

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79474; File No. SR-CHX-2016-20)

December 6, 2016

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.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 2, 2016, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change in connection with a Transaction (“Transaction”) whereby Exchange Acquisition Corporation (“Merger Sub”), a corporation organized under the laws of the State of Delaware and wholly-owned subsidiary of North America Casin Holdings, Inc. (“NA Casin Holdings”), a corporation organized under the laws of the State of Delaware,³ would merge with and into CHX Holdings, Inc. (“CHX Holdings”), a corporation organized under the laws of the State of Delaware,⁴ with CHX Holdings continuing as the surviving corporation. Pursuant to the Transaction, the Exchange will remain a wholly-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NA Casin Holdings was incorporated in the State of Delaware on January 4, 2016.

⁴ CHX Holdings was incorporated in the State of Delaware on January 26, 2005.

owned subsidiary of CHX Holdings and CHX Holdings will become a wholly-owned subsidiary of NA Casin Holdings.

The text of the proposed Third Amended and Restated Certificate of Incorporation of CHX Holdings (“CHX Holdings Certificate”) is attached as Exhibit 5A.⁵ The text of the proposed amended Bylaws of CHX Holdings (“CHX Holdings Bylaws”)⁶ is attached as Exhibit 5B.⁷ The text of the proposed Amended and Restated Certificate of Incorporation for CHX (“CHX Certificate”) is attached as Exhibit 5C.⁸ The text of the proposed amended Bylaws of the CHX (“CHX Bylaws”) is attached as Exhibit 5D.⁹ The text of the proposed amendments to the Rules of the CHX (“CHX Rules”) is attached as Exhibit 5E. The text of the proposed Amended and Restated Certificate of Incorporation of NA Casin Holdings (“NA Casin Holdings

⁵ The original CHX Holdings Certificate was filed with the Delaware Secretary of State on January 26, 2005 and was last amended on July 26, 2006 to modify the ownership limitations applicable to Participants and other persons or entities and increased the number of shares of common stock that CHX Holdings is authorized to issue. See Securities Exchange Act Release No. 54213 (June 26, 2006), 71 FR 43547 (August 1, 2006) (order approving SR-CHX-2006-22); see also CHX Article 1, Rule 1(s) defining “Participant.”

⁶ Reference to a “current” governing document (e.g., “current CHX Holdings Bylaws”) is to the version of the governing document that is currently operative, whereas reference to a “proposed” governing document (e.g., “proposed CHX Holdings Bylaws”) is to the version of the governing document that would be in effect pursuant to this proposed rule change.

⁷ The CHX Holdings Bylaws were last amended on November 23, 2009 to eliminate an age restriction for CHX Holdings Directors. See Securities Exchange Act Release No. 61053 (November 23, 2009), 74 FR 62861 (December 1, 2009).

⁸ The original Certificate of Incorporation for CHX was filed with the Delaware Secretary of State on March 15, 1972 and was last amended on February 9, 2005 in connection with the demutualization of the CHX. See Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005).

⁹ The CHX Bylaws were last amended on April 16, 2014 to modify the process by which the CHX Vice Chairman is nominated and elected. See Securities Exchange Act Release No. 71954 (April 16, 2014), 79 FR 22557 (April 22, 2014).

Certificate”) is attached as Exhibit 5F. The text of the proposed Amended and Restated Bylaws of NA Casin Holdings (“NA Casin Bylaws”) is attached as Exhibit 5G. The text of a resolution of the Board of Directors of CHX Holdings dated November 22, 2016 to waive certain ownership and voting limitations to permit the Transaction (“Resolutions”) is attached as Exhibit 5H. The text of the Stockholders’ Agreement of NA Casin Holdings (“NACH Stockholders’ Agreement”) is herein attached as Exhibit 5I. The text of the Amended and Restated Put Agreement by and among North America Casin Group, Inc. (“NA Casin Group”), NA Casin Holdings, and Saliba Ventures Holdings, LLC (“Saliba”) (“Saliba Put Agreement”) is herein attached as Exhibit 5J. The text of the Amended and Restated Put Agreement by and among NA Casin Group, NA Casin Holdings, and Raptor HoldCo LLC (“Raptor”) (“Raptor Put Agreement”) is herein attached as Exhibit 5K.

The text of this proposed rule change is available on the Exchange’s website at <http://www.chx.com/regulatory-operations/rule-filings/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule filing is to adopt and amend rules and other relevant corporate governing documents in order to permit the Exchange and CHX Holdings to effect the Transaction.

Current Ownership Structure

Since February 8, 2005, CHX has been a wholly-owned subsidiary of CHX Holdings.¹⁰ CHX Holdings is the record and beneficial owner of 1,000 shares of CHX, par value \$.01 per share, which represents all of the issued and outstanding shares of capital stock of CHX. CHX Holdings is also the sole member of CHXBD, LLC (“CHXBD”), the Exchange’s affiliated routing broker.

CHX Holdings is beneficially owned by 193 firms or individuals, including Participants¹¹ or affiliates of Participants, many of whom were former seat holders on the Exchange prior to its demutualization in 2005.¹² Moreover, four firms hold Series A Preferred Stock and seven individuals hold Series B Preferred Stock. No firm, individual, or group of affiliated firms or individuals beneficially own 10 percent or more of CHX Holdings on an as-converted basis.

¹⁰ CHX became a wholly-owned subsidiary of CHX Holdings pursuant to the Exchange’s demutualization as approved by the Commission in February 2005. See Securities Exchange Act Release No. 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (order approving SR-CHX-2004-26 and Amendment No. 1 and accelerated approval of Amendment No. 3).

¹¹ A “Participant” is a “member” of the Exchange for purposes of the Act. See CHX Article 1, Rule 1(s).

¹² See supra note 10.

Proposed Ownership Structure

Pursuant to the terms of a Merger Agreement dated February 4, 2016 (“Merger Agreement”) by and among NA Casin Holdings, Merger Sub, Chongqing Casin Enterprise Group Co., LTD. (“Chongqing Casin”), a limited company organized under the laws of the People’s Republic of China (“PRC”), Richard G. Pane solely in his capacity as the Stockholders Representative thereunder, and CHX Holdings, Merger Sub will merge into CHX Holdings,¹³ which will then become a wholly-owned direct subsidiary of NA Casin Holdings. Current CHX Holdings stockholders will receive the right to receive cash in exchange for their shares. Consummation of the Transaction (“Closing”) is subject to satisfaction of customary conditions for a transaction of this nature, including approval of this proposed rule change by the Commission.¹⁴

¹³ Under the terms of the Merger Agreement, the CHX Holdings Certificate and Bylaws in effect immediately prior to the effective time of the Transaction, which shall be prior to the Closing, shall be the Certificate and Bylaws of the surviving corporation, as amended by this proposed rule change.

¹⁴ Conditions precedent to Closing are formal requirements set forth in the Merger Agreement that must be satisfied or waived on or prior to the Closing date. These conditions include any (i) filing and consents under the Securities Act of 1933, the Exchange Act and the rules and regulations promulgated thereunder, and any other filings required to be made with and consents required be obtained from the SEC, confirming the approval of the SEC of the Transaction, (ii) filings required to be made with and consents required be obtained from any self-regulatory organizations, (iii) filings and consents necessary to comply with foreign and state securities and “blue sky” laws, (iv) receipt of Committee on Foreign Investment in the United States (“CFIUS”) Approval, and (v) receipt of the PRC consent, the absence of any of which would prohibit the consummation of the Transaction.

Upon the Closing, all of the outstanding and issued shares of NA Casin Holdings will be held by the following firms and individuals (“Indirect Upstream Owners” and with NA Casin Holdings “Upstream Owners”) in the following percentages:¹⁵

- Non-U.S. Indirect Upstream 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. Indirect Upstream 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, a limited liability company organized under the laws of the State of Delaware – 11.75%
 - 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%

¹⁵ Pursuant to Rule 6a-2 under the Act, the Exchange will, within 10 days after the Closing, amend its Form 1 (APPLICATION FOR, AND AMENDMENTS TO APPLICATION FOR REGISTRATION AS A NATIONAL SECURITIES EXCHANGE OR EXEMPTION FROM REGISTRATION PURSUANT TO SECTION 5 OF THE EXCHANGE ACT) filed with the Commission. Exhibit K of Form 1, which is applicable only to “ ... exchanges that have one or more owners, shareholders, or partners that are not also members of the exchange ”, requires the Exchange to provide a list of each shareholder that directly owns 5% or more of a class of a voting security of the Exchange. As noted above, the Exchange proposes that 100% of the issued and outstanding shares of CHX will be directly owned by CHX Holdings.

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

The Exchange submits the following regarding the Indirect Upstream Owners:¹⁶

- The only Related Persons¹⁷ among the Indirect Upstream Owners are Castle YAC and NA Casin Group.¹⁸
- There are no other Related Persons among the Indirect Upstream Owners.
- None of the Indirect Upstream 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.

As Related Persons, NA Casin Group and Castle YAC would own a combined 39% voting interest in NA Casin Holdings and, by extension, CHX Holdings, which is within the

¹⁶ An opinion of counsel in support of each these assertions has been provided to the Commission by outside counsel for the Exchange.

¹⁷ As used herein, “Related Persons” shall mean: (1) with respect to any Person, any executive officer (as such term is defined in Rule 3b-7 under the Securities Exchange Act of 1934 (“Exchange Act”)) director, general partner, manager or managing member, as applicable, and all “affiliates” and “associates” of such Person (as those terms are defined in Rule 12b-2 under the Exchange Act), and other Person(s) whose beneficial ownership of shares of stock of the Corporation with the power to vote on any matter would be aggregated with such first Person’s beneficial ownership of such stock or deemed to be beneficially owned by such first Person pursuant to Rules 13d-3 and 13d-5 under the Exchange Act; and (2) in the case of any Person constituting a member (as that term is defined in Section 3(a)(3)(A) of the Exchange Act) of CHX (defined in the Rules of the Chicago Stock Exchange, Inc. (“CHX Rules”), as such rules may be amended from time to time, as a “Participant”) for so long as CHX remains a registered national securities exchange, such Person and any broker or dealer with which such Person is associated; and (3) any other Person(s) with which such Person has any agreement, an arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation; and (4) in the case of a Person that is a natural person, any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person or who is a director or officer of the Corporation or any of its parents or subsidiaries. See Section (b) of Article FOURTH of the proposed CHX Holdings Certificate; see also Section (4) of Article IX of the proposed NA Casin Holdings Certificate

¹⁸ Mr. Jay Lu, the sole member of Castle YAC, is associated with an affiliate of Chongqing Casin and is also the son of Mr. Shengju Lu, the Chairman of Chongqing Casin.

proposed 40% Concentration Limitation of NA Casin Holdings and CHX Holdings, as described below.¹⁹ However, NA Casin Group and Castle YAC will not be permitted to exercise their collective voting interest in excess of the proposed 20% Voting Limitations of NA Casin Holdings and CHX Holdings, as described below.²⁰

The Exchange submits that execution of the proposed NACH Stockholders' Agreement would not result in the parties to the agreement becoming Related Persons for the purposes of compliance with the proposed Ownership and Voting Limitations of NA Casin Holdings and CHX Holdings ("Ownership and Voting Limitations"). Generally, the proposed NACH Stockholders' Agreement includes provisions governing the relationship between the Indirect Upstream Owners, which are intended to protect the ownership interests of the respective individual Indirect Upstream Owners. While the proposed NACH Stockholders' Agreement includes various transfer of shares provisions,²¹ the agreement does not contain any provisions,

¹⁹ See Section (9) of Article IX of the proposed NA Casin Holdings Certificate; see also Article FOURTH, paragraph (c)(i) of the proposed CHX Holdings Certificate. As described in detail below, the Exchange proposes to adopt similar Ownership and Voting Limitations for NA Casin Holdings and CHX Holdings.

²⁰ See Section (5) of Article IX of the proposed NA Casin Holdings Certificate; see also Article FOURTH, paragraph (b)(i) of the proposed CHX Holdings Certificate.

²¹ See Sections 4.02 (Right of First Offer), 4.03 (Rights to Acquire Interest Upon Change of Control), Section 6.02 (Right to Purchase New Securities) of the proposed NACH Stockholders' Agreement.

such as lock-up, drag-along or tag-along rights, which could result in the Indirect Upstream Owners becoming Related Persons.^{22 23} Accordingly, the Exchange believes that the NACH Stockholders' Agreement would not result in the parties to the agreement becoming Related Persons for the purposes of compliance with the proposed Ownership and Voting Limitations.

The Exchange further notes that execution of the Saliba Put Agreement or the Raptor Put Agreement would not result in any Indirect Upstream Owners becoming Related Persons for the purposes of compliance with the proposed Ownership and Voting Limitations. Specifically, the Saliba Put Agreement grants Saliba a put option ("Saliba Put Option") that, if exercised by Saliba, would compel NA Casin Holdings (and not another Indirect Upstream Owner) to purchase, or arrange for an unspecified third-party to purchase, a specified amount of Saliba's equity interest in NA Casin Holdings. Similarly, the Raptor Put Agreement grants Raptor a put option ("Raptor Put Option") that, if exercised by Raptor, would compel NA Casin Holdings (and not another Indirect Upstream Owner) to purchase, or arrange for an unspecified third-party to purchase, a specified amount of Raptor's equity interest in NA Casin Holdings. Accordingly, the Exchange submits that execution of the Saliba Put Agreement or the Raptor Put Agreement would not result in the parties to the agreement becoming Related Persons for the purposes of

²² Specifically, the Right of First Offer, Rights to Acquire Interest Upon Change of Control and the Right to Purchase New Securities contained in the NACH Stockholders' Agreement would not render it an "agreement, an arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation." See Section (4)(iii) of Article IX of the proposed NA Casin Holdings Certificate.

²³ See supra note 17.

compliance with the proposed Ownership and Voting Limitations.²⁴ The Exchange also notes that the exercise of the put options under either the Saliba Put Agreement or the Raptor Put Agreement would be subject to, among other things, compliance with the proposed Ownership and Voting Limitations.²⁵

Following the Closing, CHX will remain a Delaware for-profit stock corporation, with authority to issue 1,000 shares of common stock, all of which will remain owned by CHX Holdings.²⁶ Moreover, CHX Holdings shall have the authority to issue 1,000 shares of common stock, all of which will be owned by NA Casin Holdings.²⁷ CHX will also remain registered as a national securities exchange under Section 6 of the Act²⁸ and a self-regulatory organization (“SRO”) as defined in Section 3(a)(26) of the Act.²⁹ CHX Rules will remain in full force and effect as of the date of the instant rule filing, will continue to govern the activities of CHX up to and after the Closing and CHX will continue to discharge its SRO responsibilities pursuant to CHX’s registration under Section 6 of the Act. Assuming that the Closing occurs, CHX Holdings represents that it will at all times ensure that the Exchange has access to financial resources sufficient for it to discharge its SRO responsibilities after the date of Closing.

²⁴ Specifically, the put agreements do not constitute an “agreement, an arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the stock of the Corporation.” See Section (4)(iii) of Article IX of the proposed NA Casin Holdings Certificate.

²⁵ See Section 3(c) of the Saliba Put Agreement; see also Section 3(c) of the Raptor Put Agreement.

²⁶ See Article FOURTH of the proposed CHX Certificate.

²⁷ See Article FOURTH of the proposed CHX Holdings Certificate.

²⁸ 15 U.S.C. 78f.

²⁹ 15 U.S.C. 78c(a)(26).

Following the Closing, CHXBD will remain a Delaware limited liability corporation of which CHX Holdings will remain the sole member. Pursuant to Article 19, Rule 2 of CHX Rules, CHXBD provides the outbound routing of orders from the Exchange to other trading centers. CHXBD operates a facility (as defined in Section 3(a)(2) of the Exchange Act)³⁰ of the Exchange. The Financial Industry Regulatory Authority (“FINRA”), an SRO unaffiliated with the Exchange or any of its affiliates, carries out oversight and enforcement responsibilities as the designated examining authority designated by the Commission pursuant to Section 17d-1 of the Act³¹ with the responsibility for examining CHXBD for compliance with the applicable financial responsibility rules. As provided in Article 19, Rule 2(a)(3), a Participant’s use of CHXBD to route orders to another trading center is optional; any Participant that does not wish to use CHXBD may use other routers to route orders to other trading centers. Further, as provided in Article 19, Rule 2(a)(6) of CHX Rules, the books, records, premises, officers, agents, directors and employees of CHXBD as a facility of the Exchange are deemed to be those of the Exchange for purposes of, and oversight pursuant to, the Act, and the books and records of CHXBD as a facility of the Exchange are at all times subject to inspection and copying by the Exchange and by the Commission.

The Exchange states that all of the provisions of Article 19, Rule 2 of CHX Rules governing the operation of CHXBD will remain in full force and effect at all times prior to and after the Closing. The Exchange, on behalf of CHXBD, will provide notice to, and obtain any required consents from, FINRA, for the Transaction.

³⁰ 15 U.S.C. 78c(a)(2).

³¹ 15 U.S.C. 78q(d)(1).

Proposed CHX Certificate and Bylaws Generally

The Exchange proposes to retain most of the current provisions of the CHX Certificate and Bylaws, except that the Exchange proposes to amend certain requirements regarding CHX's board and committee composition and procedures to be largely similar to the board and committee composition requirements and procedures of the National Stock Exchange, Inc. ("NSX").³²

Initially, the Exchange proposes the following non-substantive amendments to the CHX Certificate:

- Amend the title to CHX Certificate to reflect "Amended and Restated Certificate of Incorporation of the Chicago Stock Exchange, Inc."
- Add an attestation clause and signature block to the end of the proposed CHX Certificate.

The Exchange also proposes the following non-substantive amendments to the CHX

Bylaws:

- Move Articles I through XI of the current CHX Bylaws to Article II through XII of the proposed CHX Bylaws, in light of the adoption of the definitions under Article I of the proposed CHX Bylaws, as discussed below, and amend all citations to reflect the new Article.
- Amend references to each section under an Article to reflect the Article to which it is associated (e.g., current Article I, "Sec. 1" is proposed "Section 1.1").

³² See Articles III and V of the NSX By-Laws. NSX is a registered national securities exchange. In 2015, the Commission approved a transaction involving NSX. See Exchange Act Release No. 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (Approval Order for SR-NSX-2014-017); see also Exchange Act Release No. 73944 (December 24, 2014), 80 FR 85 (January 2, 2015) (SR-NSX-2014-017).

CHX Board Composition Requirements and Procedures

As discussed in detail below, the proposed CHX board and committee composition and procedure requirements are similar to the board and committee composition and procedure requirements of NSX,³³ except that the proposed CHX requirements:

- include a new board composition requirement that at least 20% of the CHX Board be comprised of CHX Holdings Directors, which is not an NSX requirement;³⁴
- require a minimum of ten CHX Board directors, as opposed to a minimum of seven NSX board directors;
- maintain the current position of Vice Chairman and associated responsibilities, which is not an NSX requirement; and
- maintain current procedures for selecting members of CHX Board committees, current composition requirements for CHX Board committees (e.g., different composition requirements for the respective Executive Committees³⁵) and does not require the establishment of an Appeals Committee or a Business Conduct Committee, all of which differ from the analogous NSX requirements.

Initially, the Exchange proposes to adopt Article I of the proposed CHX Bylaws to provide definitions for certain terms used throughout the proposed CHX Bylaws, which are largely similar to the terms and definitions under Article I of the Third Amended and Restated By-Laws of NSX (“NSX By-Laws”).³⁶

Article II and Article IV of the current CHX Bylaws and Article FIFTH of the current CHX Certificate provide, among other things, CHX Board composition and procedure requirements, the key provisions of which include the following:

³³ See id.

³⁴ Section 1.1(s) of the proposed CHX Bylaws defines “CHX Holdings Director” as “a member of the Board who is a director of CHX Holdings, Inc.”

³⁵ See Section 5.5 of the proposed CHX Bylaws; see also Section 5.5 of Article V of the NSX By-Laws.

³⁶ See supra note 32.

- The CHX Board shall consist of not fewer than ten (10) and not more than sixteen (16) directors (“CHX Directors”) divided into three classes, with the term of office of one class expiring each year.³⁷
- The CHX Board shall consist of the following:³⁸
 - The Chief Executive Officer (“CEO”) of the CHX;
 - Public Directors,³⁹ who shall equal one-half the number of directors comprising the entire CHX Board (rounded up to the next whole number); and
 - Participant Directors.⁴⁰
- The Chairman of the CHX Board shall be either the CEO of CHX or a Public Director and if the CEO of CHX is the Chairman of the CHX Board, the CEO may not hold any other office at CHX.⁴¹
- The Nominating and Governance Committee shall nominate directors for each director position standing for election, provided that candidates for STP Director positions may also be nominated by Participants.⁴²
- CHX Directors are elected to full three-year terms at the annual meeting of stockholders at which a quorum is present by a plurality of the votes cast.⁴³

³⁷ See Section 2(a) of Article II of the current CHX Bylaws.

³⁸ See Section 2(b) of Article II of the current CHX Bylaws.

³⁹ Article II, Section 2(b) of the current CHX Bylaws defines “Public Director” as a director who (i) is not a Participant, or an officer, managing member, partner or employee of an entity that is a Participant, (ii) is not an employee of the Corporation or any of its affiliates, (iii) is not broker or dealer or an officer or employee of a broker or dealer, or (iv) does not have any other material business relationship with (x) CHX Holdings, Inc., the Corporation or any of their affiliates or (y) any broker or dealer.

⁴⁰ Article II, Section 2(b) of the current CHX Bylaws defines “Participant Director” as “a director who is a Participant or an officer, managing member or partner of an entity that is a Participant” and the term “Participant” means “any individual, corporation, partnership or other entity that holds a permit issued by the Corporation to trade securities on the market operated by the Corporation.” See supra note 11.

⁴¹ See Section 4(a) of Article II of the current CHX Bylaws.

⁴² See Section 3(b) and (e) of Article II of the current CHX Bylaws.

⁴³ See Section 2(c) of Article II of the current CHX Bylaws; see also Section 9 of Article III of the current CHX Bylaws.

- Vacancies are generally filled only with a person nominated by the Chairman and Vice Chairman and elected by a majority of the directors then in office, though less than a quorum or by a sole remaining director, provided that the CHX Board composition requirements are met.⁴⁴ A director chosen to fill a vacancy shall hold office until end of the the next annual meeting of stockholders.⁴⁵
- Members of the CHX Board (“CHX Directors”) may only be removed for cause.⁴⁶

The Exchange now proposes various amendments to the CHX Board composition requirements, which include the following key amendments:⁴⁷

- The CHX Board shall consist of not fewer than ten (10) and not more than twenty-five (25) CHX Directors and shall not be divided into classes. NSX requires at least seven directors.⁴⁸ The Exchange is proposing to maintain the current minimum requirement of 10 CHX Directors as that is the minimum number of directors that would permit the Exchange to meet the proposed CHX Board composition requirements, as described immediately below.
- The CHX Board shall be comprised of:⁴⁹
 - the CEO of the CHX;

⁴⁴ See Section 6 of Article II of the current CHX Bylaws.

⁴⁵ See id.

⁴⁶ See Section (f) of Article FIFTH of the current CHX Certificate.

⁴⁷ The Exchanges notes that the following provisions under the current CHX Certificate are being deleted as they are being superseded by new provisions under the proposed CHX Bylaws: Sections (b) and (c) of Article FIFTH of the current CHX Certificate is replaced by Section 3.2 of the proposed CHX Bylaws; Section (d) of Article FIFTH of the current CHX Certificate is replaced by Section 3.3 of the proposed CHX Bylaws; Section (f) of Article FIFTH of the current CHX Certificate is replaced by Section 3.8 of the proposed CHX Bylaws; and Section (g) of Article FIFTH of the current CHX Certificate is replaced by Section 3.7 of the proposed CHX Bylaws.

⁴⁸ See Section 3.2(a) of the proposed CHX Bylaws; see also Section 3.2 of Article III of the NSX By-Laws.

⁴⁹ See Section 3.2(b) of the proposed CHX Bylaws.

- at least 50% Non-Industry Directors⁵⁰ (at least one of whom shall be an Independent Director⁵¹);
- at least 20% Participant Directors;⁵² and
- at least 20% CHX Holdings Directors.⁵³

⁵⁰ Section 1.1(n) of the proposed CHX Bylaws defines “Non-Industry Director” as “a member of the Board who is (1) an Independent Director; or (2) any other individual who would not be an Industry Director.” In turn, Section 1.1(m) of the proposed CHX Bylaws defines “Industry Director” as “a member of the Board who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be: engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the member of the Board or 20 percent or more of the gross revenues received by the member of the Board's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the member of the Board or member or 20 percent or more of the gross revenues received by the member of the Board's or member's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years. The proposed definition is virtually identical to the definition of “Industry Director” under the NSX By-Laws. See Section 1.1 of the NSX By-Laws.

⁵¹ Section 1.1(l) of the proposed CHX Bylaws defines “Independent Director” as “a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange or any Participant or any affiliate of any such Participant other than as a member of the Board.”

⁵² Section 1.1(g) of the proposed CHX Bylaws defines “Participant Director” as “a director who is a Participant or a director, officer, managing member or partner of an entity that is or is an affiliate of, a Participant.”

⁵³ The Exchange believes that requiring at least 20% of the CHX board be comprised of CHX Holdings Directors will promote governance efficiencies between CHX Holdings and CHX that will operate to enhance the governance and operation of the Exchange as an SRO. The Exchange notes that the bylaws of NYSE Market (DE), Inc., a parent of NYSE MKT, LLC, a national securities exchange, requires a majority of its board be comprised of board members of an indirect parent; provided that such members meet

- The Chairman of the CHX Board may be the CEO and/or President of CHX or a Non-Industry Director.⁵⁴
- The CHX Director term shall be one year, except that the term of the CEO of CHX shall expire when such individual ceases to be the CEO of the CHX.⁵⁵ The Exchange believes that this change will facilitate compliance with the proposed board composition requirements, which is more specific than the current requirements.
- Eliminate the “STP Participant Director” positions and corresponding nominating and selection process and replace with a simplified Participant Director nominating process, whereby the Participant Director Nominating Committee⁵⁶ shall recommend individual(s) to the Board from which the stockholders will elect the required number of Participant Directors at the annual meeting of stockholders.
- Adopt a CHX Holdings Director nomination and selection process that is virtually identical to the proposed Participant Director nominating and selection process, except that candidates for the CHX Holdings Director positions shall be selected by the CHX Holdings Board.⁵⁷
- CHX Directors may be removed from office by a vote of the stockholders at any time with or without cause; provided, however, that any Participant Director or CHX Holdings Director may only be removed for cause.⁵⁸ The Exchange believes that this change will provide stockholders with recourse in the event the best interest of the Exchange requires the removal of a director who could not be removed for cause.

certain independence and domicile requirements. See Article III, Section 1(A) of the Fourth Amended and Restated Bylaws of the NYSE Market (DE), Inc. The Exchange further notes that the NSX does not have a similar requirement.

⁵⁴ See Section 3.4 of the proposed CHX Bylaws; see also Section 3.6 of the NSX By-Laws.

⁵⁵ See Section 3.3 of the proposed CHX Bylaws; see also Section 3.4 of the NSX By-Laws.

⁵⁶ See Section 5.11 of the proposed CHX Bylaws.

⁵⁷ See Sections 3.6 and 5.2 of the proposed CHX Bylaws; see also Sections 3.5 and 5.2 of the NSX By-Laws.

⁵⁸ Section 3.7 of the proposed CHX Bylaws provides that for “the purposes of Section 3.7 only, ‘cause’ shall mean shall mean only (a) a breach of a director’s duty of loyalty to the Corporation or its stockholders, (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (d) transactions from which a director derived an improper personal benefit. Any director may be removed for cause by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.

- Adopt Chairman of the CHX Board,⁵⁹ CHX Board Vacancy⁶⁰ and CHX Board Quorum and Action⁶¹ provisions that are similar to the analogous provisions under the NSX By-Laws, except that the proposed CHX Board Vacancy provisions contemplate procedures for filing vacancies for CHX Holdings Directors that are not found under the NSX By-Laws.

Incidentally, the Exchange proposes to delete Sections (b) through (d), (f) and (g) of Article FIFTH of the current CHX Certificate, as the provisions are obviated by the proposed amendments reflected in the proposed CHX Bylaws.⁶² The Exchange proposes to maintain Section (e) of Article FIFTH of the current CHX Certificate, but to move the provision to Section (b) of Article FIFTH of the proposed CHX Certificate.⁶³

The Exchange also proposes to amend Article IV of the current CHX Bylaws regarding CHX Committees. The current key requirements for CHX Committees are as follows:

- The CHX Bylaws currently require the following CHX Committees: Executive Committee; Nominating and Governance Committee; Audit Committee; Compensation Committee; Regulatory Oversight Committee; Finance Committee; Judiciary Committee; and other CHX Committees as may be provided in the bylaws or CHX Rules or as may be from time to time established by the CHX Board.⁶⁴
- Members of the CHX Committees are selected (1) by the Chairman and/or Vice Chairman of the CHX Board with approval of the CHX Board; (2) by the Vice Chairman of the CHX Board with approval of the Public Directors of the CHX Board – for the Regulatory Oversight Committee; (3) by the CEO of CHX alone – for the Judiciary Committee; or (4) by the CHX Board alone – for the Nominating and Governance Committees, subject to composition requirements, as described under current Article 2 of

⁵⁹ See Section 3.4 of the proposed CHX Bylaws; see also Section 3.6 of the NSX By-Laws.

⁶⁰ See Section 3.7 of the proposed CHX Bylaws; see also Section 3.7 of the NSX By-Laws.

⁶¹ See Section 3.13 of the proposed CHX Bylaws; see also Section 3.12 of the NSX By-Laws.

⁶² See supra note 47.

⁶³ The CHX Director election requirements may also be found under Section 4.9 of the proposed CHX Bylaws.

⁶⁴ See Section 1 of Article IV of the current CHX Bylaws.

the CHX Rules.⁶⁵ In contrast, all committees of the NSX Board are selected by the Chairman with approval of the NSX Board.⁶⁶

The Exchange proposes to maintain the current requirements for the CHX Committees with the following amendments:

- Move Article 2, Rules 2-4, 8-9, and 11-12 of the current CHX Rules⁶⁷ and restate them under Article V of the proposed CHX Bylaws as Sections 5.5 through 5.10 and 5.12 of the proposed CHX Bylaws with amendments (1) to contemplate the proposed CHX board composition requirements of Article III of the proposed CHX Bylaws and (2) to require that the Regulatory Oversight Committee consist of at least five members, all of whom must be Non-Industry Directors, the later requirement being similar to a requirement of NSX that “[t]he Regulatory Oversight Committee shall at all times be comprised entirely of Non-Industry Directors.”^{68 69} Thus, Article 2 of the proposed CHX Rules will only include rules describing the current CHX Committees that are comprised solely of Participants.⁷⁰
- Adopt Section 3.6 of the proposed CHX Bylaws, which provide CHX Director nomination and election provisions similar to analogous provisions under the NSX By-

⁶⁵ See Section 2 of Article IV of the current CHX Bylaws.

⁶⁶ See Section 5.2 of the NSX By-Laws.

⁶⁷ The Exchange proposes to eliminate Article 2, Rule 6 of the current CHX Rules as it is currently reserved.

⁶⁸ Section 5.6 of the NSX By-Laws.

⁶⁹ While all members of the current Regulatory Oversight Committee are Public Directors, Article 2, Rule 4 (Regulatory Oversight Committee) of the current CHX Rules only requires that a minimum of five members be Public Directors. See *supra* note 39. The Exchange believes that explicitly requiring all members of the Regulatory Oversight Committee to be Non-Industry Directors will serve to better avoid conflicts of interest between members of the Regulatory Oversight Committee and Participants.

⁷⁰ The Exchange propose the following amendments to Article 2 of the current CHX Rules: amend title from “Committees” to “Participant Committees;” delete current CHX Article 2, Rule 1 as the rule is redundant of, and obviated by, provisions in the proposed CHX Bylaws; proposed CHX Article 2, Rule 1 (current CHX Article 2, Rule 5) describes the Committee on Exchange Procedure, and the Exchange proposes non-substantive amendments the current CHX Article 2, Rule 5 to replace references to “Exchange Procedure Committee” with the more accurate and consistent “Committee on Exchange Procedure;” and proposed CHX Article 2, Rule 2 (current CHX Article 2, Rule 7) describes the Judiciary Committee; proposed CHX Article 2, Rule 3 (current CHX Article 2, Rule 10) describes the Participant Advisory Committee.

Laws.⁷¹ Generally, paragraph (a) and (b) thereunder provides that the Nominating and Governance Committee each year shall nominate directors for each director position standing for election at the annual meeting of stockholders that year. In addition, with respect to the nomination and election of CHX Holdings and Participant Directors:

- Paragraph (b) thereunder provides that the Nominating and Governance Committee will only nominate persons (1) for Participant Director positions who have been approved and submitted by the Participant Director Nominating Committee and (2) for CHX Holdings Director positions who have been approved and submitted by the CHX Holdings Board.
 - Paragraph (c) thereunder provides that the Participant Director Nominating Committee shall consult with the Nominating and Governance Committee, the Chairman of the CHX Board and the CEO of CHX, as well as solicit comments from Participants, for the purpose of identifying Participant Director nominees. The list of Participant Director nominees (“initial nominees”) shall be submitted to the Nominating and Governance Committee no later than 75 days prior to the date announced for the annual meeting of stockholders.
 - Paragraph (d) thereunder provides that the Nominating and Governance Committee shall provide the Secretary of CHX the initial nominees no later than 60 days prior to the date announced for the annual meeting of stockholders. The Participants may also identify other candidates (“additional candidates”), subject to specific conditions and requirements.
 - Paragraph (e) thereunder provides that if additional candidates are identified and validly presented to the Secretary of CHX, the Secretary of CHX shall notify all Participants of the list of initial nominees and additional candidates, as well as the date and time of the Participant Director election, no later than 20 days prior the date announced for the annual meeting of stockholders. Paragraph (e) further provides specific Participant voting requirements, procedures and limitations.
 - Paragraph (f) thereunder provides that if no additional candidates are received by the date that is 35 days prior to the date announced for the annual meeting of stockholders, the initial nominees shall be deemed to be the persons approved by the Participants as Participant Director nominees and the Secretary of CHX shall so notify the Nominating and Governance Committee.
- Adopt Section 5.11 of the proposed CHX Bylaws describing the Participant Director Nominating Committee, which is virtually identical Section 5.7 of the NSX By-Laws.⁷²

⁷¹ See Section 3.5 of the NSX By-Laws.

⁷² See supra note 32.

The Exchange also proposes to amend current Section 2 of Article II (Special Meetings) of the current CHX Bylaws (i.e., Section 4.2 of the proposed CHX Bylaws) (1) to clarify that a special meeting of the stockholders may be called “at any time” by the CEO or the CHX Board and (2) to permit a special meeting of the stockholders to be called “upon written notice to the Corporation by the stockholders holding one-third of the votes entitled to be cast” (“CHX stockholder-called special meeting provision”).^{73 74} Given that there will be 13 Indirect Upstream Owners of the Exchange, the Exchange submits that the CHX stockholder-called special meeting provision would facilitate the calling of special meetings of the stockholders, which would promote stockholder communication and transparency. The Exchange notes that while the proposed stockholder-called special meeting provision may result in a special meeting being called by as few as three Indirect Upstream Owners, any action by the stockholders during a special meeting would be subject to the general quorum and voting requirements of Section 4.9 of the proposed CHX Bylaws, which requires, among other things, that the majority of the total votes which all of the outstanding stock of the Corporation would be entitled to cast at the meeting to be present, in person or by proxy, to constitute a quorum.

Proposed CHX Holdings Certificate and Bylaws Generally

The Exchange proposes to retain most of the current provisions of the CHX Holdings Certificate and Bylaws, except that the Exchange proposes to amend certain requirements

⁷³ As described below, the Exchange is also proposing to adopt virtually identical amendments to Section 4.2 of the proposed CHX Holdings Bylaws.

⁷⁴ The Exchange also notes that the CHX stockholder-called special meeting provision is different from Section 2.2 of the proposed NA Casin Holdings Bylaws and Section 4.2 of the NSX By-Laws, both of which permit a special meeting of the stockholders to be called by a majority of the stockholders and Section 1.2 of the By-Laws of NSX Holdings, Inc. (“NSX Holdings By-Laws”), which do not permit stockholders to call a special meeting of the stockholders.

regarding (1) board composition and procedures; (2) Ownership and Voting Limitations to be similar to those of NSX Holdings;⁷⁵ and (3) special meetings to permit a special meeting of the stockholders to be called upon written notice to the Corporation by the stockholders holding one-third of the votes entitled to be cast.

Initially, the Exchange proposes the following non-substantive amendments to the CHX Holdings Certificate:

- Replace current Article FOURTH in its entirety with, among other provisions described in detail below, language that provides that the total number of shares of stock which CHX Holdings shall have authority to issue is 1,000 shares of common stock having a par value of \$0.01 per share and that NA Casin Holdings shall be the sole owner of this stock.
- Amend title to the CHX Holdings Certificate to state “Third Amended and Restated Certificate of Incorporation of the Chicago Stock Exchange, Inc.”
- Adopt caption paragraph above Article FIRST to reflect the amendment history of the CHX Holdings Certificate.
- Move Article SIXTH of the current CHX Holdings Certificate to Article FIFTH of the proposed CHX Holdings Certificate, due to the proposed deletion of Article FIFTH of the current CHX Holdings Certificate, as discussed below.
- Delete Article SEVENTH of the current CHX Holdings Certificate as it contains obsolete information regarding the incorporator.
- Move Articles EIGHTH through THIRTEENTH of the current CHX Holdings Certificate to Articles SIXTH through ELEVENTH of the proposed CHX Holdings Certificate, respectively, due to proposed deletions of Articles FIFTH and SEVENTH of the current CHX Holdings Certificate. Moreover, replace “United States Securities and Exchange Commission” with “Commission,” due to adoption of the shorthand reference of “Commission” for the “United States Securities and Exchange Commission” under paragraph (b)(ii) of Article FOURTH of the proposed CHX Holdings Certificate

⁷⁵ See Section (B) of Article FOURTH and Article SEVENTH of the Second Amended and Restated Certificate of Incorporation of NSX Holding (“NSX Holdings Certificate”); see also Article II of the NSX Holdings By-Laws; see also supra note 32. NSX Holdings is the direct parent of the NSX.

- Add attestation clause and signature block to the end of the proposed CHX Holdings Certificate.

The Exchange also proposes the following non-substantive amendments to the CHX

Holdings Bylaws:

- Amend reference to each section under an Article to reflect the Article to which it is associated (e.g., current “Article I, Sec. 1” would be proposed “Section 1.1”) and associated cross-references.
- Amend reference to the “Securities Exchange Act of 1934” under Section 3.1 of the proposed CHX Holdings Bylaws to note shorthand reference to the “Exchange Act” and corresponding amendments to Section 3.3 and Article VIII of the proposed CHX Holdings Bylaws to replace references to either “Securities Exchange Act of 1934” or the “Act” with the “Exchange Act.”
- Amend reference to the “Chicago Stock Exchange, Inc.” under Section 3.1 of the proposed CHX Holdings Bylaws to note shorthand reference to “CHX” and corresponding amendments under Sections 3.1, 3.2, 3.5, 3.6, 7.5, 9.3 and Article VIII of the proposed CHX Holdings Bylaws.
- Adopt shorthand reference of “Commission” for the “United States Securities and Exchange Commission” under Section 3.2 of the proposed CHX Holdings Bylaws and corresponding amendments under Section 3.5 and Article VIII of the proposed CHX Holdings Bylaws.

The Exchange further proposes to adopt Section (a) of Article FOURTH of the proposed CHX Holdings Certificate to authorize the CHX Holdings Board to create and issue options, warrants and other rights. The Exchange believes that the proposed provision would facilitate the ability of the CHX Holdings Board to raise additional capital for CHX Holdings, which would in turn permit CHX Holdings to further capitalize the Exchange so that the Exchange may continue to meet its regulatory obligations. The Exchange notes that the proposed provision is virtually identical to Section (A) of Article FOURTH of the NSX Holdings Certificate.

CHX Holdings Board Composition Requirements and Procedures

The Exchange proposes to substantively modify certain requirements related to CHX Holdings Board composition and procedures, which is similar to the board composition and

procedures requirement of NSX Holdings, as described below. Article SIXTH of the current CHX Holdings Certificate and Articles II, IV and V of the current CHX Holdings Bylaws provide, among other things, CHX Holdings Board composition and procedure requirements, the relevant provisions of which include the following:

- CHX Holdings Board shall consist of not less than 10 nor more than 16 directors, divided into three classes, where one CHX Holdings Director must be the CEO of CHX Holdings.⁷⁶
- The Nominating and Governance Committee, comprised of six or more CHX Holdings Directors, shall nominate directors for the class of directors standing for election each year. In the event a vacancy on the CHX Holdings Board occurs between annual meeting of the stockholders, the vacancy shall be filled only with a person nominated by the Chairman and Vice Chairman and elected by a majority of the CHX Holdings Directors then in office, though less than a quorum, except that those vacancies resulting from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs.⁷⁷
- CHX Holdings Directors are elected to full three-year terms at the annual meeting of stockholders at which a quorum is present by a plurality of the votes cast, with one class expiring each year.⁷⁸
- CHX Holdings directors may only be removed for “cause”⁷⁹ by the holders of a majority of the shares of capital stock then entitled to be voted at an election of directors.⁸⁰
- Vacancies created on the CHX Holdings Board may only be filled by a person nominated by the Chairman and Vice Chairman of CHX Holdings and elected by a majority of the directors then in office, though less than a quorum, except that those vacancies resulting

⁷⁶ See Section 2 of Article II of the current CHX Holdings Bylaws.

⁷⁷ See Sections 3 and 6 of Article II of the current CHX Holdings Bylaws.

⁷⁸ See Section 2(c) of Article II of the current CHX Holdings Bylaws; see also Section 9 of Article IV of the current CHX Holdings Bylaws.

⁷⁹ Article SIXTH, Section (f) of the current CHX Holdings Certificate defines “cause” only as “(i) a breach of a director's duty of loyalty to the Corporation or its stockholders, (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) actions resulting in liability under Section 174 of the General Corporation Law of Delaware, or (iv) transactions from which a director derived an improper personal benefit.”

⁸⁰ See Section (f) of Article SIXTH of the current CHX Holdings Certificate.

from removal from office by a vote of the stockholders for cause may be filled by a vote of the stockholders at the same meeting at which such removal occurs.⁸¹

- All committees of CHX Holdings are appointed by the Chairman and/or Vice Chairman, with the approval of the CHX Holdings Board, except that members of the Nominating and Governance Committee are appointed by the board of directors.⁸²

The Exchange now proposes various amendments to the CHX Holdings Board

composition requirements and procedures to be similar to those of NSX Holdings, which include the following key amendments:⁸³

- Eliminate required minimum and maximum number of CHX Holdings Directors and permit the number of CHX Holdings Directors to be fixed by resolution of the CHX Holdings Board.⁸⁴
- Eliminate classes of CHX Holdings Directors and associated three-year terms and replace with a general provision that each CHX Holdings Director shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. CHX Holdings Directors shall continue to be elected at the annual meeting of stockholders at which a quorum is present by a plurality of the votes cast.⁸⁵

⁸¹ See Section 6 of Article II of the current CHX Holdings Bylaws.

⁸² See Section 3 of Article II of the current CHX Holdings Bylaws; see also Section 2 of Article V of the current CHX Holdings Bylaws.

⁸³ The Exchanges notes that the following provisions under the current CHX Holdings Certificate are being deleted as they are being superseded by new provisions under the proposed CHX Holdings Bylaws or obsolete: Sections (b) and (c) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.2 of the proposed CHX Holdings Bylaws; Section (d) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.2(c) and (d) of the proposed CHX Holdings Bylaws; Section (f) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.16 of the proposed CHX Holdings Bylaws; Section (g) of Article SIXTH of the current CHX Holdings Certificate is being deleted as obsolete; and Section (h) of Article SIXTH of the current CHX Holdings Certificate is replaced by Section 2.6 of the proposed CHX Holdings Bylaws.

⁸⁴ See Section 2.2(a) of the proposed CHX Holdings Bylaws; see also Article SEVENTH of the NSX Holdings Certificate.

⁸⁵ See Section 2.2(c) of the proposed CHX Holdings Bylaws; see also Article SEVENTH of the NSX Holdings Certificate.

- Maintain the current CHX Holdings Director nominating process via the Nominating and Governance Committee, but reduce the number of required members of the Nominating and Governance Committee to one or more directors, in light of the proposed elimination of the required minimum/maximum number of CHX Holdings Directors. This would harmonize the minimum CHX Holdings Board and committee member requirements.
- Any CHX Holdings Director or the entire CHX Holdings Board may be removed, with or without cause, by the holders of a majority of the voting power of the shares then entitled to vote at an election of directors; except that the CHX Holdings Board must consist of one director who is the CEO of CHX Holdings.⁸⁶ The Exchange believes that this change will provide stockholders with recourse in the event the best interest of the Exchange requires the removal of a director who could not be removed for cause.

Incidentally, the Exchange proposes to delete paragraphs (b) through (d) and (f) through (h) of Article SIXTH of the current CHX Holdings Certificate, as the provisions are either obviated by the proposed amendments reflected in the proposed CHX Holdings Bylaws or obsolete.⁸⁷ The Exchange proposes to maintain current Section (e) of Article SIXTH of the current CHX Holdings Certificate, but to move the provision to Section (b) of Article FIFTH of the proposed CHX Holdings Certificate.⁸⁸ The Exchange also proposes to delete reference to CHX Holdings Director classes under Section 2.6 of the proposed CHX Holdings Bylaws.

The Exchange also proposes to amend current Section 2 of Article IV (Special Meetings) of the current CHX Holdings Bylaws (i.e., Section 4.2 of the proposed CHX Holdings Bylaws) (1) to clarify that a special meeting of the stockholders may be called “at any time” by the CEO or the CHX Holdings Board and (2) to permit a special meeting of the stockholders to be called “upon written notice to the Corporation by the stockholders holding one-third of the votes entitled to be cast” (“CHX Holdings stockholder-called special meeting provision”). Similar to

⁸⁶ See Section 2.16 of the proposed CHX Holdings Bylaws; see also Article SEVENTH of the NSX Holdings Certificate.

⁸⁷ See supra note 83.

⁸⁸ The CHX Holdings Director election requirements may also be found under Section 4.9 of the proposed CHX Holdings Bylaws.

the reasoning for the proposed amendment to Section 4.2 of the CHX Bylaws, given that there will be 13 Upstream Owners of CHX Holdings, the Exchange submits that the CHX Holdings stockholder-called special meeting provision would facilitate the calling of special meetings of the stockholders, which would promote stockholder communication and transparency. The Exchange notes that while the proposed CHX Holdings stockholder-called special meeting provision may result in a special meeting of the stockholders being called by as few as three Indirect Upstream Owners, any action by the stockholders during a special meeting would be subject to the general quorum and voting requirements of Section 4.9 of the proposed CHX Holdings Bylaws, which requires, among other things, that the majority of the total votes which all of the outstanding stock of CHX Holdings would be entitled to cast at the meeting to be present, in person or by proxy, to constitute a quorum.

CHX Holdings Current Ownership and Voting Limitations

Section (b) of Article FIFTH of the current CHX Holdings Certificate contains Ownership and Voting Limitations, which provide in general that for so long as CHX Holdings controls the CHX: no Person,⁸⁹ either alone or together with its Related Persons,⁹⁰ may own,

⁸⁹ Paragraph (a)(i) of Article FIFTH of the current CHX Holdings Certificate defines “Person” as “an individual, partnership (general or limited), joint stock company, corporation, limited liability company, trust or unincorporated organization, or any governmental entity or agency or political subdivision thereof.”

⁹⁰ Paragraph (a)(ii) of Article FIFTH of the current CHX Holdings Certificate defines “Related Persons” as “(A) with respect to any Person, all “affiliates” and “associates” of such Person (as such terms are defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended); (B) with respect to any Person that holds a permit issued by the Chicago Stock Exchange, Inc. to trade securities on the Chicago Stock Exchange (a “Participant”), any broker or dealer with which a Participant is associated; and (C) any two or more Persons that have any agreement, arrangement or understanding (whether or not in writing) to act together for the purpose of acquiring, voting, holding or disposing of shares of the capital stock of the Corporation.”

directly or indirectly, of record or beneficially shares of stock of CHX Holdings representing in the aggregate more than forty percent (40%) of the then-outstanding votes entitled to be cast on any matter; (2) no Person, either alone or together with its Related Persons, who is a Participant may own, directly or indirectly, of record or beneficially shares of stock of CHX Holdings representing in the aggregate more than twenty percent (20%) of the then-outstanding votes entitled to be cast on any matter; and (3) no Person, either alone or together with its Related Persons, at any time may, directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, vote or cause the voting of shares of the capital stock (whether such shares be common stock or preferred stock) of CHX Holdings or give any consent or proxy with respect to shares representing more than twenty percent (20%) of the voting power of the then issued and outstanding capital stock of CHX Holdings. Section (a) of Article FIFTH of the current CHX Holdings Certificate contains obsolete stock transfer restrictions that expired in 2004, which the Exchange proposes to delete in its entirety.

The current CHX Holdings Certificate contains provisions to address violations of the current Ownership and Voting Limitations. Specifically, Section (d) of Article FIFTH the current CHX Holdings Certificate (Effect of Purported Transfers and Voting in Violation of this Article) requires CHX Holdings to only record the transfer or voting of shares that do not violate the Ownership and Voting Limitations. That is, to the extent a purported transfer or voting of shares exceeds the Ownership and Voting Limitations (“excess shares”), such excess shares are not recorded nor effective. Furthermore, Section (e) of Article FIFTH the current CHX Holdings Certificate (Right to Redeem Shares Purportedly Transferred or Voted in Violation of this Article) provides that if any stockholder purports to transfer or vote shares in excess of the

Ownership and Voting Limitations, CHX Holdings shall have the right to redeem such excess shares for a price per share equal to the par value of those shares.

With respect to the ability of the Commission to enforce the Act as it applies to the CHX after the Closing, the CHX will operate in the same manner following the close of the Transaction in which it operates today. Thus, the Commission will continue to have plenary regulatory authority over the CHX, as is the case currently with the CHX being a wholly-owned subsidiary of CHX Holdings. As described throughout this proposed rule filing, the CHX is proposing a series of amendments to its governing documents, as well as governing documents of NA Casin Holdings that will create an ownership structure and provide the Commission with appropriate oversight tools to ensure that the Commission will have the ability to enforce the Exchange Act with respect to the CHX and their respective directors, officers, employees, and agents to the extent that they are involved in the activities of the CHX.

Waiver of Current Ownership and Voting Limitations

As described above, CHX Holdings will become a wholly-owned direct subsidiary of NA Casin Holdings (“Proposed Share Ownership”). In order to permit the Proposed Share Ownership in excess of the current Ownership and Voting Limitations, paragraph (b)(iii)(B) and paragraph (b)(iv) of Article FIFTH of the current CHX Holdings Certificate requires that the CHX Holdings Board adopt a bylaw that waives the current Ownership and Voting Limitations

and make certain findings with respect to the waiver of the current Ownership and Voting Limitations.⁹¹

Thus, pursuant to paragraph (b)(iii)(B) of Article FIFTH of the current CHX Holdings Certificate, on February 3, 2016 and November 22, 2016, the CHX Holdings Board voted to approve Article XII, Section 12.1 of the proposed CHX Holdings Bylaws, which provides as follows:

(a) For the sole purpose of permitting the merger contemplated by an Agreement and Plan of Merger, dated February 4, 2016, among the Corporation, Exchange Acquisition Corporation (“Merger Sub”) and North America Casin Holdings, Inc. (“Parent”), under which the Corporation will become a wholly-owned subsidiary of Parent, the Board of Directors hereby waives pursuant to Article FIFTH, paragraph (b)(iii)(B) of the certificate of incorporation of the Corporation dated July 27, 2006, as amended (“2006 Certificate”): (i) the restrictions on ownership of capital stock of the Corporation described in Article FIFTH, paragraph (b)(ii)(A) of the 2006 Certificate (“Ownership

⁹¹ Current Paragraph (b)(iii)(B) of Article FIFTH of the current CHX Holdings Certificate provides as follows: “the limitations in clauses (ii)(A) and (ii)(C) may be waived by the Board of Directors of the Corporation pursuant to an amendment to the bylaws adopted by the Board of Directors, if, in connection with the adoption of such amendment, the Board of Directors adopts a resolution stating that it is the determination of such Board that such amendment will not impair the ability of the Chicago Stock Exchange, Inc., to carry out its functions and responsibilities as an ‘exchange’ under the Act, and the rules under the Act; is otherwise in the best interests of the Corporation and its stockholders and the Chicago Stock Exchange, Inc.; will not impair the ability of the United States Securities and Exchange Commission to enforce the Act, and such amendment shall not be effective until approved by said Commission. In making the determinations referred to in the immediately preceding sentence, the Board of Directors may impose on the Person in question and its Related Persons such conditions and restrictions as it may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Act, and the rules under the Act, and the governance of the Chicago Stock Exchange, Inc.” Current Paragraph (b)(iv) of Article FIFTH of the current CHX Holdings Certificate provides as follows: “Notwithstanding clauses (iii)(A) and (iii)(B) above, in any case where a Person, either alone or together with its Related Persons, would own or vote more than the above percentage limitations upon consummation of any proposed sale, assignment or transfer of the Corporation's capital stock, such sale, assignment or transfer shall not become effective until the Board of Directors of the Corporation shall have determined, by resolution, that such Person and its Related Persons are not subject to any applicable ‘statutory disqualification’ (within the meaning of Section 3(a)(39) of the Securities Exchange Act of 1934, as amended).”

Limits”) to permit Parent to possess ownership in the Corporation in excess of the Ownership Limits (“Proposed Share Ownership”); and (ii) the restrictions on voting rights with respect to the capital stock of the Corporation as described in Article FIFTH, paragraph (b)(ii)(C) of the 2006 Certificate (“Voting Limits”) to permit Parent to possess voting rights in excess of the Voting Limits (“Proposed Voting Rights”).

(b) In so waiving the applicable Ownership Limits and Voting Limits, the Board of Directors has determined that: (i) the acquisition of the Proposed Share Ownership by Parent will not impair the ability of the Chicago Stock Exchange, Inc. (“Exchange”) to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; (ii) the acquisition or exercise of the Proposed Voting Rights by Parent will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and that it will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; and (iii) neither Parent, nor any of its Related Persons, is subject to “statutory disqualification” within the meaning of Section 3(a)(39) of the Exchange Act.⁹²

Moreover, on November 22, 2016, the CHX Holdings Board approved the Resolutions, herein attached as Exhibit 5H, which includes, among other things, findings that (1) the acquisition of the Proposed Share Ownership by Parent will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules and regulations promulgated thereunder, is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and will not impair the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; (2) the acquisition or exercise of the Proposed Voting Rights by Parent will not impair the ability of the Exchange to carry out its functions and responsibilities as an “exchange” under the Exchange Act and the rules and regulations promulgated thereunder, that it is otherwise in the best interests of the Corporation, its stockholders and the Exchange, and that it will not impair

⁹² 15 U.S.C. 78c(a)(39).

the ability of the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder; (3) neither Parent, nor any of its Related Persons, is subject to “statutory disqualification” within the meaning of Section 3(a)(39) of the Exchange Act; and (4) execution and delivery of the Merger Agreement by Parent constitutes notice of Parent’s intention to acquire the Proposed Share Ownership and the Proposed Voting Rights, in writing not less than forty-five days before the proposed ownership of such shares or the proposed exercise of such voting rights.⁹³

The Exchange submits that SEC approval of the proposed rule change and, in particular, Section 12.1 of the proposed CHX Holdings Bylaws, will effectuate a waiver of the current Ownership and Voting Limitations and will permit the Proposed Share Ownership and the Proposed Voting Rights.

Proposed Ownership and Voting Limitations

The Exchange further proposes to replace the Exchange’s current Ownership and Voting Limitations under Article FIFTH of the current CHX Holdings Certificate with similar Ownership and Voting Limitations (comprised of the “Voting Limitation” and the “Concentration Limitation”) utilized by NSX Holdings, except that the Exchange is not requesting a temporary waiver of the Concentration Limitation as provided under Section B of Article FOURTH of the NSX Holdings Certificate. Given that the Indirect Upstream Owners will have a direct ownership interest in NA Casin Holdings, NA Casin Holdings would also adopt Ownership and Voting Limitations under the proposed NA Casin Holdings Certificate

⁹³ The Merger Agreement was executed on February 4, 2016 and the Resolutions were approved on November 22, 2016.

identical to the those in the proposed CHX Holdings Certificate,⁹⁴ with additional language that provides that for so long as the Corporation shall directly or indirectly control CHX, the Corporation shall take reasonable steps necessary to cause CHX Holdings, a Delaware corporation and a wholly-owned subsidiary of the Corporation, to be in compliance with the Voting Limitation and the Concentration Limitation, as such terms are defined in Article FOURTH of the proposed CHX Holdings Certificate.⁹⁵

Paragraph (c)(i) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Except as otherwise provided in this Section (c) of Article FOURTH, no Person,⁹⁶ either alone or with its Related Persons,⁹⁷ shall be permitted at any time to own beneficially shares of stock of the Corporation representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter (the “Concentration Limitation”).

Paragraph (c)(i)(A) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

The Concentration Limitation shall apply unless and until: (x) a Person (either alone or with its Related Persons) intending to acquire such ownership shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than 45 days (or such shorter period as the Board of Directors of the Corporation shall expressly consent to) prior to the acquisition of any shares that would cause such Person (either alone or with its Related Persons) to exceed the Concentration Limitation, of its intention to acquire such ownership; (y) the Board of Directors of the Corporation shall have resolved to expressly permit such ownership; and (z) such resolution shall have been filed with the Commission under Section 19(b) of the Exchange Act and shall have become effective thereunder.

⁹⁴ See Sections (4) – (15) of Article IX of the proposed NA Casin Holdings Certificate.

⁹⁵ See Section (4) of Article IX of the proposed NA Casin Holdings Certificate.

⁹⁶ Section (b) of Article FOURTH of the proposed CHX Holdings Certificate provides, in pertinent part, as follows: “‘Person’ as a natural person, partnership (general or limited), corporation, limited liability company, trust or unincorporated organization, or a governmental entity or political subdivision thereof.”

⁹⁷ Supra note 17.

Paragraph (c)(i)(B) of Article FOURTH of the proposed CHX Holdings Certificate

provides as follows:

Subject to its fiduciary obligations pursuant to the Delaware General Corporation Law, the Board of Directors of the Corporation shall not adopt any resolution pursuant to paragraph (i)(A) of this Section (c) of Article FOURTH unless the Board of Directors of the Corporation shall have determined that: (x) such acquisition of beneficial ownership by such Person, either alone or with its Related Persons, will not impair any of the Corporation's or CHX's ability to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of the Corporation and its stockholders; (y) such acquisition of beneficial ownership by such Person, either alone or with its Related Persons, will not impair the Commission's ability to enforce the Exchange Act; and (z) neither such Person nor any of its Related Persons is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act. In making such determinations, the Board of Directors of the Corporation may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board of Directors of the Corporation may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation.

Moreover, paragraph (c)(i)(C) of Article FOURTH of the proposed CHX Holdings

Certificate provides as follows:

Unless the conditions specified in paragraph (i)(A) of this Section (c) of Article FOURTH are met, if any Person, either alone or with its Related Persons, at any time owns beneficially shares of stock of the Corporation in excess of the Concentration Limitation, the Corporation shall call from such Person and its Related Persons that number of shares of stock of the Corporation entitled to vote on any matter that exceeds the Concentration Limitation in accordance with Section (e) of this Article FOURTH at a price equal to the par value of such shares of stock.⁹⁸

The proposed CHX Holdings Certificate also provides for limitations on ownership of shares by Participants of the Exchange. Paragraph (c)(ii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

⁹⁸ Any stock called pursuant to Article FOURTH, paragraph (c)(i)(C) of the proposed CHX Holdings Certificate shall be effected by a resolution of the CHX Holdings Board that must be filed with the Commission pursuant to Section 19(b) of the Exchange Act.

For so long as CHX remains a registered national securities exchange under Section 6 of the Exchange Act, no Participant, either alone or with its Related Persons, shall be permitted at any time to own beneficially shares of stock of the Corporation representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter. If any Participant, either alone or with its Related Persons, at any time owns beneficially shares of stock in excess of such 20% limitation, the Corporation shall call from such Participant and its Related Persons that number of shares of stock of the Corporation entitled to vote on any matter that exceeds such 20% limitation in accordance with Section (e) of this Article FOURTH at a price equal to the par value of such shares of stock.

Paragraph (c)(iii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

The Corporation shall not register the purported transfer of any shares of stock of the Corporation in violation of the restrictions imposed by this Section (c) of Article FOURTH.

Paragraph (c)(iv) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

For purposes of this Section (c) of this Article FOURTH, no Person shall be deemed to have any agreement, arrangement or understanding to act together with respect to voting shares of stock of the Corporation solely because such Person or any of such Person's Related Persons has or shares the power to vote or direct the voting of such shares of stock pursuant to a revocable proxy given in response to a public proxy or consent solicitation conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act, except if such power (or the arrangements relating thereto) is then reportable under Item 6 of Schedule 13D under the Exchange Act (or any similar provision of a comparable or successor report).

Section (d) of Article FOURTH (Ownership Limitation for Disqualified Controlling Stockholders) of the proposed CHX Holdings Certificate provides as follows:

Notwithstanding any other provision of this Third Amended and Restated Certificate of Incorporation, no Person that is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act shall be permitted at any time to own beneficially, either alone or with its Related Persons, shares of stock of the Corporation representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter (such Person, a "Disqualified Controlling Stockholder"). If a Person becomes a Disqualified Controlling Stockholder, the Corporation shall call from such Person and its Related Persons that number of shares of stock entitled to vote on any matter that exceeds

such 20% limitation in accordance with Section (e) of this Article FOURTH at a price equal to the par value of such shares of stock.

Section (e) of Article FOURTH of the proposed CHX Holdings Certificate (Procedure for Calling Shares) provides as follows:

In the event the Corporation shall call shares of stock (the “Called Stock”) of the Corporation pursuant to Sections (c) or (d) of this Article FOURTH, notice of such call shall be given by first class mail, postage prepaid, mailed not less than 5 business nor more than 60 calendar days prior to the call date, to the holder of the Called Stock, at such holder's address as the same appears on the stock register of the Corporation. Each such notice shall state: (w) the call date; (x) the number of Called Stock to be called; (y) the aggregate call price; and (z) the place or places where Called Stock are to be surrendered for payment of the call price. Failure to give notice aforesaid, or any defect therein, shall not affect the validity of the call of Called Stock. From and after the call date (unless default shall be made by the Corporation in providing funds for the payment of the call price), shares of Called Stock, which have been called as aforesaid shall be cancelled, shall no longer be deemed to be outstanding, and all rights of the holder of such Called Stock as a stockholder of the Corporation (except the right to receive from the Corporation the call price against delivery to the Corporation of evidence of ownership of such shares) shall cease. Upon surrender in accordance with said notice of evidence of ownership of Called Stock so called (properly assigned for transfer, if the Board of Directors of the Corporation shall so require and the notice shall so state), such shares shall be called by the Corporation at par value.

Section (f) of Article FOURTH of the proposed CHX Holdings Certificate (Right to Information; Determinations by the Board of Directors) provides as follows:

The Board of Directors of the Corporation shall have the right to require any Person and its Related Persons reasonably believed (v) to be subject to the Voting Limitation or the Nonvoting Agreement Prohibition, (w) to own beneficially (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) shares of stock of the Corporation entitled to vote on any matter in excess of the Concentration Limitation, (x) to own beneficially (within the meaning of Rules 13d-3 and 13d-5 under the Exchange Act) an aggregate of 5% or more of the then outstanding shares of stock of the Corporation entitled to vote on any matter, which ownership such Person, either alone or with its Related Persons, has not reported to the Corporation, (y) to be subject to the ownership limitation set forth in paragraph (ii) of Section (c) of this Article FOURTH or (z) to be a Disqualified Controlling Stockholder, to provide the Corporation complete information as to all shares of stock of the Corporation beneficially owned by such Person and its Related Persons and any other factual matter relating to the applicability or effect of this Article FOURTH as may reasonably be requested of such Person and its Related Persons. Any constructions, applications or determinations made by the Board of Directors of the Corporation pursuant to this Article FOURTH in good faith and on the basis of such

information and assistance as was then reasonably available for such purpose shall be conclusive and binding upon the Corporation and its directors, officers and stockholders.

With respect to voting limitations, paragraph (b)(i) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Notwithstanding any other provision of this Third Amended and Restated Certificate of Incorporation, (x) no Person, either alone or with its Related Persons, as of any record date for the determination of stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of the Corporation, in person or by proxy or through any voting agreement or other arrangement, to the extent such shares represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter (the “Voting Limitation”), and if votes have been cast, in person or by proxy or through any voting agreement or other arrangement, by any Person, either alone or with its Related Persons, in excess of the Voting Limitation, the Corporation shall disregard such votes cast in excess of the Voting Limitation and (y) no Person, either alone or with its Related Persons, may enter into any agreement, plan or other an agreement relating to shares of stock of the Corporation entitled to vote on any matter with any other Person, either alone or with its Related Persons, under circumstances which would result in shares of stock of the Corporation that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any Person, either alone or with its Related Persons, to vote, possess the right to vote or cause the voting of shares of stock of the Corporation which would, as a result thereof, represent in the aggregate more than 20% of the then outstanding votes entitled to be cast on such matter (the “Nonvoting Agreement Prohibition”).⁹⁹

Paragraph (b)(ii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

⁹⁹ Article FOURTH, paragraph (b)(i) of the proposed CHX Holdings Certificate prohibits “Nonvoting Agreements” by or among Persons and their Related Persons that would result in shares of stock of CHX Holdings that would be subject to such agreement plan or other arrangement not being voted on any matter, or the withholding of any proxy relating those shares, where the effect of such an agreement would be to enable any Person, either alone or with its Related Persons, to vote, possess the right to vote or cause the voting of shares of CHX Holdings which would, as a result thereof, represent in the aggregate more than 20% of the then outstanding votes entitled to be cast (the “Nonvoting Agreement Prohibition”). Any share owner seeking a waiver of the Nonvoting Agreement Prohibition so as to be able to enter into such an agreement would also be required to obtain express permission of the CHX Holdings Board through a duly authorized written resolution that is filed with and approved by the Commission under Section 19(b) of the Exchange Act.

The Voting Limitation or the Nonvoting Agreement Prohibition, as applicable, shall apply unless and until: (x) a Person (and its Related Persons) owning any shares of stock of the Corporation entitled to vote on such matter shall have delivered to the Board of Directors of the Corporation a notice in writing, not less than 45 days (or such shorter period as the Board of Directors of the Corporation shall expressly consent to) prior to any vote, of its intention to cast more than 20% of the votes entitled to be cast on such matter or to enter into an agreement, plan or other arrangement that would violate the Nonvoting Agreement Prohibition, as applicable; (y) the Board of Directors of the Corporation shall have resolved to expressly permit such exercise or the entering into of such agreement, plan or other arrangement, as applicable; and (z) such resolution shall have been filed with the Securities and Exchange Commission (the "Commission") under Section 19(b) of the Exchange Act and shall have become effective thereunder.

Paragraph (b)(iii) of Article FOURTH of the proposed CHX Holdings Certificate provides as follows:

Subject to its fiduciary obligations pursuant to the Delaware General Corporation Law, the Board of Directors of the Corporation shall not adopt any resolution pursuant to paragraph (b)(ii) of this Article FOURTH unless the Board of Directors of the Corporation shall have determined that: (v) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or with its Related Persons, will not impair any of the Corporation's or the CHX's ability to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of the Corporation and its stockholders; (w) the exercise of such voting rights or the entering into of such agreement, plan or other arrangement, as applicable, by such Person, either alone or with its Related Persons, will not impair the Commission's ability to enforce the Exchange Act; (x) neither such Person nor any of its Related Persons is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act; (y) in the case of a resolution to approve the exercise of voting rights in excess of the Voting Limitation, for so long as CHX remains a registered national securities exchange as defined under Section 6 of the Exchange Act, neither such Person nor any of its Related Persons is a Participant (any such Person that is a Related Person of a Participant shall hereinafter also be deemed to be a Participant for purposes of this Third Amended and Restated Certificate of Incorporation, as the context may require); and (z) in the case of a resolution to approve any waiver of the Nonvoting Agreement Prohibition, no such waiver may be approved with respect to any agreement, plan or other arrangement to which a Participant is a party that relates to shares of stock of the Corporation entitled to vote on any matter. In making such determinations, the Board of Directors of the Corporation may impose such conditions and restrictions on such Person and its Related Persons owning any shares of stock of the Corporation entitled to vote on any matter as the Board of Directors of the Corporation may in its sole discretion deem necessary, appropriate or desirable in furtherance of the objectives of the Exchange Act and the governance of the Corporation.

Paragraph (b)(iv) of Article FOURTH of the proposed CHX Holdings Certificate

provides as follows:

This Section (b) of Article FOURTH shall not apply to (x) any solicitation of any revocable proxy from any stockholder of the Corporation by or on behalf of the Corporation or by any officer or director of the Corporation acting on behalf of the Corporation or (y) any solicitation of any revocable proxy from any stockholder of the Corporation by any other stockholder that is conducted pursuant to, and in accordance with, Regulation 14A promulgated pursuant to the Exchange Act.

Jurisdiction over Individuals

The Exchange proposes to harmonize provisions under the proposed CHX Holdings Bylaws and the NA Casin Holdings Bylaws regarding jurisdiction over individuals.

Specifically, Section 3.5 of the proposed CHX Holdings Bylaws¹⁰⁰ provides as follows:

- The Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, Commission, and CHX,¹⁰¹ for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of CHX, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, Commission or the CHX, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of CHX.

¹⁰⁰ Section 3.6 of the proposed CHX Holdings Bylaws provides that the Corporation shall take such action as is necessary to ensure that the Corporation's officers, directors and employees consent to the applicability of Sections 3.1, 3.2, 3.3, 3.4 and 3.5 with respect to activities related to the CHX.

¹⁰¹ Section 3.5 of the proposed CHX Holdings Bylaws is virtually identical to Article III, Section 5 of the current CHX Holdings Bylaws, except for amendments to replace “Chicago Stock Exchange, Inc.” with the abbreviated “CHX.”

Similarly, Section 10.1.1 of the NA Casin Holdings Bylaws¹⁰² provides as follows:

- The Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts, United States Securities and Exchange Commission (“Commission”), and the Chicago Stock Exchange, Inc. (“CHX”), for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules or regulations thereunder, arising out of, or relating to, the activities of CHX, and by virtue of their acceptance of any such position, shall be deemed to waive, and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claims that it or they are not personally subject to the jurisdiction of the United States federal courts, Commission or the CHX, that the suit, action or proceeding is an inconvenient forum or that the venue of the suit, action or proceeding is improper, or that the subject matter of that suit, action or proceeding may not be enforced in or by such courts or agency. The Corporation and its officers, directors, employees and agents also agree that they will maintain an agent, in the United States, for the service of process of a claim arising out of, or relating to, the activities of CHX.

Access to Books and Records

The Exchange proposes to harmonize provisions under the CHX Holdings Bylaws and the NA Casin Holdings Certificate regarding access to certain books and records so as to facilitate access to such books and records of the Indirect Upstream Owners by the Commission and CHX.

Specifically, the proposed CHX Holdings Bylaws includes the following provisions:

- Section 3.2¹⁰³ would provide that all confidential information pertaining to the self-regulatory function of CHX (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of CHX that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (i) not be made available to any

¹⁰² Similar to Section 3.6 of the proposed CHX Holdings Bylaws, Section 10.1.2 of the NA Casin Bylaws would provide that the Corporation shall take reasonable steps necessary to cause its officers, directors, and employees prior to accepting a position as an officer, director, or employee, as applicable, of the Corporation to consent to the applicability to them of Sections 1, 3, 16 and 17 of Article IX of the Certificate of Incorporation and Section 10.1.1 hereof to the extent that such officers, directors, and employees are involved in the activities of CHX. See supra note 100.

¹⁰³ See supra note 100.

Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the Corporation; and (iii) not be used for any non-regulatory purposes. Nothing in these bylaws shall be interpreted as to limit or impede: (a) the rights of the Commission or CHX to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder; or (b) the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or CHX.

- Section 3.3¹⁰⁴ would provide that for so long as the Corporation shall control, directly or indirectly, CHX, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of CHX for purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books and records are related to, or such officers, directors and employees are involved in, the activities of CHX. The Corporation's books and records relating to the activities of CHX shall be subject at all times to inspection and copying by the Commission and CHX. The Corporation's books and records related to the activities of CHX shall be maintained within the United States.
- Section 3.7 provides that for so long as a stockholder shall maintain a direct or indirect equity interest in the Chicago Stock Exchange, Inc.: (a) the books, records, officers, directors (or equivalent) and employees of the stockholder shall be deemed to be the books, records, officers, directors and employees of Chicago Stock Exchange, Inc. for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of Chicago Stock Exchange, Inc.; (b) the stockholder's books and records related to the activities of Chicago Stock Exchange, Inc. shall at all times be made available for inspection and copying by the Commission and Chicago Stock Exchange, Inc.; and (c) the stockholder's books and records related to the activities of Chicago Stock Exchange, Inc. shall be maintained within the United States.

Similarly, the NA Casin Holdings Certificate includes the following provisions:

- Similar to Section 3.2 of the proposed CHX Holdings Bylaws, Section (16) of Article IX would provide that all confidential information pertaining to the self-regulatory function of CHX (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of CHX that shall come into the possession of the Corporation shall, to the fullest extent permitted by law: (i) not be made available to any Person (other than as provided in the next sentence) other than to those officers, directors, employees and agents of the Corporation that have a reasonable need to know the contents thereof; (ii) be retained in confidence by the Corporation and the officers, directors, employees and agents of the

¹⁰⁴ See id.

Corporation; and (iii) not be used for any non-regulatory purposes. Nothing in this Amended and Restated Certificate of Incorporation shall be interpreted as to limit or impede: (A) the rights of the Commission or CHX to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder; or (B) the ability of any officers, directors, employees or agents of the Corporation to disclose such confidential information to the Commission or CHX.

- Similar to Section 3.3 of the proposed CHX Holdings Bylaws, Section (17) of Article IX would provide that for so long as the Corporation shall control, directly or indirectly, CHX, the books, records, premises, officers, directors and employees of the Corporation shall be deemed to be the books, records, premises, officers, directors and employees of CHX for purposes of and subject to oversight pursuant to the Exchange Act, but only to the extent that such books and records are related to, or such officers, directors and employees are involved in, the activities of CHX. The Corporation's books and records relating to the activities of CHX shall be subject at all times to inspection and copying by the Commission and CHX. The Corporation's books and records related to the activities of CHX shall be maintained within the United States.
- Similar to Section 3.7 of the proposed CHX Holdings Bylaws, Section (18) of Article IX would provide that for so long as a stockholder shall maintain a direct or indirect equity interest in CHX: (a) the books, records, officers, directors (or equivalent) and employees of the stockholder shall be deemed to be the books, records, officers, directors and employees of CHX for purposes of and subject to oversight pursuant to the Exchange Act to the extent that such books and records are related to, or such officers, directors (or equivalent) and employees are involved in, the activities of CHX; (b) the stockholder's books and records related to the activities of CHX shall at all times be made available for inspection and copying by the Commission and CHX; and (c) the stockholder's books and records related to the activities of CHX shall be maintained within the United States.

Additional Matters

The Exchange proposes to harmonize provisions under the CHX Holdings Bylaws and the NA Casin Holdings Certificate regarding the preservation of the independence of the self-regulatory function of the CHX, directors' consideration of the effect of CHX Holdings' actions on the CHX's ability to carry out its responsibilities under the Exchange Act and cooperation with the Commission and the CHX.

Specifically, the proposed CHX Holdings Bylaws includes the following provisions:

- Section 3.1 provides that for so long as the Corporation shall control Chicago Stock Exchange, Inc. ("CHX"), the Corporation and its Board of Directors, officers, employees

and agents shall give due regard to the preservation of the independence of the self-regulatory function of the CHX and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of the CHX relating to its regulatory functions (including enforcement and disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of the CHX to carry out its responsibilities under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The Corporation’s books and records related to the activities of CHX shall be maintained within the United States.

- Section 3.4 provides that the Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall comply with the federal securities laws and rules and regulations thereunder and shall: (a) cooperate (i) with the Commission, and (ii) with CHX pursuant to, and to the extent of, CHX’s regulatory authority; and (b) take reasonable steps necessary to cause its agents to cooperate (i) with the Commission, and (ii) with CHX pursuant to, and to the extent of, CHX’s regulatory authority with respect to such agents’ activities related to CHX.

Similarly, the NA Casin Holdings Certificate includes the following provisions:

- Similar to Section 3.1 of the proposed CHX Holdings Bylaws, Section (3) of Article IX would provide that for so long as the Corporation shall control CHX, the Corporation and its Board of Directors, officers, employees and agents shall give due regard to the preservation of the independence of the self-regulatory function of the CHX and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of the CHX relating to its regulatory functions (including enforcement and disciplinary matters) or the structure of the market which it regulates or which would interfere with the ability of the CHX to carry out its responsibilities under the Securities Exchange Act of 1934, as amended. The Corporation’s books and records related to the activities of CHX shall be maintained within the United States.
- Similar to Section 3.4 of the proposed CHX Holdings Bylaws, Section (2) of Article IX would provide that the Corporation and its officers, directors, employees and agents, by virtue of their acceptance of such position, shall comply with the federal securities laws and rules and regulations thereunder and shall: (a) cooperate (i) with the United States Securities and Exchange Commission (the “Commission”), and (ii) with the Chicago Stock Exchange, Inc. a Delaware corporation and an indirect wholly-owned subsidiary of the Corporation (“CHX”), pursuant to, and to the extent of, CHX’s regulatory authority; and (b) take reasonable steps necessary to cause its agents to cooperate (i) with the Commission, and (ii) with CHX pursuant to, and to the extent of, CHX’s regulatory authority with respect to such agents’ activities related to CHX.

Moreover, so as to ensure that a new NA Casin Holdings board is elected by the Indirect

Upstream Owners as soon as practicable after the Closing and to facilitate the ability of NA

Casin Holdings to maintain board members that are experienced with the operation of the Exchange, NA Casin Holdings would adopt the following provision in the NA Casin Holdings Certificate:

- Section (4) of Article V of the NA Casin Holdings Certificate would provide that the directors shall hold office until their successors are elected and qualified, and prior to the election of directors described in paragraph (5) below, any director may be removed with or without cause at any time by a vote of the recordholders of a majority of the Shares then entitled to vote, or by written consent of the recordholders of a majority of the Shares entitled to vote at a meeting of the stockholders.
- Section (5) of Article V of the NA Casin Holdings Certificate would provide that within 30 days after the consummation of the merger contemplated by the Agreement and Plan of Merger dated as of February 4, 2016 among CHX Holdings, Inc., the Corporation and Exchange Acquisition Corp. (the “Merger Agreement”) the Corporation shall convene a special meeting of its stockholders for the purpose of electing a new Board of Directors. From and after such special meeting, the Board shall be and is divided into three classes, as nearly equal in number as possible, designated: Class I, Class II and Class III. In case of any increase or decrease, from time to time, in the number of directors, the number of directors in each class shall be apportioned as nearly equal as possible. No decrease in the number of directors shall shorten the term of any incumbent director.
- Section (6) of Article V of the NA Casin Holdings Certificate would provide that each director shall serve for a term ending on the date of the third annual meeting following the meeting at which such director was elected; provided, that each director initially appointed to Class I shall serve for an initial term expiring at the corporation's annual meeting of stockholders held in 2017; each director initially appointed to Class II shall serve for an initial term expiring at the corporation's annual meeting of stockholders held in 2018; and each director initially appointed to Class III shall serve for an initial term expiring at the corporation's annual meeting of stockholders held in 2019; provided further, that the term of each director shall continue until the election and qualification of a successor and be subject to such director's earlier death, resignation or removal.

The class board structure of Article V of the NA Casin Holdings Certificate would ensure overlap of board member terms, which would provide continuity and stability as to board composition and, thereby, facilitate the ability of the NA Casin Holdings board to meet its obligations under Article IX of the NA Casin Holdings Certificate.

Effecting Amendments to CHX Holdings and NA Casin Governing Documents

The Exchange proposes to harmonize provisions under the CHX Holdings Bylaws, the NA Casin Holdings Certificate and the NA Casin Holdings Bylaws regarding the effectuation of amendments to those documents.

Specifically, Article VIII of the proposed CHX Holdings Bylaws provides as follows:

- These bylaws may be amended or repealed, or new bylaws may be adopted, by the Board of Directors. These bylaws may also be amended or repealed, or new bylaws may be adopted, by action taken by the stockholders of the Corporation. For so long as this Corporation shall control, directly or indirectly, CHX, before any amendment to or repeal of any provision of the bylaws of this Corporation shall be effective, those changes shall be submitted to the Board of Directors of CHX and if that Board shall determine that the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the Exchange Act and the rules promulgated under that Exchange Act by the Commission or otherwise, then the proposed changes to the bylaws of this Corporation shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

Also, Article ELEVENTH of the proposed CHX Holdings Certificate provides as follows:

- The Corporation reserves the right to amend this certificate of incorporation, and to change or repeal any provision of the certificate of incorporation, in the manner prescribed at the time by statute, and all rights conferred upon stockholders by such certificate of incorporation are granted subject to this reservation. For so long as this Corporation shall control, directly or indirectly, Chicago Stock Exchange, Inc., before any amendment to or repeal of any provision of this certificate of incorporation shall be effective, those changes shall be submitted to the Board of Directors of Chicago Stock Exchange, Inc. and if that Board shall determine that the same must be filed with or filed with and approved by the Commission before the changes may be effective, under Section 19 of the Act and the rules promulgated under that Act by the Commission or otherwise, then the proposed changes to the certificate of incorporation of this Corporation shall not be effective until filed with or filed with and approved by the Commission, as the case may be.

Similarly, NA Casin Holdings would adopt the following provisions in its governing documents to require the consent of the CHX's board of directors in amending or repealing any provisions of NA Casin Holdings' governing documents:

- Section 11.1 of the NA Casin Holdings Bylaws would provide, in pertinent part, that for so long as this Corporation shall control, directly or indirectly, CHX, before any amendment to or repeal of any provision of these Bylaws shall be effective, the same shall be submitted to the board of directors of CHX and if said board shall determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Securities and Exchange Act of 1934 and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.
- Article X of the NA Casin Holdings Certificate would provide that for so long as this Corporation shall control, directly or indirectly, CHX before any amendment to or repeal of any provision of this Certificate of Incorporation shall be effective, the same shall be submitted to the board of directors of CHX and if said board shall determine that the same must be filed with, or filed with and approved by, the Commission before the same may be effective, under Section 19 of the Exchange Act and the rules promulgated thereunder, then the same shall not be effective until filed with, or filed with and approved by, the Commission, as the case may be.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,¹⁰⁵ and Section 6(b)(1) in particular.¹⁰⁶ Specifically, the Exchange believes that the proposed non-substantive amendments to the governing documents of CHX and CHX Holdings and the CHX Rules clarify the history and organization of those documents and eliminates redundant provisions, which include the following key changes described in greater detail above:

- Omitting provisions from the proposed CHX Holdings Certificate regarding board composition requirements and election/vacancy procedures, as they are fully-described under Article II of the proposed CHX Holdings Bylaws.
- Omitting provisions from the proposed CHX Certificate regarding board composition requirements and election/vacancy procedures, as they are fully-described under Article III of the proposed CHX Bylaws.
- Moving provisions under Article 2, Rule 1 of the current CHX Rules regarding board

¹⁰⁵ 15 U.S.C. 78f(b).

¹⁰⁶ 15 U.S.C. 78f(b)(1).

committees and their respective composition requirements to Article V of the proposed CHX Bylaws.

Accordingly, the Exchange believes that the proposed rule change would further enable the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its Participants and persons associated with its Participants, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, in furtherance of the objectives of Section 6(b)(1) of the Act.

Moreover, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(5)¹⁰⁷ in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Exchange submits that the CHX Rules, the relevant governing documents of CHX and its upstream affiliates, CHX Holdings and NA Casin Holdings, the NACH Stockholders' Agreement, the Saliba Put Agreement and the Raptor Put Agreement, as proposed to be adopted or amended, to permit the Transaction, are consistent with Section 6(b) of the Act,¹⁰⁸ in general and 6(b)(5), in particular.

The proposed CHX Holdings Certificate and Bylaws establish an organizational structure for CHX Holdings, as the holding company for CHX, which will assure that the Commission and CHX will continue to be able to fully discharge their respective obligations to effectively regulate the equity securities markets and CHX. Specifically, among other key provisions, CHX Holdings and its directors, officers, employees and agents, are subject to the exclusive

¹⁰⁷ 15 U.S.C. 78f(b)(5).

¹⁰⁸ 15 U.S.C. 78f(b).

jurisdiction of the U.S. federal courts, the SEC and CHX; CHX Holdings is obligated to comply with the federal securities laws and the rules and regulations thereunder, as are its directors, officers and employees; prospective owners would be required to adhere to the proposed Ownership and Voting Limitations; and the books, records, premises, directors, employees and agents of CHX Holdings are deemed to be those of CHX for purposes of and subject to oversight pursuant to the Act. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

The proposed CHX Holding Certificate and Bylaws also establish board composition and procedure requirements, which will facilitate the ability of the CHX Holdings to ensure that the CHX Holdings Board is optimally constituted with members that would give due regard to the preservation of the independence of the SRO function of the Exchange. To this end, the CHX Holdings Certificate and Bylaws have been updated to be largely consistent with the board composition and procedure requirements of NSX Holdings. Specifically, among other provisions, the proposed CHX Holdings Board composition and procedure requirements provide flexibility regarding the number of CHX Holdings Directors and the removal of CHX Holdings Directors. The Exchange believes that the proposed changes will also promote consistency among the various governance documents of the holding companies of the national securities exchanges and facilitate the ability of the Commission to provide oversight regarding the upstream governance of national securities exchanges. The Exchange also notes that CHX Holdings stockholder-called special meeting provision will facilitate the calling of special meetings of the stockholders, which would promote stockholder communication and transparency. As such, these provisions operate to assure that the Exchange's rules meet the

statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

The proposed NA Casin Holdings Certificate and Bylaws establish an organizational structure for NA Casin Holdings, as the direct holding company for CHX Holdings, which will assure that the Commission and CHX will continue to be able to fully discharge their respective obligations to effectively regulate the equity securities markets and CHX. Specifically, similar to the requirements under the CHX Holdings Certificate and Bylaws, among other provisions, NA Casin Holdings and its directors, officers, employees and agents, would be subject to the exclusive jurisdiction of the U.S. federal courts, the SEC and CHX; NA Casin Holdings is obligated to comply with the federal securities laws and the rules and regulations thereunder, as are its directors, officers and employees; prospective owners would be required to adhere to the Ownership and Voting Limitations; and the books, records, premises, directors, employees and agents of NA Casin Holdings are deemed to be those of CHX for purposes of and subject to oversight pursuant to the Act. Moreover, the harmonization between the NA Casin Holdings Certificate and Bylaws and the CHX Holdings Certificate and Bylaws are intended to align the CHX Holdings governance structure with that of NA Casin Holdings and thus enhance governance efficiencies. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

The proposed CHX Certificate, Bylaws and Rules establish an organization structure for CHX that will assure that CHX will continue to be able to fully-discharge its obligations as an SRO pursuant to the Exchange Act. Specifically, among other key provisions, the CHX board composition and procedure requirements have been updated to be largely consistent with the

board composition and procedure requirements of NSX; the CHX Regulatory Oversight Committee composition requirements have been updated to be consistent with the NSX Regulatory Oversight Committee composition requirements; and the rules governing the composition of the various CHX board committees have been restated under the proposed CHX Bylaws in a manner similar to the NSX By-Laws. The Exchange believes that these amendments will promote consistency among the various governance documents of the national securities exchanges and facilitate the ability of the Commission to provide oversight of the equity securities markets. The Exchange also notes that the current provisions regarding the SRO function of CHX will remain substantively unchanged and will remain in full force and effect prior to, during and after the Closing. As such, these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

To the extent that the CHX Certificate and Bylaws differ from that of NSX, the Exchange believes that those provisions are also consistent with the objectives of Section 6(b)(5). Specifically, the Exchange believes that the proposed requirement that at least 20% of the CHX board be comprised of CHX Holdings Directors will promote governance efficiencies between CHX Holdings and CHX that will operate to enhance the governance and operation of the Exchange as an SRO. Also, the Exchange believes that maintaining the role of Vice Chairman of the CHX Board and the current CHX Board committee composition requirements (except for the Regulatory Oversight Committee composition requirements, as described above) will provide continuity in CHX governance so as to facilitate the transition to the post-Closing governance structure. Finally, the Exchange believes that the CHX stockholder-called special meeting provision will facilitate the calling of special meetings of the stockholders, which would promote

stockholder communication and transparency. As such, all of these provisions operate to assure that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

In addition, the proposed NACH Stockholders' Agreement, Saliba Put Agreement and Raptor Put Agreement include provisions that provide reasonable financial protections to the Indirect Upstream Owners so as to facilitate consummation of the Transaction without violating the proposed Ownership and Voting Limitations. Specifically, while the proposed NACH Stockholders' Agreement includes various transfer of shares provisions, the agreement does not contain any provisions, such as lock-up, drag-along or tag-along rights, that could result in the Indirect Upstream Owners becoming Related Persons.^{109 110} Accordingly, the Exchange believes that these agreements would not by themselves result in a violation of the proposed Ownership and Voting Limitations and would, instead, facilitate the ability of the Indirect Upstream Owners to provide additional capital to the Exchange so that the Exchange's rules meet the statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

Moreover, the Exchange submits that the proposed call options under the proposed CHX Holdings Certificate¹¹¹ and NA Casin Holdings Certificate¹¹² will serve as an enforcement and deterrence mechanism to ensure compliance with the proposed Ownership and Voting Limitations by the Upstream Owners and any future owners. Thus, the Exchange submits that the call options are consistent with Section 6(b)(5) in that the call options further the protection of

¹⁰⁹ See supra note 17.

¹¹⁰ See supra note 22.

¹¹¹ See Section (e) of Article FOURTH of the proposed CHX Holdings Certificate.

¹¹² See Section (14) of Article IX of the proposed NA Casin Holdings Certificate.

investors and the public interest by ensuring diversity in the ownership of the Exchange, which is key to protecting the Exchange's independence and its ability to meet its obligations pursuant to the Exchange Act.

Further, the proposed rule change is designed to effectuate changes to the CHX Holdings' ownership necessary to close the Transaction and provide for an efficient transition into a new organizational structure as soon as practicable after approval by the Commission of the proposed rule change. To this extent, the Exchange submits that the rule changes are consistent with Section 6(b)(5) in that they are designed to remove impediments to and perfect the mechanism of a free and open market and national market system.

The Exchange believes that the Transaction and the proposed rule change promote the protection of investors and the public interest. The Exchange submits that its proposal and the proposed ownership structure are consistent with the public interest in promoting efficient markets, reducing administrative burdens on exchanges, and providing flexibility where appropriate to the effective discharge of SRO responsibilities. The amendments are intended to provide market participants, investors, and the public with a clear and transparent description of the proposed changes to the CHX Holdings' ownership and governance structure as reflected in governing corporate documents. The Exchange also believes that the Closing will operate to enhance competition among the equity securities markets and provide new trading and capital formation opportunities for market participants and the investing public. As such, the Transaction and the proposed rule change will assure that the Exchange meets its statutory requirements of Section 6(b)(5) of the Act to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The rule change is being proposed in connection with the Transaction that will, upon completion, change the ownership structure of CHX Holdings. The Exchange believes that the Transaction will result in substantial capital investment into the Exchange, which will better enable the Exchange to compete within the highly competitive U.S. securities market and better enable the Exchange to further the objectives of the Act. As such, the Exchange believes that there is no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve or disapprove the proposed rule change, or
- B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CHX-2016-20 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CHX-2016-20. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit

personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CHX-2016-20 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹³

Eduardo A. Aleman
Assistant Secretary

¹¹³ 17 CFR 200.30-3(a)(12).