

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79781; File No. SR-CHX-2016-20)

January 12, 2017

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change in Connection with the Proposed Transaction Involving CHX Holdings, Inc. and North America Casin Holdings, Inc.

I. Introduction

On December 2, 2016, the Chicago Stock Exchange, Inc. (“CHX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change in connection with the proposed transaction (“Transaction”) involving CHX Holdings, Inc. (“CHX Holdings”) and North America Casin Holdings, Inc. (“N.A. Casin Holdings”). The proposed rule change was published for comment in the Federal Register on December 12, 2016.³ The Commission received five comment letters on the proposed rule change⁴ and two letters from the Exchange in response to certain comments.⁵ This order institutes proceedings

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79474 (December 12, 2016), 81 FR 89543 (“Notice”).

⁴ See letters from: Representative Robert Pittenger, Representative Earl L. “Buddy” Carter, Representative Peter DeFazio, Representative Collin Peterson, and Representative David Joyce, dated December 22, 2016 (“Pittenger Letter”); James N. Hill, dated December 23, 2016 (“Hill Letter”); John Ciccarella, dated January 2, 2017 (“Ciccarella Letter”); Anonymous, dated January 3, 2017 (“Anonymous Letter”); and David E. Kaplan, Executive Director, Global Investigative Journalism Network, dated January 4, 2017 (“GIJN Letter”). All of the comments are available at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

⁵ See letters from John K. Kerin, President and Chief Executive Officer, CHX, dated January 5, 2016 (“CHX Response Letter 1”) and Albert J. Kim, Vice President and Associate General Counsel, CHX, dated January 6, 2016 (“CHX Response Letter 2”)

under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.

II. Summary of the Proposal

The Exchange is a wholly-owned subsidiary of CHX Holdings. According to the Exchange, CHX Holdings is currently beneficially owned by 193 firms or individuals, including Exchange Participants or affiliates of Exchange Participants.⁷ Under the terms of the Transaction, CHX Holdings would become a wholly-owned subsidiary of N.A. Casin Holdings. According to the Exchange, current CHX Holdings stockholders would receive the right to receive cash in exchange for their shares under the terms of the Transaction.⁸ The Exchange states that consummation of the Transaction is subject to the satisfaction of certain conditions precedent, which include approval of the proposed rule change by the Commission.⁹

Upon the closing of the Transaction, the Exchange represents that all of the outstanding and issued shares of N.A. Casin Holdings would be held by the following firms and individuals (the “upstream owners”) in the following percentages:

- Non-U.S. Upstream Owners:
 - N.A. Casin Group, Inc. (“N.A. Casin Group”), a corporation incorporated under the laws of the State of Delaware and wholly-owned by Chongqing Casin Enterprise Group (“Chongqing Casin”) – 20%

(responding specifically to the Ciccarelli Letter). Both of these letters are available at <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Notice, supra note 3 at 89544. See also CHX Article 1, Rule 1(s) defining “Participant.”

⁸ See Notice, supra note 3 at 89544.

⁹ See id.

- Chongqing Jintian Industrial Co., Ltd., a corporation incorporated under the laws of the People’s Republic of China – 15%
- Chongqing Longshang Decoration Co., Ltd., a corporation incorporated under the laws of the People’s Republic of China – 14.5%
- U.S. 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 Jay Lu,¹⁰ a U.S. citizen and Vice President of N.A. Casin Group – 19%
 - Raptor Holdco LLC (“Raptor”), a limited liability company organized under the laws of the State of Delaware – 11.75%
 - Saliba Ventures Holdings, LLC (“Saliba”), a limited liability company organized under the laws of the State of Illinois – 11.75%
 - Xian Tong Enterprises, Inc., 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%
 - Cheevers & Co., Inc., a corporation incorporated under the laws of the State of Illinois – 0.18%¹¹

Following the closing of the Transaction, CHX would remain registered as a national securities exchange under Section 6 of the Act¹² and a self-regulatory organization (“SRO”) as defined in Section 3(a)(26) of the Act.¹³ According to the Exchange, CHX rules would remain in full force and effect as of the date of the proposed rule filing, would continue to govern the activities of CHX up to and after the closing of the Transaction, and CHX would continue to

¹⁰ According to the Exchange, Jay Lu, the sole member of Castle YAC, is associated with an affiliate of Chongqing Casin and is also the son of Shengju Lu, the Chairman of Chongqing Casin. See Notice, supra note 3 at 89545 n.18.

¹¹ See id. at 89544-55.

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78c(a)(26).

discharge its SRO responsibilities pursuant to CHX's registration under Section 6 of the Act.¹⁴

In addition, the Exchange states that following the closing, CHX's affiliated routing broker, CHXBD, would remain a Delaware limited liability corporation of which CHX Holdings would remain the sole member.

In order to facilitate the Transaction, the Exchange is proposing to amend its certificate of incorporation and bylaws,¹⁵ the certificate of incorporation and bylaws of CHX Holdings,¹⁶ and its rules.¹⁷ CHX has also filed the following documents in connection with the Transaction: (i) the certificate of incorporation and bylaws of N.A. Casin Holdings;¹⁸ (ii) text of a proposed resolution of the CHX Holdings Board of Directors to waive certain ownership and voting limitations to permit the Transaction;¹⁹ (iii) the proposed N.A. Casin Holdings Stockholders Agreement,²⁰ which includes transfer-of-share provisions for the upstream owners that provide a right of first offer, a right to acquire interest upon change of control, and a right to purchase new securities; (iv) proposed put agreements between Saliba, N.A. Casin Group, and N.A. Casin Holdings,²¹ and Raptor, N.A. Casin Group, and N.A. Casin Holdings,²² respectively, which would grant Saliba and Raptor the right to compel N.A. Casin Holdings to purchase or arrange

¹⁴ See Notice, supra note 3 at 89545-46.

¹⁵ See Exhibits 5C and 5D.

¹⁶ See Exhibits 5A and 5B.

¹⁷ See Exhibit 5E.

¹⁸ See Exhibits 5F and 5G.

¹⁹ See Exhibit 5H. See infra note 23.

²⁰ See Exhibit 5I.

²¹ See Exhibit 5J.

²² See Exhibit 5K.

for an unspecified third-party to purchase a specified amount of Saliba's or Raptors's equity interest in N.A. Casin Holdings, respectively.

The Exchange proposes several substantive and technical amendments to its corporate governance documents, rules, and the governing documents of CHX Holdings. The amendments include revised provisions addressing, among other items, board and committee composition and procedures, procedures regarding stockholder meetings, consent to U.S. and Commission jurisdiction, and Commission access to corporate books and records.

The proposed amendments also would revise provisions in the certificate of incorporation of CHX Holdings relating to ownership and voting limitations. Additionally, the proposed certificate of incorporation of N.A. Casin Holdings would contain identical ownership concentration and voting limitations and other provisions substantially similar to those contained in the CHX Holdings documents, which would apply directly to the upstream owners.²³ These provisions specify that no person, either alone or with its Related Persons,²⁴ shall be permitted at

²³ The current CHX Holdings Certificate contains ownership concentration and voting concentration limitations that are similar to those being proposed by the Exchange. In order to effect the Transaction, the CHX Holdings Board of Directors has waived the applicability of those limitations so that CHX Holdings can become a wholly owned subsidiary of N.A. Casin Holdings. See Exhibit 5H.

²⁴ As set forth in the proposed certificates of incorporation of N.A. Casin Holdings and CHX Holdings, the term "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

any time to own beneficially shares of stock of CHX Holdings or N.A. Casin Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter unless specific procedures are followed prior to acquiring shares in excess of the ownership limitation.²⁵ Furthermore, as proposed, no Exchange Participant, either alone or with its Related Persons, shall be permitted at any time to own beneficially shares of stock of CHX Holdings or N.A. Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.²⁶ In addition, 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 CHX Holdings or N.A. Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.²⁷ CHX also proposes cure provisions that would require CHX Holdings or N.A. Casin Holdings, as applicable, to call shares held in excess of these ownership limitations and to not register any shares transferred in violation of these ownership limitations.²⁸

Additionally, both the certificates of incorporation of CHX Holdings and N.A. Casin Holdings would preclude any stockholder, either alone or with its Related Persons, from voting

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.”

²⁵ See Notice, supra note 3, at 89552.

²⁶ See id. at 89552-53.

²⁷ See id. at 89553.

²⁸ See id.

more than 20% of the then outstanding shares entitled to be cast on any matter unless specific procedures are followed prior to voting in excess of the limitation.²⁹ Similarly, no person, either alone or with its Related Persons, would be permitted to enter into an agreement, plan, or other arrangement that would result in an aggregate of more than 20% of the then outstanding votes entitled to be cast on a matter to not be voted unless specific procedures are followed prior to entering into such an agreement, plan, or arrangement in violation.³⁰ The certificates of incorporation would require that CHX Holdings or N.A. Casin Holdings, as applicable, disregard any votes cast in excess of the voting limitations.³¹

III. Summary of the Comments

The Commission received four comments regarding the proposed rule change.³² The Commission also received one comment letter stating that, contrary to what the Ciccarelli Letter stated, the Ciccarelli Letter was not submitted by or on behalf of the Global Investigative Journalism Network.³³ The Exchange submitted a letter responding to the comments generally and a letter responding to the Ciccarelli Letter.³⁴

In general, three of the commenters express concern over the proposed upstream ownership of CHX.³⁵ One commenter questions whether the Chinese government may influence Chongqing Casin, stating that Chongqing Casin is involved in a number of Chinese market

²⁹ See id.

³⁰ See id.

³¹ See id.

³² See supra note 4.

³³ See GIJN Letter, supra note 4; see also CHX Response Letter 2, supra note 5.

³⁴ See supra note 5.

³⁵ See generally Pittinger Letter, supra note 4; Ciccarelli Letter, supra note 4; Anonymous Letter, supra note 4.

sectors that require close ties to the state, particularly in state-sensitive environmental protection areas, that its financial assets were originally state-controlled, and that its chairman sits on an industry council overseen directly by the mayor of the Chongqing Municipality.³⁶ The commenter states that, in particular, Chinese ownership or involvement presents risks as Chinese government-sponsored cyber-attacks have been conducted to devalue foreign businesses and steal intellectual property and proprietary data.³⁷ This commenter asserts that the United States government has been unable to adequately address transparency concerns with regard to the operations of Chinese businesses.³⁸ In its first response to comments, CHX affirms that no prospective investor controls, or is controlled by, or is under common control with, a governmental entity or any political subdivision thereof, including the Chinese government.³⁹

Another commenter argues that due to jurisdiction limitations and transparency concerns, the Commission cannot exercise proper regulatory oversight under the current proposal.⁴⁰ In response, CHX states that it believes that its rules are consistent with the requirements of the Exchange Act, and that the CHX rules and Exchange Act contain various provisions that would facilitate the ability of U.S. regulators, including the Commission, to monitor, compel and enforce compliance by each of the upstream owners, particularly in that upstream owners would be required to adhere to the ownership and voting limitations; submit to U.S. regulatory jurisdiction and maintain agents in the U.S. for the service of process; maintain open books and records related to their ownership of CHX and keep such books and records in the U.S.; and

³⁶ See Pittinger Letter, supra note 4, at 1.

³⁷ See id.

³⁸ See id. at 2.

³⁹ See CHX Response Letter 1, supra note 5, at 2.

⁴⁰ See Ciccarelli Letter, supra note 4, at 1-2.

refrain from interfering with, and give due consideration to, the SRO function of CHX.⁴¹ CHX also asserts that, pursuant to the Exchange Act, the Exchange is subject to direct and rigorous oversight by the Commission, which includes, among other things, frequent examinations of various aspects of CHX operations by Commission staff, including security and trading protocols, as well as Commission approval of certain regulatory, operational, and strategic initiatives prior to implementation by CHX.⁴²

This commenter also questions the identity of the proposed upstream owners and the validity of CHX's representation that there are no Related Persons among the proposed upstream owners other than Castle YAC and N.A. Casin Group.⁴³ The commenter asserts that contrary to CHX's representations in the Notice, several of the proposed upstream owners may be affiliated.⁴⁴ In addition, the commenter argues that Chongqing Casin has virtual control over Raptor and Saliba due to the put agreements.⁴⁵ The commenter therefore concludes that after the proposed transaction, approximately 99% of the voting stock in CHX would be controlled by Chinese entities or affiliated shell nominees.⁴⁶ In response, CHX asserts that 50.5% of CHX will be indirectly owned by U.S. citizens, and that it has not misrepresented any facts regarding the Transaction.⁴⁷ CHX reaffirms the representations that it made in the Notice that the only Related Persons among the prospective owners are Castle YAC and N.A. Casin Group, there are no other

⁴¹ See CHX Response Letter 1, supra note 5, at 4; CHX Response Letter 2, supra note 5, at 3.

⁴² See CHX Response Letter 2, supra note 5, at 3-4.

⁴³ See generally Ciccarelli Letter, supra note 4.

⁴⁴ See id. at 2-3.

⁴⁵ See id. at 3.

⁴⁶ See id. at 2.

⁴⁷ See CHX Response Letter 2, supra note 5, at 2.

Related Persons among the prospective owners, and that none of the prospective owners directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a governmental entity or subdivision thereof.⁴⁸ CHX notes that each of these representations is supported by an opinion of counsel provided to the Commission by outside counsel for CHX.⁴⁹ CHX asserts that, as described in the Notice, Xian Tong Enterprises, Inc. and Castle YAC are controlled by U.S. citizens, Quiling Luo and Jay Lu, respectively.⁵⁰ CHX also states that under the terms of the Saliba and Raptor put agreements, N.A. Casin Holdings could not compel Saliba or Raptor to exercise their put options, and that in the event that either the Saliba or Raptor put agreement is exercised, the CHX rules would require the resulting ownership structure to comport with the ownership and voting limitations.⁵¹ In addition, CHX states that it “provided [the Committee for Foreign Investment in the United States (“CFIUS”)] with detailed information regarding the [p]rospective [o]wners, which recently concluded its investigation into the [p]roposed Transaction and found no unresolved national security concerns.”⁵²

This commenter also asserts that there are few or no controls in place at the upstream corporate ownership level that would prevent the upstream owners from transferring their voting power in CHX to what the commenter opines could be more opaque owners, including those that involve the Chinese government.⁵³ In response, CHX represents that no prospective owner and

⁴⁸ See id. at 5.

⁴⁹ See id.

⁵⁰ See id. at 5-6.

⁵¹ See id. at 6.

⁵² See id. at 5.

⁵³ See Ciccarelli Letter, supra note 4, at 2.

its Related Persons would maintain an equity interest in N.A. Casin Holdings in excess of the 40% ownership limitation, and that no prospective owner and its Related Persons would be permitted to exercise voting power in excess of the 20% voting limitation.⁵⁴ CHX also responds that the proposed governance documents for N.A. Casin Holdings and CHX Holdings provide robust enforcement mechanisms for the ownership and voting limitations, and that the CHX board's composition would be required to meet certain independence requirements.⁵⁵ As described above, CHX notes that the CHX rules and Exchange Act contain various provisions that would facilitate the ability of U.S. regulators, including the Commission, to monitor, compel and enforce compliance by each of the upstream owners.⁵⁶ CHX states that in the event that a prospective owner does not comply with the ownership or voting limitations, the proposed governance documents enable the relevant holding companies to cure non-compliance.⁵⁷

Two commenters assert that the proposed acquisition may present financial security risks to investors and the U.S. marketplace.⁵⁸ One of these commenters raises concerns that a bad actor with access to a national stock exchange's data could use information available through brokerage records and the Consolidated Audit Trail to engage in spear phishing, blackmail attempts, and other similar attacks.⁵⁹ In its response, CHX states that CFIUS investigated the

⁵⁴ See CHX Response Letter 1, supra note 5, at 3; CHX Response Letter 2, supra note 5, at 2.

⁵⁵ See CHX Response Letter 1, supra note 5, at 3; CHX Response Letter 2, supra note 5, at 3.

⁵⁶ See supra note 41 and accompanying text.

⁵⁷ See CHX Response Letter 2, supra note 5, at 3.

⁵⁸ See Pittinger Letter, supra note 4, at 1; Anonymous Letter, supra note 4.

⁵⁹ See Anonymous Letter, supra note 4.

Transaction and “CFIUS determined that there were no unresolved national security concerns with respect to the [p]roposed Transaction...”⁶⁰

Finally, three commenters express concern regarding the length of the comment period and the timing of the filing over the holiday season.⁶¹ Two of the commenters request that the Commission extend the comment period.⁶² In response, CHX states that it has been in regular contact with the Commission’s staff since the merger agreement was executed, and that the timing of the filing was not intended to circumvent thorough Commission review of the proposed rule change.⁶³

IV. Proceedings to Determine Whether to Approve or Disapprove SR-CHX-2016-20 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act⁶⁴ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as stated below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

⁶⁰ See CHX Response Letter 1, supra note 5, at 5.

⁶¹ See Pittinger Letter, supra note 4, at 1; Hill Letter, supra note 4; Ciccarelli Letter, supra note 4, at 4.

⁶² See Pittinger Letter, supra note 4, at 1; Hill Letter, supra note 4.

⁶³ See CHX Response Letter 1, supra note 5, at 4-5.

⁶⁴ 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Exchange Act,⁶⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(1) of the Exchange Act, which requires that a national securities exchange is so organized and has the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the exchange. In addition, the Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange are designed to protect investors and the public interest.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(1), 6(b)(5), or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁶⁶

⁶⁵ Id.

⁶⁶ Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 30 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 45 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

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 Numbers 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

appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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 these filings 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 30 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 45 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁷

Eduardo A. Aleman
Assistant Secretary

⁶⁷ 17 CFR 200.30-3(a)(57).