficial ownership, alone or together with its Related Persons, of record or beneficially, of five percent (5%) or more of the then outstanding shares of stock of the corporation entitled to vote on any matter.<sup>15</sup>

In other words, CHX Rules will require that the Commission and Exchange be afforded ample time to determine whether a proposed transfer of shares pursuant to an executed put option is consistent with CHX Rules and the Act.

- Annual Attestations as to Ownership Levels. Each stockholder of the corporation will be required to attest directly to the Commission and the corporation as to (1) its equity ownership level in the corporation and the identity of its Related Persons<sup>16</sup> and (2) the existence of any agreement, arrangement or understanding (whether or not in writing) to act together exists between the stockholder, on the one hand, and any other person, on the other hand, for the purpose of acquiring, voting, holding or disposing of shares of stock of the corporation.<sup>17</sup>

Thus, regardless of whether its ownership level is material, all NACH and CHX Holdings shareholders will be required to annually attest to their ownership levels and the existence of any voting agreements, which will ensure that the Commission is aware of all changes to CHX ownership on, at least, an annual basis.

- Notice of Change of Related Persons Status. Each Person having voting rights or beneficial ownership of stock of the corporation will be required to promptly provide the

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<sup>15</sup> See Amendment No. 1, supra note 3, at Exhibit 5A, paragraph (g)(i) of Article FOURTH of the proposed Third Amended and Restated Certificate of Incorporation of CHX Holdings (“CHX Holdings Certificate”), and Exhibit 5F, Section 19(i) of Article IX of the proposed Amended and Restated Certificate of Incorporation of NACH (“NACH Certificate”).

<sup>16</sup> See Initial Filing, supra note 4, n. 17.

<sup>17</sup> See Amendment No. 1, supra note 3, at Exhibit 5A, paragraph (h) of Article FOURTH of the proposed CHX Holdings Certificate, and Exhibit 5F, Section 20 of Article IX of the proposed NACH Certificate.

corporation with written notice of any change in its status as a Related Person of another Person that owns voting share of stock of the corporation.<sup>18</sup>

Thus, to the extent that the execution of a put option would change any shareholder's status as a Related Person of another shareholder (e.g., execution of a put option would result in a new shareholder becoming a Related Person of an existing shareholder), CHX Rules will require that affected shareholders notify the corporation of the change, which will permit the Commission and the Exchange to ensure that any change in ownership is consistent with CHX Rules and the Act, including the ownership and voting limitations.<sup>19</sup>

When these provisions are considered with the fact that the Commission has required Rule 19b-4 filings for any proposed change of control of a national securities exchange and has broad authority to compel compliance or mitigate non-compliance with CHX Rules, including suspending, censuring or deregistering the Exchange pursuant to Section 19(h)(1) of the Act, the Commission will be able to effectively monitor and review any changes to CHX ownership.

Accordingly, the Exchange believes that the Put Agreements are appropriate and consistent with Commission precedence and the Act.

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As a final matter, the Exchange notes that certain commenters have speculated as to the details of the NACH shares that will be attributed to CHX management.<sup>20</sup> In response, the Exchange would like to clarify that of the 8.32% of NACH shares that will be attributed to CHX management, as described under Amendment No. 2, more than half of the shares will be purchased on terms similar to other prospective investors, and the remaining shares are being granted by NACH as restricted stock subject to a customary vesting period. All details and agreements regarding CHX management shares, including financial wherewithal and source of funds documentation, have been fully disclosed to the Commission and FINRA.

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<sup>18</sup> See Amendment No. 1, supra note 3, at Exhibit 5A, paragraph (g)(ii) of Article FOURTH of the proposed CHX Holdings Certificate, and Exhibit 5F, Section 19(ii) of Article IX of the proposed NACH Certificate.

<sup>19</sup> See Approval Order, supra note 3, at 38744-38745.

<sup>20</sup> See e.g., Gresack Letter, supra note 5, at 2.

Mr. Eduardo A. Aleman  
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In light of the foregoing, the Exchange respectfully requests that the Commission approve Amendment No. 2 and affirm the Approval Order.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Ongena".

James G. Ongena

cc:

The Honorable Walter J. Clayton  
Chairman  
Commission  
Washington, D.C.

The Honorable Michael S. Piwowar  
Commissioner  
Commission  
Washington, D.C.

The Honorable Kara M. Stein  
Commissioner  
Commission  
Washington, D.C.