



8011-01
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81366; File No. SR-CHX-2016-20)

August 9, 2017

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Acquisition of CHX Holdings, Inc. by 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 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change in connection with the acquisition (“Transaction”) of CHX Holdings, Inc. (“CHX Holdings”) by North America Casin Holdings, Inc. (“NA Casin Holdings”). The proposed rule change was published for comment in the Federal Register on December 12, 2016.³ On January 12, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁴ to determine whether to approve or disapprove the proposed rule change.⁵ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79474 (December 6, 2016), 81 FR 89543 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2)(B).

⁵ See Securities Exchange Act Release No. 79781, 82 FR 6669 (January 19, 2017).

received 28 comments on the proposed rule change,⁶ and three responses from the Exchange in response to certain comments.⁷ On June 6, 2017, pursuant to Section 19(b)(2) of the Exchange

⁶ See letters from: (1) Representative Robert Pittenger, Representative Earl L. “Buddy” Carter, Representative Peter DeFazio, Representative Collin Peterson, and Representative David Joyce, dated December 22, 2016 (“Pittenger Letter 1”); (2) James N. Hill, dated December 23, 2016; (3) John Ciccarelli, dated January 2, 2017 (“Ciccarelli Letter”); (4) Anonymous, dated January 3, 2017 (“Anonymous Letter”); (5) David E. Kaplan, Executive Director, Global Investigative Journalism Network, dated January 4, 2017; (6) Reddy Dandolu, Founder, Chief Executive Officer, Las Vegas Stock Exchange, dated February 4, 2017 (“Dandolu Letter”); (7) David Ferris, Senior Research Analyst, The Public Interest Review, dated February 16, 2017 (“Ferris Letter 1”); (8) Michael Brennan, Independent Market Commentator, dated February 17, 2017 (“Brennan Letter”); (9) Lawrence Bass, Individual Member, Alliance for American Manufacturing, dated February 20, 2017 (“Bass Letter”); (10) Steven Mayer, dated February 20, 2017 (“Mayer Letter”); (11) William Park, dated February 21, 2017 (“Park Letter”); (12) Jason Blake, Commentator, The Wall Street Journal, dated February 25, 2017; (13) John Meagher, Freelance Journalist, dated March 1, 2017; (14) Yong Xiao, Chief Executive Officer, North America Casin Holdings, Inc., dated March 1, 2017 (“NA Casin Holdings Letter”); (15) Steven Caban, dated March 1, 2017 (“Caban Letter”); (16) Harley Seyedin, President, American Chamber of Commerce in South China, dated March 2, 2017 (“Seyedin Letter”); (17) Salvatore Nobile, dated March 2, 2017 (“Nobile Letter”); (18) Olga Gouroudeva, dated March 3, 2017 (“Gouroudeva Letter”); (19) John R. Prufeta, dated March 3, 2017 (“Prufeta Letter”); (20) Anthony J. Saliba, Saliba Ventures Holdings, LLC, dated March 3, 2017 (“Saliba Letter”); (21) Aileen Zhong, dated March 5, 2017 (“Zhong Letter”); (22) Duncan Karcher, dated March 5, 2017 (“Karcher Letter”); (23) Ira Gottlieb, Principal, Healthcare Practice, Mazars USA LLP, dated March 5, 2017 (“Gottlieb Letter”); (24) James N. Hill, dated March 6, 2017 (“Hill Letter 2”); (25) David Ferris, Senior Research Analyst, The Public Interest Review, dated March 6, 2017 (“Ferris Letter 2”); (26) Sean Casey, dated April 24, 2017; (27) Representative Robert Pittenger, Representative Chris Smith, Representative Peter DeFazio, Representative Ted Yoho, Representative Rosa DeLauro, Representative Steve King, Representative Walter Jones, Representative David Joyce, Representative Brian Babin, Representative Bill Posey, and Representative Tom Marino, dated July 10, 2017 (“Pittenger Letter 2”); and (28) Senator Joe Manchin, III, dated July 20, 2017 (“Manchin Letter”). All of the comments are available at: <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

⁷ See letters from John K. Kerin, President and Chief Executive Officer, CHX, dated January 5, 2017 (“CHX Response Letter 1”); Albert J. Kim, Vice President and Associate General Counsel, CHX, dated January 6, 2017 (“CHX Response Letter 2”) (responding specifically to the Ciccarelli Letter); and John K. Kerin, President and Chief Executive Officer, CHX, dated March 6, 2017 (“CHX Response Letter 3”).

Act,⁸ the Commission designated a longer period for Commission action on proceedings to determine whether to disapprove the proposed rule change.⁹ On August 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.¹⁰ The Commission is publishing this notice

⁸ 15 U.S.C. 78s(b)(2).

⁹ See Securities Exchange Act Release No. 80864, 82 FR 26966 (June 12, 2017).

¹⁰ In Amendment No. 1, the Exchange modified its proposal to respond to concerns expressed by certain commenters. Specifically, in Amendment No. 1, the Exchange: (1) amends the proposed certificates of incorporation of CHX Holdings and NA Casin Holdings to require that: (a) owners of the corporation provide notice to the corporation of certain changes to their ownership levels, and that the Exchange provide the Commission notice of certain changes; (b) each person having voting rights or beneficial ownership of stock of the corporation to promptly provide the corporation with written notice of any change in its status as a related person of another person that owns voting share of stock of the corporation; and (c) each stockholder of the corporation to annually attest directly to the Commission and the corporation as to its equity ownership level in the corporation and the identity of its related persons and to whether any agreement to act together exists between the stockholder and any other person for the purpose of acquiring, voting, holding, or disposing of shares of stock of the corporation; (2) amends the certificate of incorporation of CHX Holdings to: (a) require the chief compliance officer of CHX Holdings to monitor compliance with the limitations on voting and ownership applicable to all upstream beneficial owners, and to ensure that each beneficial owner of the corporation provides the corporation with certain annual attestations; and (b) require that CHX Holdings will engage an independent and Public County Accounting Oversight Board (“PCAOB”)-registered auditor that will perform within one year of the closing date of the Transaction and every two years thereafter, an audit of the corporation’s oversight of compliance with the ownership and voting limitations; (3) amends the bylaws of CHX, CHX Holdings, and NA Casin Holdings to require that each corporation contemporaneously provides the Commission with any information it provides to any other U.S. governmental entity or U.S. authority pursuant to any agreement; (4) amends the CHX Rules to: (a) require that, before reporting data to Consolidated Audit Trail (“CAT”) or having access to CAT data, it will adopt policies and procedures to ensure that only CHX regulatory personnel have access to any “CAT Data” (as defined in the National Market System Plan Governing the Consolidated Audit Trail approved by the U.S. Securities and Exchange Commission on November 15, 2016, as such plan may be amended from time to time) and that CHX regulatory personnel would not provide access to any CAT Data to (i) any personnel of CHX and CHX Holdings (except such personnel that may also be CHX regulatory personnel); (ii) any personnel of NA Casin Holdings; or (iii) any upstream beneficial owner, regardless of citizenship of such personnel and owners (except such personnel that may also be CHX regulatory personnel); (b) confirm that any regulatory services agreement (“RSA”) it may enter into would comply with the U.S. federal securities laws at the time of the execution

to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Summary of the Proposal, As Modified by Amendment No. 1

Currently, the Exchange is a wholly-owned subsidiary of CHX Holdings, and CHX Holdings is beneficially owned by 193 firms or individuals, including certain Participants or

and on an ongoing basis; (c) require the chief regulatory officer of CHX to monitor Exchange compliance with the provision of each RSA to which the Exchange is party; and (d) and require the Exchange to engage an independent and PCAOB-registered auditor to perform within one year of the closing date of the Transaction and every two years thereafter, an audit of the Exchange's oversight of: (i) all RSAs to which the Exchange is a party and (ii) compliance with the CHX rule restricting access to CAT Data to CHX regulatory personnel; (5) supplements certain of its representations with certifications from each owner of NA Casin Holdings, attesting to CHX and the Commission (a) the identities of all related persons, if any; (b) that it does not directly, or indirectly through one or more intermediaries, control, and is not, directly or indirectly through one or more intermediaries, controlled or owned by, or under common control or ownership with, a governmental entity or political subdivision thereof; (c) that it nor any of its related persons is subject to any "statutory disqualification" as defined in Section 3(a)(39) of the Exchange Act; and (d) that no agreement, arrangement, or understanding to acquire, vote, hold, or dispose of stock of NA Casin Holdings, exists between such owner and any of the other owners of NA Casin Holdings; (6) provides a statement from each of the owners of NA Casin Holdings in which such owner (a) irrevocably submits to the jurisdiction of the U.S. federal courts, the Commission, and CHX, for the purposes of any suit, action or proceeding relating to the certifications it provided to the Exchange and CHX regarding among other things, its related persons, or arising pursuant to the U.S. federal securities laws, or the rules and regulations thereunder, arising out of, or relating to, the activities of CHX, and 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 is not personally subject to the jurisdiction of the U.S. federal courts, the Commission or 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; (b) designates, authorizes and identifies to the Commission an agent in the U.S. for the service of process of a claim arising out of, or relating to, the activities of CHX, including the certificates it provided to the Exchange and the Commission; and (c) agrees to promptly inform the Commission in writing of any change to its designated and authorized agent; and (7) changes the name of one of the proposed upstream owners from "Cheevers & Co., Inc." ("Cheevers") to "Penserra Securities, LLC" ("Penserra") to reflect that Cheevers merged with Penserra, with Penserra as the surviving entity. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml>.

affiliates of Participants.¹¹ Pursuant to the terms of an Agreement and Plan of Merger, dated February 4, 2016 (“Merger Agreement”), by and among NA Casin Holdings, Exchange Acquisition Corporation, Chongqing Casin Enterprise Group Co., LTD. (“Chongqing Casin”), Richard G. Pane solely in his capacity as the Stockholders Representative thereunder, and CHX Holdings, Exchange Acquisition Corporation would merge into CHX Holdings, which would then become a wholly-owned direct subsidiary of NA Casin Holdings.¹² Current CHX Holdings stockholders would receive the right to receive cash in exchange for their shares under the terms of the Transaction.¹³ The Exchange would continue to be a wholly-owned subsidiary of CHX Holdings. Consummation of the Transaction is subject to the satisfaction of certain conditions precedent, including approval by the Commission of the proposed rule change.¹⁴

The Exchange represents that, after the closing of the Transaction, all of the outstanding and issued shares of NA Casin Holdings would be held by the following firms and individuals (referred to collectively as the “upstream owners”) in the following percentages:

Upstream Owners:

- NA Casin Group, Inc. (“NA Casin Group”), a corporation incorporated under the laws of the State of Delaware and wholly-owned by Chongqing Casin, a limited company organized under the laws of the People’s Republic of China (“PRC”) – 20%
- Chongqing Jintian Industrial Co., Ltd., a corporation incorporated under the laws of the PRC – 15%

¹¹ See Notice, supra note 3, 81 FR at 89544. See also CHX Rules Article 1, Rule 1(s) (defining “Participant”).

¹² See Notice, supra note 3, 81 FR at 89544.

¹³ See id.

¹⁴ See id.

- Chongqing Longshang Decoration Co., Ltd., a corporation incorporated under the laws of the PRC – 14.5%
- 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,¹⁵ a U.S. citizen and Vice President of NA 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%
- Five members of the CHX Holdings management team, all U.S. citizens – 0.88% (as equity incentives)
- Penserra, a limited liability company organized under the laws of the State of New York – 0.18%¹⁶

After the closing of the Transaction, CHX would remain a national securities exchange, registered under Section 6 of the Exchange Act,¹⁷ and a self-regulatory organization (“SRO”), as defined in Section 3(a)(26) of the Exchange Act.¹⁸ In addition, following the closing, the Exchange’s affiliated routing broker, CHXBD, would remain a Delaware limited liability corporation of which CHX Holdings would remain the sole member.

¹⁵ According to the Exchange, Jay Lu is associated with an affiliate of Chongqing Casin and is the son of Shengju Lu, the Chairman of Chongqing Casin. See Notice, supra note 3, 81 FR at 89545, n.18. The Exchange represents that the only Related Persons among the upstream owners are Castle YAC and NA Casin Group. See id.

¹⁶ See id. at 89544-55; see Amendment No. 1, supra note 10, at 7 (explaining that Cheevers merged with Penserra, with Penserra as the surviving entity).

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78c(a)(26).

To effect the Transaction, the Exchange proposes to amend its certificate of incorporation and bylaws (“CHX Bylaws”),¹⁹ the certificate of incorporation (“CHX Holdings Certificate”) and bylaws (“CHX Holdings Bylaws”) of CHX Holdings,²⁰ and the Exchange’s rules.²¹ The Exchange has also filed the following documents in connection with the Transaction: (1) the certificate of incorporation (“NA Casin Holdings Certificate”) and bylaws (“NA Casin Holdings Bylaws”) of NA Casin Holdings;²² (2) text of a proposed resolution of CHX Holdings’ board of

¹⁹ See Exhibits 5C and 5D. All Exhibits to the proposed rule change are available at: <https://www.sec.gov/rules/sro/chx/chxarchive/chxarchive2016.shtml>.

²⁰ See Exhibits 5A and 5B.

²¹ See Exhibit 5E. The current CHX Holdings Certificate and CHX Holdings Bylaws require that, for so long as CHX Holdings controls the Exchange, either directly or indirectly, any changes to the CHX Holdings Certificate or CHX Holdings Bylaws must be submitted to the board of directors of the Exchange and, if the Exchange’s board determines that the change must be filed with, or filed with and approved by, the Commission under Section 19 of the Exchange Act and the rules thereunder, then the changes will not be effective until filed with, or filed with and approved by, the Commission. See Article THIRTEENTH of the current CHX Holdings Certificate; and Article VIII of the current CHX Holdings Bylaws. Section 19(b) of the Exchange Act and Rule 19b-4 thereunder require an SRO to file proposed rule changes with the Commission. Although CHX Holdings is not an SRO, its certificate of incorporation and bylaws are rules of the Exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b-4 under the Exchange Act) of the exchange, and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Exchange Act and Rule 19b-4 thereunder. Accordingly, the Exchange filed the CHX Holdings Certificate and CHX Holdings Bylaws with the Commission.

²² See Exhibits 5F and 5G. The proposed NA Casin Holdings Certificate and NA Casin Holdings Bylaws require that, for so long as NA Casin Holdings controls the Exchange, either directly or indirectly, any change to those documents must be submitted to the board of directors of the Exchange and, if the Exchange’s board determines that the change must be filed with, or filed with and approved by, the Commission under Section 19 of the Exchange Act and the rules thereunder, then the changes will not be effective until filed with, or filed with and approved by, the Commission. See proposed NA Casin Holdings Certificate, Article X; proposed NA Casin Holdings Bylaws, Article 11. Although NA Casin Holdings is not an SRO, its certificate of incorporation and bylaws are rules of the Exchange if they are stated policies, practices, or interpretations (as defined in Rule 19b-4 under the Exchange Act) of the exchange, and must therefore be filed with the Commission pursuant to section 19(b)(4) of the Exchange Act and Rule

directors to waive certain ownership and voting limitations to permit the Transaction;²³ (3) the proposed NA Casin Holdings Stockholders' Agreement,²⁴ 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; and (4) put agreements between Saliba, NA Casin Group, and NA Casin Holdings ("Saliba Put Agreement"),²⁵ and Raptor, NA Casin Group, and NA Casin Holdings ("Raptor Put Agreement"),²⁶ which would grant Saliba and Raptor, respectively, the right to compel NA Casin Holdings to purchase or arrange for an unspecified third-party to purchase a specified amount of Saliba's or Raptor's equity interest in NA Casin Holdings, respectively.

The Exchange proposes several substantive and technical amendments to its corporate governance documents, rules, and the governing documents of CHX Holdings. Among other items, the proposed amendments revise provisions in the CHX Holdings Certificate relating to ownership and voting limitations.²⁷ In addition, to govern the upstream owners, the Exchange proposes to establish in the NA Casin Holdings' Certificate ownership and voting limitations that are identical to those contained in the proposed CHX Holdings documents.²⁸ In particular, these

19b-4 thereunder. Accordingly, the Exchange filed the NA Casin Holdings Certificate and NA Casin Holdings Bylaws with the Commission.

²³ See Exhibit 5H.

²⁴ See Exhibit 5I.

²⁵ See Exhibit 5J.

²⁶ See Exhibit 5K.

²⁷ See infra Section III.A.

²⁸ See id.

provisions prohibit any Person,²⁹ either alone or with its Related Persons,³⁰ from beneficially owning shares of stock of CHX Holdings or NA 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.³¹ In addition, no Participant, either alone or with its Related Persons, would be permitted at any time to beneficially own shares of stock of CHX Holdings or NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.³²

²⁹ The NA Casin Holdings Certificate and CHX Holdings Certificate define “Person” to mean “a natural person, partnership (general or limited), corporation, limited liability company, trust or unincorporated organization, or a governmental entity or political subdivision thereof.” See proposed CHX Holdings Certificate Article FOURTH, Section (b); proposed NA Casin Holdings Certificate Article IX, Section (4).

³⁰ CHX proposes to define the term “Related Persons” in the NA Casin Holdings Certificate and CHX Holdings Certificate to mean: (1) with respect to any Person, any executive officer (as such term is defined in Rule 3b-7 under the 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 NA Casin Holdings or CHX Holdings, as applicable, 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 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 NA Casin Holdings or CHX Holdings, as applicable; 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 NA Casin Holdings or CHX Holdings, as applicable, or any of its parents or subsidiaries. See proposed CHX Holdings Certificate Article FOURTH, Section (b); and proposed NA Casin Holdings Certificate Article IX, Section (4).

³¹ See proposed CHX Holdings Certificate Article FOURTH, Section (c)(i); and proposed NA Casin Holdings Certificate Article IX, Section (9).

³² See proposed CHX Holdings Certificate Article FOURTH, Section (c)(ii); proposed NA Casin Holdings Certificate Article IX, Section (10).

Further, no Person that is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act would be permitted at any time to beneficially own, either alone or with its Related Persons, shares of stock of CHX Holdings or NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.³³ CHX also proposes cure provisions that would require CHX Holdings or NA Casin Holdings, as applicable, to call shares held in excess of these ownership limits, and to not register any shares transferred in violation of these ownership limits.³⁴ These restrictions are described herein as the “ownership limitations.”

In addition, both the CHX Holdings Certificate and NA Casin Holdings Certificate contain voting restrictions that would preclude any stockholder, either alone or with its Related Persons, from voting 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.³⁵ 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.³⁶ The certificates of incorporation would also require that CHX Holdings and NA Casin Holdings disregard any votes

³³ See proposed CHX Holdings Certificate Article FOURTH, Section (d); and proposed NA Casin Holdings Certificate Article IX, Section (13).

³⁴ See proposed CHX Holdings Certificate Article FOURTH, Sections (c)(i)(C), (c)(ii)-(iii), and (d); proposed NA Casin Holdings Certificate Article IX, Sections (9)(iii), (10), (11), and (13).

³⁵ See proposed CHX Holdings Certificate FOURTH (b)(i); and proposed NA Casin Holdings Certificate Article IX, Section (5).

³⁶ See id.

cast in excess of the voting limitations.³⁷ These restrictions are described herein as the “voting limitations.”

In addition, the Exchange has proposed revisions to the corporate governance documents of NA Casin Holdings and CHX Holdings to provide notice requirements with respect to changes in ownership that may affect the ownership and voting limitations. Specifically, the NA Casin Holdings Certificate and CHX Holdings Certificate will provide that: (1) each Person involved in an acquisition for shares of stock of the corporation shall provide the corporation with written notice 14 days prior to the closing date of any acquisition that would result in a Person having voting rights or beneficial ownership, alone or together with its Related Persons, of record or beneficially, of five percent or more of the then outstanding shares of stock of the corporation entitled to vote on any matter; (2) NA Casin Holdings and CHX Holdings will be required to provide 10-day advance written notice to the Commission of any such changes in ownership; (3) any Person that, either alone or together with its Related Persons, has voting rights or beneficial ownership of, five percent or more of the outstanding voting shares of CHX Holdings or NA Casin Holdings (whether by acquisition or by change in the number of shares outstanding or otherwise), will be required, immediately upon acquiring knowledge of its ownership, to give the board of directors of CHX Holdings or NA Casin Holdings, as applicable, notice of such ownership; (4) any Person that, either alone or together with its Related Persons, of record or beneficially, has voting rights or beneficial ownership of five percent or more of NA Casin Holdings or CHX Holdings must promptly update the corporation if its ownership stake in or voting power regarding NA Casin Holdings or CHX Holdings increases or decreases by one

³⁷ See id.

percent or more;³⁸ and (5) each Person having voting rights or beneficial ownership of stock of the NA Casin Holdings or CHX Holdings will be required to provide prompt written notice to the corporation regarding any changes to its Related Person status with respect to other Persons that own voting shares of stock of the corporation.³⁹

Furthermore, CHX is amending the CHX Holdings Bylaws,⁴⁰ CHX Bylaws,⁴¹ and NA Casin Holdings Bylaws,⁴² to adopt provisions in each respective document to require that each of CHX Holdings, CHX, and NA Casin Holdings, as applicable, contemporaneously provide the Commission with any information it provides to any other U.S. governmental entity or U.S. authority pursuant to any agreement.

The proposed rule change also includes changes to CHX Holdings' and the Exchange's certificates of incorporation and bylaws addressing, among other items, board and committee composition and procedures, procedures regarding stockholder meetings, consent to U.S. federal court and Commission jurisdiction, and Commission access to certain corporate books and records.⁴³ The proposed rule change also adopts provisions in the new NA Casin Holdings Certificate and NA Casin Holdings Bylaws relating to these matters.⁴⁴

³⁸ See proposed NA Casin Holdings Certificate Article IX, Section (19)(i); proposed CHX Holdings Certificate Article Fourth(g)(i).

³⁹ See proposed NA Casin Holdings Certificate Article IX, Section (19)(ii); proposed CHX Holdings Certificate Article Fourth(g)(ii).

⁴⁰ See proposed CHX Holdings Bylaws, Article XIII, Section 13.1.

⁴¹ See proposed CHX Bylaws, Article XIII, Section 13.1

⁴² See proposed NA Casin Holdings Bylaws, Article 10, Section 10.1.3.

⁴³ See infra Sections III.0 and III.B.

⁴⁴ See id.

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, comments on the proposal, and the commitments undertaken by the Exchange in Amendment No. 1, which was filed to respond to comments.⁴⁵ The Commission has also considered additional information provided by the Exchange, some of which was provided on a confidential basis. Based on this consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.⁴⁶ In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(1) and 6(b)(3) of the Exchange Act,⁴⁷ which require, among other things, that: (1) a national securities exchange be organized and have the capacity to be able to carry out the purposes of the Exchange Act 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; and (2) the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. The Commission also finds that the proposal is consistent with Section 6(b)(5) of the Exchange Act,⁴⁸ which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free

⁴⁵ See Amendment No. 1, supra note 10, at 5.

⁴⁶ In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁷ 15 U.S.C. 78f(b)(1) and f(b)(3).

⁴⁸ 15 U.S.C. 78f(b)(5).

and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission notes that, as discussed below, several commenters assert that the proposed rule change is inconsistent with Sections 6(b)(1) and 6(b)(5) of the Exchange Act because they believe that the proposed ownership structure is opaque and therefore it would be difficult for the Exchange to monitor for compliance with the Exchange Act and the rules of the Exchange,⁴⁹ and for the Commission to exercise regulatory oversight, following the closing of the Transaction.⁵⁰ After careful consideration, as discussed further below, the Commission believes that the commenters' concerns are adequately addressed by the following safeguards: the ownership and voting limitations as well as the related monitoring provisions and related remedies; the notice requirements regarding changes in ownership and Related Person relationships; provisions relating to compliance with U.S. law; consents to jurisdiction; requirements to give due regard to the regulatory obligations and functions of the Exchange; and provisions ensuring access to books and records.⁵¹

A. Voting and Ownership Limitations; Consent to Jurisdiction; Due Regard; Books and Records

As noted above,⁵² under the terms of the Transaction, CHX will continue to be a wholly-owned subsidiary of CHX Holdings, and CHX Holdings will become a wholly-owned subsidiary

⁴⁹ See infra note 85 and accompanying text.

⁵⁰ See infra notes 91-95 and accompanying text.

⁵¹ See infra Section III.0.

⁵² See supra notes 12-14 and accompanying text.

of NA Casin Holdings. Furthermore, NA Casin Holdings will be owned by a consortium of both U.S. and non-U.S. entities.⁵³

The rules of each exchange provide for limitations on ownership and voting rights, which are designed to prevent any stockholder from exercising undue control over the operation of an exchange and to assure that the exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act. Here, CHX represents that the CHX Holdings Certificate and the NA Casin Holdings Certificate contain substantially identical ownership and voting limitations (other than the requirement that NA Casin Holdings take reasonable steps to cause CHX Holdings to be in compliance with the voting and ownership limitations contained in the CHX Holdings Certificate).⁵⁴ Under the proposal, the board of directors of CHX Holdings would waive CHX Holdings' 40% ownership limitation with respect to the proposed acquisition by NA Casin Holdings so that NA Casin Holdings could own 100% of CHX Holdings.⁵⁵ But the relevant ownership and voting limitations will be contained in the NA Casin Holdings Certificate. The Commission notes that these limitations are designed to prevent any stockholder from exercising undue control over the operation of CHX and to assure that CHX and the Commission are able to carry out their regulatory obligations under the Exchange Act. The proposed governing documents of CHX Holdings and NA Casin Holdings contain provisions relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records that are designed to address

⁵³ See supra note 16 and accompanying text.

⁵⁴ See supra notes 28-37 and accompanying text.

⁵⁵ See infra Section III.D.

CHX's ability to carry out its regulatory obligations and the Commission to exercise its regulatory oversight over CHX after the acquisition.

1. Proposed Ownership and Voting Limitations

With regard to ownership, the NA Casin Holdings Certificate restricts the ability of any Person, either alone or with its Related Persons, to vote or own shares of stock of NA Casin Holdings above certain thresholds. Specifically, the NA Casin Holdings Certificate provides that unless otherwise provided, no Person, either alone or with its Related Persons, shall be permitted at any time to beneficially own shares of stock of NA Casin Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter.⁵⁶ In addition, the NA Casin Holdings Certificate prohibits any Participant, either alone or with its Related Persons, from beneficially owning shares of stock of NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.⁵⁷ The NA Casin Holdings Certificate also prohibits a Person that is subject to any statutory disqualification as defined in Section 3(a)(39) of the Exchange Act from at any time beneficially owning, either alone or with its Related Persons, shares of stock of NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.⁵⁸

The NA Casin Holdings Certificate provides that if any Person, either alone or with its Related Persons, intends on acquiring ownership in excess of these ownership limitations, such Person must provide the board of directors of NA Casin Holdings with advance notice, the board

⁵⁶ See proposed NA Casin Holdings Certificate Article IX, Section (9).

⁵⁷ See proposed NA Casin Holdings Certificate Article IX, Section (10).

⁵⁸ See proposed NA Casin Holdings Certificate Article IX, Section (13).

must adopt a resolution permitting such ownership, and such resolution must be filed with and approved by the Commission under Section 19(b) of the Exchange Act.⁵⁹ In addition, the NA Casin Holdings and CHX Holdings Certificates both provide that the Commission will be given prior notice of any acquisition that would result in a Person, alone or together with its Related Persons, owning or voting five percent or more of the voting stock of the NA Casin Holdings or CHX Holdings, as applicable.⁶⁰

In addition, the NA Casin Holdings Certificate provides that, if any Person, either alone or with its Related Persons, at any time beneficially owns shares of stock of NA Casin Holdings in excess of the ownership limitations described above and such proposed ownership has not been approved by the board of directors of NA Casin Holdings and the Commission in accordance with the NA Casin Holdings Certificate,⁶¹ NA Casin Holdings will call from such Person and its Related Persons the number of shares of stock of NA Casin Holdings entitled to vote on any matter that exceeds the ownership limitation at a price equal to the par value of the shares of stock.⁶² In addition, the NA Casin Holdings Certificate provides that NA Casin Holdings will not register the purported transfer of any shares of its stock in violation of the 40% ownership limitation set forth in Article IX, Section (9).⁶³

The NA Casin Holdings Certificate also contains voting restrictions. It provides that no Person, either alone or with its Related Persons, as of any record date for the determination of

⁵⁹ See proposed NA Casin Holdings Certificate Article IX, Section (9)(i)-(ii).

⁶⁰ See proposed NA Casin Holdings Certificate Article IX, Section (19)(i); proposed CHX Holdings Certificate Article FOURTH(g)(i).

⁶¹ See proposed NA Casin Holdings Certificate Article IX, Section (9)(i)-(ii).

⁶² See proposed NA Casin Holdings Certificate Article IX, Sections (9)(iii), (10), and (13).

⁶³ See proposed NA Casin Holdings Certificate Article IX, Section (11).

stockholders entitled to vote on any matter, shall be entitled to vote or cause the voting of shares of stock of NA Casin Holdings, 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.⁶⁴ The NA Casin Holdings Certificate also provides that NA Casin Holdings will disregard any votes cast in excess of the voting limitation.⁶⁵ Further, the NA Casin Holdings Certificate requires NA Casin Holdings to take reasonable steps necessary to cause CHX Holdings to comply with the voting and ownership limitations set forth in the CHX Holdings Certificate.⁶⁶

Relevant to the ownership and voting limitations, the Exchange represents that the only Related Persons among the upstream owners are Castle YAC and NA Casin Group.⁶⁷ Together, Castle YAC and NA Casin Group would hold a 39% ownership interest in NA Casin Holdings, which is lower than the 40% ownership limitation. In addition, they would not be permitted to exercise their collective voting interest in excess of the 20% voting limitation. In connection with the proposed rule change, the Exchange has submitted to the Commission and to CHX a certification from each of the upstream owners attesting: (1) to the identities of its Related Persons; (2) that such owner does not directly, or indirectly through one or more intermediaries, control, and is not, directly or indirectly through one or more intermediaries, controlled or owned by, or under common control or ownership with, a governmental entity or political subdivision thereof; (3) that no agreement, arrangement, or understanding for the purpose of acquiring, voting, holding, or disposing of stock of NA Casin Holdings exist between the stockholder and

⁶⁴ See proposed NA Casin Holdings Certificate Article IX, Section (5).

⁶⁵ See id.

⁶⁶ See proposed NA Casin Holdings Certificate Article IX, Section (4).

⁶⁷ See supra note 15.

any of the upstream owners; and (4) that neither such owner nor any of its Related Persons is subject to any applicable “statutory disqualification” as defined in Section 3(a)(39) of the Exchange Act.⁶⁸

In addition, by September 1, 2018, and for every year thereafter, each stockholder of NA Casin Holdings and CHX Holdings would be required to submit to the Commission and the corporation an attestation regarding: (1) its equity ownership level in the corporation and the identity of its Related Persons and (2) the existence of any agreement, arrangement or understanding (whether or not in writing) between the stockholder and any other person to act together for the purpose of acquiring, voting, holding or disposing of shares of stock of the corporation.⁶⁹ The Exchange further represents that the NA Casin Holdings Stockholders’ Agreement and the Raptor and Saliba put agreements would not violate the proposed ownership and voting limitations.⁷⁰

2. Proposed Provisions on Consent to Jurisdiction; Books and Records; Due Regard

⁶⁸ See Amendment No. 1, supra note 10 at Exhibit 2.

⁶⁹ See Amendment No. 1, supra note 10, at 9-10 (see CHX Holdings Certificate, Article FOURTH(h); NA Casin Holdings Certificate, Article IX, Section (20)).

⁷⁰ See Notice, supra note 3, 81 FR at 89545. The put agreements contemplate that the closing of the purchase of shares pursuant to the put agreements may be delayed in the event that the parties need to seek regulatory approval. See Saliba Put Agreement, Section 3(c); Raptor Put Agreement, Section 3(c). In accordance with Article IX, Section (9) of the NA Casin Holdings Certificate, if exercise of the put agreements would result in any party owning more than 40% of the outstanding voting stock in NA Casin Holdings, the parties would need to seek approval of NA Casin Holdings’ board of directors to waive the 40% ownership limitation and the proposed rule change approving such waiver would need to be filed with and approved by the Commission. Therefore, before the exercise of the put rights could close and transfer shares in violation of the 40% ownership limitation, the Commission would have an opportunity to evaluate whether the transfer of shares would be consistent with the Exchange Act. Accordingly, these put rights should not result in any entity holding over 40% of ownership without first receiving Commission approval.

Proposed Article IX, Section 2 of the NA Casin Holdings Certificate and proposed Section 3.4 of the CHX Holdings Bylaws provide that each of NA Casin Holdings and CHX Holdings, respectively, and its officers, directors, employees, and agents, by virtue of their acceptance of their positions, shall comply with the federal securities laws and rules and regulations thereunder and shall cooperate, and shall take reasonable steps necessary to cause its agents to cooperate, with respect to such agents' activities related to CHX, with the Commission and the Exchange, pursuant to, and to the extent of, CHX's regulatory authority. In addition, pursuant to proposed Article 10, Section 10.1 of the NA Casin Holdings Bylaws and Article III, Section 3.5 of the CHX Holdings Bylaws, each entity and its officers, directors, employees, and agents, by virtue of their acceptance of their positions, submit to the jurisdiction of the U.S. federal courts, the Commission, and the Exchange, and agree to maintain an agent in the U.S. for service of process of a claim arising out of, or relating to, the activities of the Exchange.

In addition, CHX has filed a statement from each of the upstream owners in which each such owner (1) irrevocably submits to the jurisdiction of the U.S. federal courts, the Commission, and CHX, for the purposes of any suit, action or proceeding relating to the certification it provided to the Commission and CHX arising pursuant to the U.S. federal securities laws, or the rules and regulations thereunder, arising out of, or relating to, the activities of CHX, and 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 is not personally subject to the jurisdiction of the U.S. federal courts, the Commission or 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; (2) designates, authorizes and identifies to the Commission an agent in the U.S. for the

service of process of a claim arising out of, or relating to, the activities of CHX, including the certificates provided to CHX and the Commission regarding, among other things, its ownership level and Related Person status; and (3) agrees to promptly inform the Commission in writing of any change to its designated and authorized agent.⁷¹

CHX Holdings also proposes to amend its certificate of incorporation to state that its chief compliance officer shall (1) monitor compliance with the ownership and voting limitations applicable to all upstream beneficial owners and (2) ensure that each beneficial owner of the corporation provides certain annual attestations.⁷² The CHX Holdings Certificate also provides that CHX Holdings shall engage an independent and PCAOB-registered auditor that will perform within one year of the closing date of the Transaction, and every two years thereafter, an audit of CHX Holdings' oversight of compliance with the ownership and voting limitations.⁷³

Proposed Article IX, Section 3 of the NA Casin Holdings Certificate and proposed Article III, Section 3.1 of the CHX Holdings Bylaws require that, for as long as NA Casin Holdings and CHX Holdings control the Exchange, each of NA Casin Holdings and CHX Holdings, respectively, 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 Exchange and to its obligations to investors and the general public, and shall not take any actions that would interfere with the effectuation of any decisions by the board of directors of the Exchange relating to its regulatory functions (including enforcement and disciplinary matters) or the

⁷¹ See Amendment No. 1, supra note 10, at Exhibit 2.

⁷² See Amendment No. 1, supra note 10, at 10; proposed CHX Holdings Certificate, Article FOURTH(i)(i).

⁷³ See Amendment No. 1, supra note 10, at 10; proposed CHX Holdings Certificate, Article FOURTH(i)(ii).

structure of the market that the Exchange regulates or that would interfere with the ability of the Exchange to carry out its responsibilities under the Exchange Act.

Proposed Article IX, Sections 3 and 17 of the NA Casin Holdings Certificate and proposed Sections 3.1 and 3.3 of the CHX Holdings Bylaws provide that each entity's respective books and records related to the activities of the Exchange will be maintained within the U.S. Proposed Article IX, Section 17 of the NA Casin Holdings Certificate and proposed Section 3.3 of the CHX Holdings Bylaws also provide that for so long as NA Casin Holdings and CHX Holdings control, directly or indirectly, the Exchange, the books, records, premises, officers, directors, and employees of the NA Casin Holdings and CHX Holdings, respectively, will be deemed to be the books, records, premises, officers, directors, and employees of the Exchange for the 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 the Exchange. These provisions further provide that the NA Casin Holdings and CHX Holdings books and records relating to the activities of Exchange will also be subject at all times to inspection and copying by the Commission and the Exchange. In addition, proposed Article IX, Section 16 of the NA Casin Holdings Certificate and proposed Article III, Section 3.2 of the CHX Holdings Bylaws require each entity to maintain the confidentiality of all confidential information pertaining to the self-regulatory functions of the Exchange (including, but not limited to, confidential information regarding disciplinary matters, trading data, trading practices and audit information) contained in the books and records of the Exchange that come

into the possession of each entity and preclude each entity from using such confidential information for any non-regulatory purpose.⁷⁴

Finally, proposed Article IX, Section 18 of the NA Casin Holdings Certificate and proposed Article III, Section 3.7 of the CHX Holdings Bylaws provide that for so long as a stockholder shall maintain a direct or indirect equity interest in the Exchange: (1) 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 the Exchange 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 the Exchange; (2) the stockholder's books and records related to the activities of the Exchange shall at all times be made available for inspection and copying by the Commission and the Exchange; and (3) the stockholder's books and records related to the activities of the Exchange shall be maintained within the United States.

CHX also proposes to amend its rules to require the Exchange to confirm that any RSA to which the Exchange is a party must comply with the U.S. federal securities laws, and the rules and regulations thereunder, at the time of the execution of the RSA and on an ongoing basis.⁷⁵ In addition, CHX is amending its rules to require that its chief regulatory officer monitor Exchange compliance with the provisions of each RSA to which the Exchange is a party.⁷⁶ CHX also

⁷⁴ These provisions also state that they shall not be interpreted as to limit or impeded the rights of the Commission or the Exchange to access and examine such confidential information pursuant to the federal securities laws and the rules and regulations promulgated thereunder or the ability of any officers, directors, employees or agents of the each entity to disclose such confidential information to the Commission or the Exchange.

⁷⁵ See proposed CHX Rules Article 24, Rule 2(a).

⁷⁶ See proposed CHX Rules Article 24, Rule 2(b).

proposes to amend its rules to require that, before reporting data to CAT or having access to CAT Data, the Exchange will adopt policies and procedures to ensure that only CHX “Authorized Personnel”⁷⁷ have access to any CAT Data, and that CHX regulatory personnel would not provide access to any CAT Data to the following persons, regardless of citizenship: (1) any personnel of CHX and CHX Holdings that are not Authorized Personnel; (2) any personnel of NA Casin Holdings; or (3) any upstream beneficial owners of the Exchange that are not Authorized Personnel.⁷⁸ Further, CHX proposes to amend its rules to provide that it will engage an independent and PCAOB-registered auditor that would perform, within one year after the closing of the Transaction and every two years thereafter, an audit of CHX’s oversight of: (1) any RSA; and (2) compliance with the policies and procedures relating to access to CAT Data.⁷⁹

3. Summary of Comments and the Exchange’s Response

The Commission received comments regarding the proposed rule change generally, and the ownership and voting limitations and corporate governance provisions in particular. First, several commenters express concern about the proposed ownership structure of CHX following the close of the Transaction as it relates to the ownership and voting limitations. Some of these commenters question the identities of the proposed upstream owners and the validity of the Exchange’s representation that there are no Related Persons among the proposed upstream

⁷⁷ For purposes of proposed CHX Rule Article 24, Rule 1, CHX defines “Authorized Personnel” to mean (1) regulatory, compliance and legal personnel of the Exchange and (2) information technology personnel of the Exchange working under the supervision of regulatory, compliance or legal personnel of the Exchange.

⁷⁸ See proposed CHX Rules Article 24, Rule 1(b).

⁷⁹ See proposed CHX Rules Article 24, Rule 3(a).

owners other than Castle YAC and NA Casin Group.⁸⁰ Several commenters also question the Exchange’s representations regarding the backgrounds and identities of the upstream owners.⁸¹ In addition, commenters assert that contrary to the Exchange’s representations, several of the proposed upstream owners may be affiliated.⁸² Some of these commenters state that, after the closing of the Transaction, approximately 99% of the voting stock in CHX would be controlled by what the commenters believe to be Chinese entities or affiliated shell nominees.⁸³ Several of these commenters state that they believe that the post-Transaction ownership would deviate from the 40% ownership limitation.⁸⁴

Several commenters also opine that the proposed upstream ownership of CHX is opaque.⁸⁵ Some of these commenters state their views that approval of the proposal would promote the improper consolidation of ownership and coordinate voting control over CHX, and

⁸⁰ See Ciccarelli Letter, supra note 6; Ferris Letter 1, supra note 6; Ferris Letter 2, supra note 6; Brennan Letter, supra note 6; Mayer Letter, supra note 6; Bass Letter, supra note 6, at 2-4. Another commenter asserts: “[m]urky Chinese ownership laws, poor property ownership rights and deficient IP protection rules” make it “unclear who would actually own CHX under Chinese law.” See Park Letter, supra note 6, at 4.

⁸¹ See Ciccarelli Letter, supra note 6, at 2-9; Mayer Letter, supra note 6; Brennan Letter, supra note 6, at 1-2; Ferris Letter 1, supra note 6, at 2-3; Ferris Letter 2, supra note 6, at 1-3; Park Letter, supra note 6, at 2; and Bass Letter, supra note 6, at 2-4.

⁸² See Ciccarelli Letter, supra note 6, at 2-3; Ferris Letter 1, supra note 6, at 2-3; Bass Letter, supra note 6, at 2; and Ferris Letter 2, supra note 6, at 4. See also Mayer Letter, supra note 4 (asserting that certain of the proposed upstream owners are shell companies put in place by Chongqing Casin to avoid “explicit violation” of the 40% ownership limitation, and should be examined for independence from Chongqing Casin).

⁸³ See Ciccarelli Letter, supra note 6, at 1-2. See also Ferris Letter 2, supra note 6, at 4; and Bass Letter, supra note 6, at 3.

⁸⁴ See Brennan Letter, supra note 6, at 1; Ciccarelli Letter, supra note 6, at 2; Ferris Letter 1, supra note 6, at 1; Bass Letter, supra note 6, at 1; Ferris Letter 2, supra note 6, at 4.

⁸⁵ See Pittenger Letter 2, supra note 6, at 1; Bass Letter, supra note 6 at 1-5; Mayer Letter, supra note 6; Ciccarelli Letter, supra note 6, at 1-4; Ferris Letter 1, supra note 6, at 1-4; Ferris Letter 2, supra note 6, at 1-5. See also Hill Letter 2, supra note 6 (stating that “it is easy to become confused about exactly who wants to own this exchange”).

also materially harm the public trust in the independent and objective operation of U.S. capital markets.⁸⁶ These commenters believe that the Transaction would concentrate ownership and voting power under Chongqing Casin and its “coordinate” investment entities in China, and with little or no insight and transparency into what the commenters state are government-dominated Chinese markets, the commenters believe that the Commission will be unable to monitor the ownership structure of Chongqing Casin after approval.⁸⁷ The commenters believe that this scenario would leave CHX open to undue, improper, and possibly state driven influence via coordinated voting control by its upstream ownership.⁸⁸ In addition, one commenter states that as a result of the proposed ownership, there would be “reputational risks” for CHX, and that “compliance frustrations” related to the Foreign Corrupt Practices Act and Anti-Money Laundering rules would be at the “front and center” in the Commission’s oversight of CHX.⁸⁹ Accordingly, the commenters state that, given these actual or potential outcomes, the Transaction appears inconsistent with Sections 6(b)(1) and 6(b)(5) of the Exchange Act.⁹⁰

Commenters also express concern about the ability of the Commission to exercise regulatory oversight over the Exchange following the closing of the Transaction.⁹¹ One commenter questions whether the Commission can effectively regulate the Exchange and protect the market from abuses if the Commission staff does not know, and cannot independently

⁸⁶ See Pittenger Letter 2, supra note 6, at 1.

⁸⁷ See id.

⁸⁸ See Pittenger Letter 2, supra note 6, at 1.

⁸⁹ See Park Letter, supra note 6, at 3. See also Ferris Letter 2, supra note 6, at 2 (stating that concerns over possible money laundering are not addressed by NA Casin, therefore are conceded).

⁹⁰ See id.

⁹¹ See Pittenger Letters 1 and 2, supra note 6, at 2; Ciccarelli Letter, supra note 6, at 1-2; Bass Letter, supra note 6, at 1; and Ferris Letter 1, supra note 6, at 4.

confirm, the backgrounds of what the commenter characterizes as “Chinese shell companies” involved in the Transaction.⁹² Another commenter argues that for the sake of the public interest, the Commission should take extreme caution in reviewing the proposed rule change and reject the Exchange’s representations, which the commenter believes to be misleading.⁹³

In response to these concerns, the Exchange states that it has not misrepresented any facts regarding the Transaction.⁹⁴ It also states that 50.5% of CHX will be indirectly owned by U.S. citizens.⁹⁵ The Exchange reaffirms the representations that it made in the Notice that the only Related Persons among the upstream owners are Castle YAC and NA Casin Group, that there are no other Related Persons among the upstream owners, and that none of the 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 subdivision thereof.⁹⁶ The Exchange asserts that each of these representations is supported by an opinion of counsel provided to the Commission by outside counsel for CHX on a confidential basis.⁹⁷ The Exchange, NA Casin Holdings, and one of the proposed upstream owners also assert that some of the comment letters

⁹² See Brennan Letter, supra note 6, at 1. In addition, three commenters express concern about the source of funding for the Transaction. See Park Letter, supra note 6, at 2-3 (stating that none of foreign upstream owners are on the published State Administration of Foreign Exchange’s list of entities that “have applied and received approvals for foreign currencies” and questioning the legitimacy of the funds being used to pay for the Transaction); Ferris Letter 1, supra note 6, at 2; Ferris Letter 2, supra note 6, at 3; and Bass Letter, supra note 6, at 3.

⁹³ See Ferris Letter 1, supra note 6, at 4.

⁹⁴ See CHX Response Letter 2, supra note 7, at 2, 5-6. The Exchange states 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. See id. at 4-6.

⁹⁵ See id. at 2.

⁹⁶ See id. at 5.

⁹⁷ See id.

contain false accusations regarding the identity, ownership, relationships, and business activities of certain upstream owners.⁹⁸ In addition, the Exchange, NA Casin Holdings, and two other commenters assert that the proposed upstream owners are reputable businesses.⁹⁹

Moreover, the Exchange asserts that it provided detailed information regarding the upstream owners to the Committee for Foreign Investment in the United States (“CFIUS”) and the Exchange asserts that CFIUS determined that there are no unresolved national security concerns with respect to the Transaction.¹⁰⁰ In response to this assertion, some of the commenters state that CFIUS’s approval of the Transaction has no relevance to the Commission’s determination because CFIUS’s review focuses solely on national security concerns, and does not relate to the ownership and voting restrictions applicable to exchanges.¹⁰¹ The Exchange responds that, with respect to the financial services sector, CFIUS review involves an examination of the potential disruptions to U.S. stock markets or the U.S. financial system as a whole, cybersecurity vulnerabilities, and the vulnerabilities associated with the fact that the U.S. business obtains and preserves personal information.¹⁰² The Exchange also states that CFIUS review includes a full and detailed assessment of the foreign investing entities, including all of their individual senior executives and major stockholders, and the extent of any foreign

⁹⁸ See CHX Response Letter 3, supra note 7, at 3-5; Saliba Letter, supra note 6, at 2; NA Casin Holdings Letter, supra note 6, at 7.

⁹⁹ See CHX Response Letter 3, supra note 7, at 3; NA Casin Holdings Letter, supra note 6, at 7; Gouroudeva Letter, supra note 6; and Prufeta Letter, supra note 6.

¹⁰⁰ See CHX Response Letter 2, supra note 7 at 5; and CHX Response Letter 3, supra note 7, at 6.

¹⁰¹ See Ferris Letter 1, supra note 6, at 3; Brennan Letter, supra note 6, at 2; and Bass Letter, supra note 6, at 4-5. Another commenter expresses concern that CFIUS disregarded the concerns of Congress when it closed its review of the Transaction. See Hill Letter 2, supra note 6.

¹⁰² See CHX Response Letter 3, supra note 7, at 6.

government control over the investors.¹⁰³ The Exchange again asserts that CFIUS conducted a thorough, deep, and wide-ranging investigation of the Transaction and the proposed upstream owners, and that it concluded that there were no unresolved national security concerns.¹⁰⁴

Furthermore, commenters express concern about whether the Chinese government could have influence or control over the Exchange and its upstream owners.¹⁰⁵ Some of these commenters assert that one of the proposed upstream owners has ties to the Chinese government.¹⁰⁶ Several commenters question whether the Chinese government could influence Chongqing Casin, stating that Chongqing Casin is involved in a number of Chinese market sectors that require close ties to the state, such as environmental protection.¹⁰⁷ The commenters assert that Chinese markets are non-transparent and “heavily dominated” by the Chinese State Council and that companies in China often receive significant illegal subsidies from the government and are used as conduits for the Chinese Communist Party to “disrupt and distort foreign markets, businesses, and governments.”¹⁰⁸ Some commenters also state that Chongqing

¹⁰³ See id.

¹⁰⁴ See id.

¹⁰⁵ See Pittenger Letter 1, supra note 6, at 1-2; Pittenger Letter 2, supra note 6, at 1; Bass Letter at 4, supra note 6; Mayer Letter, supra note 6; and Hill Letter 2, supra note 6.

¹⁰⁶ See Pittenger Letter 1, supra note 6, at 1-2; Bass Letter, supra note 6, at 4 (asserting that Chongqing Casin could be 40% owned and controlled by Chinese government entities and Chinese government officials); Mayer Letter, supra note 6; and Hill Letter 2, supra note 6 (asserting that the Chinese government may be a minority stockholder in one of the upstream owners and that the Chinese government should not be given protections afforded to SROs).

¹⁰⁷ See Pittenger Letter 1, supra note 6, at 1. See also Pittenger Letter 2, supra note 6, at 1 (stating that the Chinese government dominates all sectors of society and consistently fails to abide by international agreements).

¹⁰⁸ See Pittenger Letter 1, supra note 6, at 1. In addition, some commenters express concern that the Exchange may list securities of Chinese companies following the Transaction, citing recent accounting and disclosure violations by Chinese companies. See Mayer

Casin's financial assets were originally state-controlled, and that its chairman sits on an industry council overseen directly by the mayor of the Chongqing Municipality.¹⁰⁹ These commenters state 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; the commenters assert that this has cost American companies billions of dollars annually.¹¹⁰ Commenters also state that the Transaction may present financial security risks to investors and the U.S. marketplace.¹¹¹ Some commenters believe that the proposal will materially harm the public trust in the independent and objective operation of U.S. capital markets.¹¹² Similarly, another commenter believes that the proposal is a threat to Americans' faith in the U.S.'s national financial market infrastructure.¹¹³ One commenter also raises concerns that a bad actor with access to an exchange's data could use information available through brokerage records and the Consolidated Audit Trail to engage in spear

Letter, supra note 6; and Park Letter, supra note 6. But see Nobile Letter, supra note 6 (stating that listing of legitimate foreign entities on a U.S. platform strictly regulated under Commission rules and regulations will instill confidence in prospective investors who normally shy away from trading and engaging in foreign exchanges due to well-intentioned concerns regarding lack of regulation or the perception thereof). The Commission notes that the Exchange does not currently list such companies, and the proposed rule change under consideration would not modify the Exchange's listing rules. Thus any new listings would be subject to the rules of the Exchange, and any changes to the Exchange's listing rules would be subject to Commission review under to Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder.

¹⁰⁹ See Pittenger Letter 1, supra note 6, at 1.

¹¹⁰ See id.

¹¹¹ See Pittenger Letters 1 and 2, supra note 6, at 1; Manchin Letter, supra note 6, at 1; Anonymous Letter, supra note 6; and Dandolu Letter, supra note 6.

¹¹² See Pittenger Letter 2, supra note 6, at 1.

¹¹³ See Manchin Letter, supra note 6, at 1.

phishing, blackmail attempts, and other similar attacks.¹¹⁴ In response, the Exchange states that CFIUS investigated the Transaction and “determined that there were no unresolved national security concerns with respect to the [p]roposed Transaction.”¹¹⁵ Furthermore, some commenters believe that the Transaction would benefit the U.S. capital markets and have positive economic effects.¹¹⁶ The Exchange also states that the Transaction will enable it to

¹¹⁴ See Anonymous Letter, supra note 6.

¹¹⁵ CHX Response Letter 1, supra note 7, at 5.

¹¹⁶ See Caban Letter, supra note 6 (stating that having an exchange that would help attract additional foreign investment in Chicago is an important way to help create well-paying jobs); NA Casin Holdings Letter, supra note 6, at 8 (stating that the Transaction will help establish links between the capital markets of China and the U.S. and explaining how the Transaction will attract Chinese investors to buy stocks listed on CHX and companies in Asia to list their stock on CHX); Seyedin Letter, supra note 6, at 1 (stating the beliefs that the Transaction will make CHX an important bridge between capital markets in US and China and that connecting US and Chinese stock markets would allow the US to benefit further from China's growth); Nobile Letter, supra note 6 (stating that the Transaction will result in some very clear benefits to the global financial community and that Casin Group may seek less well known, but legitimate foreign entities that would be listed on a U.S. platform strictly regulated under Commission rules and regulations); Gouroudeva Letter, supra note 6 (stating the belief that ownership of CHX by a respected Chinese company will greatly increase direct Chinese investment into the U.S. economy.); Prufeta Letter, supra note 6 (stating the belief that the Transaction will provide a unique and exceedingly valuable window to major cross-border investment between the world's largest economies); Saliba Letter, supra note 6, at 2 (stating that in order for the U.S. financial markets to remain at the forefront globally, the U.S. must continually innovate and attract business from all over the globe, which the Transaction will enable); Zhong Letter, supra note 6 (expressing support for the Transaction because, among other reasons, there are positive effects of trade and commerce between top Chinese companies and U.S.-based companies and that trade is the fundamental basis for positive foreign relations); Karcher Letter, supra note 6 (expressing support for investment by Chinese companies in the U.S. because the increased ties through trade will benefit both countries); and Gottlieb Letter, supra note 6 (stating that the Transaction will provide a needed opportunity and valuable window for cross-border investments and world economies).

accelerate implementation of its strategic plan, which includes implementing a primary listing program focused on capital formation for emerging growth companies.¹¹⁷

Another commenter expresses concern that the proposed upstream ownership leaves CHX and U.S. markets open to “undetectable manipulation” by Chongqing Casin and the Chinese government.¹¹⁸ In response, the Exchange affirms that no prospective investor controls, is controlled by, or is under common control with, a governmental entity or any political subdivision thereof, including the Chinese government.¹¹⁹

In addition, some commenters express concern that the Saliba Put Agreement and the Raptor Put Agreement could create voting collusion between Raptor and Saliba, resulting in a combined 24% voting interest that exceeds the 20% voting limitation.¹²⁰ The Exchange responds that under the terms of the put agreements, NA Casin Holdings could not compel Saliba or Raptor to exercise its respective put option and that, in the event that either put agreement is exercised, CHX rules would require the resulting ownership structure to comport with the ownership and voting limitations.¹²¹ Some of the commenters assert that Raptor is Saliba’s nominee or business partner.¹²² NA Casin Holdings and Saliba respond that Raptor and Saliba have never had any relationship, are located in different cities, and are owned by different

¹¹⁷ See CHX Response Letter 1, supra note 7, at 2; CHX Response Letter 3, supra note 7, at 2-3.

¹¹⁸ See Mayer Letter, supra note 6.

¹¹⁹ See CHX Response Letter 1, supra note 7, at 2.

¹²⁰ See Brennan Letter, supra note 6, at 2; Mayer Letter, supra note 6; Ferris Letter 1, supra note 6, at 2; Ferris Letter 2, supra note 6, at 3-4; Bass Letter, supra note 6, at 2; and Park Letter, supra note 6, at 4.

¹²¹ See CHX Response Letter 2, supra note 7, at 6.

¹²² See Ferris Letter 1, supra note 6, at 2, n. 5; and Brennan Letter, supra note 6, at 2.

families.¹²³ In addition, one commenter asserts that these put agreements are specifically designed to skirt the Commission's exchange ownership restrictions, which would give Chongqing Casin virtual control over the Exchange.¹²⁴ In response, the Exchange explains that the put agreements only grant Saliba and Raptor the right to exercise their respective put options and do not grant NA Casin Holdings the right to compel the exercise of those rights.¹²⁵ The Exchange also notes that any exercise of the put rights would be subject to compliance with the ownership and voting limitations.¹²⁶

Moreover, two commenters express concern that CHX and the Commission may not be aware of or able to control future transfers of ownership or voting in contravention of the ownership and voting limitations.¹²⁷ One of these commenters asserts that there are little to no controls in place at the upstream corporate ownership level that would prevent the upstream owners from transferring their voting power in CHX to even more opaque owners or ownership that involves the Chinese government.¹²⁸ The other commenter asserts that neither the Exchange nor the Commission would know if capital stock in China is being consolidated, resold,

¹²³ See NA Casin Holdings Letter, supra note 6, at 7; and Saliba Letter, supra note 6, at 2.

¹²⁴ See Ciccarelli Letter, supra note 6, at 3.

¹²⁵ See CHX Response Letter 2, supra note 7, at 6. In addition, some commenters assert that a conflict of interest exists because one of the upstream owners, Anthony Saliba, serves on the Exchange's and CHX Holdings' boards of directors. See Brennan Letter, supra note 6, at 2-3; Ferris Letter 1, supra note 6, at 2; Ferris Letter 2, supra note 6, at 5; Bass Letter, supra note 6, at 2; and Park Letter, supra note 6, at 4. In response, the Exchange notes that its current rules require a CHX board position to be reserved for certain CHX Holdings stockholders and asserts that there is no unresolved conflict of interest because Mr. Saliba recused himself from all material CHX Holdings and CHX board votes related to the Transaction. See CHX Response Letter 3, supra note 7, at 5.

¹²⁶ See CHX Response Letter 2, supra note 7, at 6.

¹²⁷ See Ciccarelli Letter, supra note 6, at 1; and Mayer Letter, supra note 6.

¹²⁸ See Ciccarelli Letter, supra note 6, at 2.

collateralized, or collusively voted in violation of the 20% voting limitation.¹²⁹ The commenter expresses concern that collusion or changes in ownership that are unknown to the Exchange or the Commission could hinder the Exchange's and the Commission's obligations to prevent conflicts of interest and improper influence under Section 6(b)(5) of the Exchange Act.¹³⁰ In addition, the commenter asserts that the upstream owners are not being required to amend their governing documents to restrict collusive voting or resale of the Exchange.¹³¹

In response, the Exchange states that to the contrary, the governing documents of NA Casin Holdings and CHX Holdings do indeed restrict the voting and sale of the Exchange.¹³² In addition, as noted above, the Exchange affirms its representation that no prospective owner or any of its Related Persons would maintain an equity interest, or exercise voting power, in violation of the ownership and voting limitations.¹³³ The Exchange also responds that the proposed governance documents for NA 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.¹³⁴ The Exchange also notes that the CHX rules and Exchange Act contain various provisions that would facilitate

¹²⁹ See Mayer Letter, supra note 6. The commenter asserts that restricting voting of shares would not remedy "back-room voting collusion, share re-sale or collateralization to an unknown party or state entity in China." See id.

¹³⁰ See id.

¹³¹ See id.

¹³² See CHX Response Letter 1, supra note 7, at 3-4; and CHX Response Letter 2, supra note 7, at 2-3.

¹³³ See CHX Response Letter 1, supra note 7, at 3; and CHX Response Letter 2, supra note 7, at 2.

¹³⁴ See CHX Response Letter 1, supra note 7, at 3. See also CHX Response Letter 2, supra note 7, at 3.

the ability of U.S. regulators, including the Commission, to monitor, compel, and enforce compliance by each of the upstream owners.¹³⁵

Commenters also express concern about the ability of the Commission to exercise regulatory oversight over the Exchange following the closing of the Transaction.¹³⁶

Characterizing the proposed upstream ownership of CHX as “opaque,” several commenters state that approval of the proposal would strip the Commission of its ability to carry out its statutorily mandated oversight of exchange ownership.¹³⁷ These commenters also state that given ongoing concerns with the severe lack of transparency in China, the commenters have substantial concerns related to the Commission’s ability to monitor and regulate the upstream ownership of Chongqing Casin.¹³⁸ These commenters note that neither Chongqing Casin nor any of its coordinate foreign entities have provided U.S. regulators with any power to monitor or regulate their activities with respect to CHX.¹³⁹ These commenters further state that, in the past, Chinese entities have limited visibility into post-acquisition activities and have attempted to interpose arguments – such as sovereign immunity or limits to the extraterritorial application of U.S. laws

¹³⁵ See CHX Response Letter 2, supra note 7, at 2-4 (specifically noting: (1) the ownership and voting limitations; (2) provisions in which the upstream owners consent to U.S. regulatory jurisdiction and agree to maintain an agent in the U.S. for service of process; and (3) provisions requiring the upstream owners to maintain their books and records related to CHX in the U.S. and to refrain from interfering with, and to give due consideration to, the SRO function of CHX). See also CHX Response Letter 3, supra note 7, at 2.

¹³⁶ See Pittenger Letters 1 and 2, supra note 6, at 2; Ciccarelli Letter, supra note 6, at 1-2; Bass Letter, supra note 6, at 1; and Ferris Letter 1, supra note 6, at 4.

¹³⁷ See Pittenger Letter 2, supra note 6, at 1.

¹³⁸ See id.

¹³⁹ See id. at 2.

– to avoid compliance with U.S. regulatory requirements.¹⁴⁰ The commenters believe that these actions erode investor trust and adversely affect U.S. regulatory interests.¹⁴¹

Similarly, another commenter opines that what the commenter cites as the Chinese government’s continued rejection of fundamental free-market norms and property rights of private citizens makes the commenter strongly doubt whether an Exchange operating under the direct control of a Chinese entity can be trusted to self-regulate now and in the future.¹⁴² The commenter states that while the harms caused by NA Casin Group’s acquisition of the CHX may not become apparent immediately, allowing this acquisition to proceed could have a devastating effect on the health of U.S. financial markets, which the commenter states are “the envy of the world.”¹⁴³ The commenter further states that the commenter remains unconvinced of the following: (1) that no prospective investor is influenced or controlled by the Chinese government; (2) that Exchange rules could stand against the levels of deceit employed by the Chinese government; and (3) that the Chinese government would not employ influence to affect exchange decisions or votes.¹⁴⁴

Furthermore, another commenter asserts that, due to jurisdiction limitations and transparency concerns, under the current proposal, the Commission would not be able to exercise proper regulatory oversight.¹⁴⁵ Some commenters also express concern about the ability of U.S.

¹⁴⁰ See id.

¹⁴¹ See id.

¹⁴² See Manchin Letter, supra note 6, at 1.

¹⁴³ See id. at 1-2.

¹⁴⁴ See id. at 2.

¹⁴⁵ See Ciccarelli Letter, supra note 6, at 1-2.

regulators to access the books and records of the Chinese-owned upstream owners.¹⁴⁶ Two commenters state that they believe that the proposed foreign upstream owners will not submit to U.S. jurisdiction.¹⁴⁷ Another commenter states its view that foreign ownership of the Exchange may result in lax enforcement of its rules.¹⁴⁸

The Exchange responds that it believes that its rules are consistent with the requirements of the Exchange Act, and that its rules and the 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. In particular, 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 refrain from interfering with, and give due consideration to, the SRO function of the Exchange.¹⁴⁹ The Exchange also asserts that, pursuant to the Exchange Act, the Exchange is subject to “direct and rigorous” oversight by the Commission, which, the Exchange describes as including among other things, frequent examinations of various aspects of its operations by Commission staff, including security and trading protocols, as well as the requirement for

¹⁴⁶ See Bass Letter, supra note 6, at 5; and Ferris Letter 1, supra note 6, at 4. See also Pittenger Letter 1, supra note 6, at 2 (asserting that the Public Company Accounting Oversight Board must be able to “penetrate Chinese opacity” before a Chinese firm is allowed to purchase an American stock exchange).

¹⁴⁷ See Ciccarelli Letter, supra note 6, at 3-4; and Mayer Letter, supra note 6.

¹⁴⁸ See Hill Letter 2, supra note 6. This commenter also alleges that the Exchange has a record of non-compliance with regulations and failure to fully enforce its rules.

¹⁴⁹ See CHX Response Letter 1, supra note 7, at 4; and CHX Response Letter 2, supra note 7, at 3-4.

Commission approval of certain regulatory, operational, and strategic initiatives prior to implementation by the Exchange.¹⁵⁰

In addition, NA Casin Holdings asserts that extensive regulatory and governance safeguards would empower the Commission and the Exchange to prevent any influence over the Exchange and its operations that is improper or a violation of U.S. securities laws and regulations.¹⁵¹ Other commenters express confidence that the regulatory controls currently in place are adequate to monitor the proposed investors.¹⁵²

4. Commission Findings

The Commission believes that, in light of the proposed restrictions on the ownership and voting of stockholders, the above-discussed corporate governance provisions relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records, and the statements from the upstream owners committing to submit to jurisdiction and designating an agent for service of process, the proposed rule change is consistent with the requirements of Section 6(b) of the Exchange Act. The Commission believes that the proposed ownership and voting limitations are reasonably

¹⁵⁰ See CHX Response Letter 2, supra note 7, at 3-4.

¹⁵¹ See NA Casin Holdings Letter, supra note 6, at 1-2. Specifically, NA Casin Holdings observes that 50% of the board of the Exchange would be required to consist of “Non-Industry Directors” (which NA Casin Holdings notes is defined in the CHX Bylaws), who cannot be employed by any affiliate of CHX.

¹⁵² See Prufeta Letter, supra note 6 (stating that “the continual scrutiny of the US financial system is both essential and firmly in place” and that the commenter believes that “all the controls necessary to monitor the investment group exist now and will be sufficient”). See also Zhong Letter, supra note 6 (expressing confidence that the current controls of the U.S. regulatory system serve as an “effective check and balance” on both foreign and domestic investors); Karcher Letter, supra note 6 (stating that commenter “trust[s] [the Commission’s] process much more than relying on the ad hominum attacks [the commenter] read[s] within the comments section”).

designed to prevent any stockholder from exercising undue control over the operation of NA Casin Holdings, and in turn, over the operation of the Exchange. The Commission also notes that these ownership and voting limitations are consistent with those approved by the Commission for other SROs¹⁵³ (including for other SROs with foreign ownership),¹⁵⁴ and

¹⁵³ See, e.g., Securities Exchange Act Release Nos. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR-BatsBZX-2016-68) (approving similar restrictions in connection with the merger of Bats Global Markets, Inc. and CBOE Holdings, Inc.) (“BATS-CBOE Approval Order”); 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11, SR-ISE Gemini-2016-05, SR-ISE Mercury-2016-10) (approving similar restrictions proposed in connection with Nasdaq, Inc. becoming the indirect parent of International Securities Exchange, ISE Gemini, LLC, and ISE Mercury, LLC); 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (SR-NSX-2014-017) (approving similar restrictions in connection with National Stock Exchange, Inc. becoming a wholly-owned subsidiary of National Stock Exchange Holdings, Inc.) (“NSX Approval Order”); 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR-EDGA-2013-34; SR-EDGX-2013-43) (approving similar restrictions in connection with the merger of BATS Global Markets, Inc. and Direct Edge Holdings LLC); 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR-BATS-2013-059, SR-BYX-2013-039) (approving similar restrictions in connection with the merger of BATS Global Markets, Inc. and Direct Edge Holdings LLC); 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR-NYSE-2013-42, SR-NYSEMKT-2013-50 and SR-NYSEArca-2013-62) (approving similar restrictions in connection with NYSE Euronext Holdings, LLC becoming a wholly-owned subsidiary of Intercontinental Exchange Group, Inc.); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10-198) (approving similar restrictions in connection with the registration Bats BYX Exchange, Inc. as a national securities exchange); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10-194 and 10-196) (approving similar restrictions in connection with the registrations of EDGX Exchange, Inc. and EDGA Exchange, Inc. as national securities exchanges) (“EDGX and EDGA Registrations”); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10-182) (approving similar restrictions in connection with the registration of BATS Exchange, Inc. as a national securities exchange); 56955 (December 13, 2007), 72 FR 71979, 71982-84 (December 19, 2007) (SR-ISE-2007-101) (approving similar restrictions in connection with International Securities Exchange Holdings, Inc. becoming a wholly-owned indirect subsidiary of Eurex Frankfurt AG) (“ISE Approval Order”); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120) (approving similar restrictions in connection with the combination of NYSE Group, Inc. and Euronext N.V.) (“NYSE Euronext Approval Order”); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (approving similar restrictions in connection with the merger of New York Stock Exchange, Inc. and Archipelago); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR-NSX-

believes that they are reasonably designed to assure that the Exchange and the Commission are able to carry out their regulatory obligations under the Exchange Act and in administering and complying with the requirements of the Exchange Act. Moreover, the Commission believes that the proposed ownership and voting limits are reasonably designed to eliminate the potential that the control of the Exchange by one or few stockholders would improperly interfere with or impair the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Exchange Act.

In addition to being designed to eliminate the potential of any stockholder from exercising undue control over the Exchange, the Commission also notes that other proposed ownership and voting limitations applicable to members of the Exchange are designed to address the conflicts of interests that might result from a member of a national securities exchange owning interests in the exchange.¹⁵⁵ As the Commission has noted in the past, a member's interest in an exchange could become so large as to cast doubts on whether the exchange may fairly and objectively exercise its self-regulatory responsibilities with respect to such member.¹⁵⁶ A member that is a controlling stockholder of an exchange could seek to exercise that controlling influence by directing the exchange to refrain from, or the exchange may hesitate to, diligently

2006-03) (approving similar restrictions in connection with the demutualization of the National Stock Exchange); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (approving similar restrictions in connection with the registration the Nasdaq Stock Market LLC as a national securities exchange); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR-CHX-2004-26) (approving similar restrictions in connection with the demutualization of CHX); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR-Phlx-2003-73) (approving similar restrictions in connection with the demutualization of the Philadelphia Stock Exchange, Inc.).

¹⁵⁴ See, e.g., NYSE Euronext Approval Order, supra note 153; EDGX and EDGA Registrations, supra note 153; and ISE Approval Order, supra note 153.

¹⁵⁵ See supra note 57 and accompanying text.

¹⁵⁶ See, e.g., BATS-CBOE Order, supra note 153, at 93990.

monitor and conduct surveillance of the member's conduct or diligently enforce the exchange's rules and the federal securities laws with respect to conduct by the member that violates such provisions. As such, these restrictions on Exchange members' ownership and voting of NA Casin Holdings stock are expected to minimize the potential that a person or entity can improperly interfere with or restrict the ability of CHX to effectively carry out its regulatory oversight responsibilities under the Exchange Act.

The Commission also believes that the proposed rule change, as modified by Amendment No. 1, is reasonably designed to: (1) safeguard against violations of the ownership and voting limitations and (2) facilitate the ability of the Exchange to comply with its responsibilities under the Exchange Act. In particular, the Commission notes the requirements that: (1) certain stockholders of CHX Holdings and NA Casin Holdings must notify the corporation of changes to the stockholder's voting power or ownership;¹⁵⁷ (2) the chief compliance officer of CHX Holdings monitor for compliance with the limits on ownership and voting applicable to the upstream beneficial owners;¹⁵⁸ and (3) CHX Holdings hire an independent and PCAOB-registered auditor to regularly monitor CHX Holdings' oversight of those limits.¹⁵⁹ The Commission believes this will assist CHX Holdings in exercising its oversight obligations of the ownership and voting limits after the closing of the Transaction.

With regards to commenters' concerns that the upstream owners in fact may be Related Persons,¹⁶⁰ or that the upstream owners may vote or act collusively,¹⁶¹ or may be under the

¹⁵⁷ See supra note 38 and accompanying text.

¹⁵⁸ See supra note 72 and accompanying text.

¹⁵⁹ See supra note 73 and accompanying text.

¹⁶⁰ See supra notes 80-84 and accompanying text.

¹⁶¹ See supra notes 120 and 129 and accompanying text.

control of a foreign government,¹⁶² CHX has responded to these concerns by providing certifications from each of the upstream owners, each of which: identifies its Related Persons; states that it does not directly, or indirectly through one or more intermediaries, control, and is not, directly or indirectly through one or more intermediaries, controlled or owned by, or under common control or ownership with, a governmental entity or political subdivision thereof; and attests that no agreement, arrangement, or understanding exists between the stockholder and any other person for the purpose of acquiring, voting, holding or disposing of shares of stock of NA Casin Holdings.¹⁶³ In response to these concerns, as well as commenters' concerns regarding the ability of the Exchange to exercise its self-regulatory obligations and monitor for compliance with its ownership and voting limitations after the closing of the Transaction,¹⁶⁴ the Commission notes that: (1) by September 1, 2018, and every year thereafter, each stockholder of NA Casin Holdings as well as CHX Holdings will be required to submit directly to the Commission and the corporation an attestation as to (a) its equity ownership level in the corporation and the identity of its Related Persons and (b) the existence of any agreement, arrangement or understanding (whether or not in writing) to act together exists between the stockholder, on the one hand, and any other person, on the other hand, for the purpose of acquiring, voting, holding or disposing of shares of stock of the corporation;¹⁶⁵ (2) the chief compliance officer of CHX Holdings will monitor for compliance with the corporation's voting and ownership limitations and ensure that each of the upstream owners provides to the Commission and CHX on a yearly basis relevant

¹⁶² See supra note 105 and accompanying text.

¹⁶³ See supra note 69 and accompanying text.

¹⁶⁴ See supra notes 87, 127-131, and 138-139 and accompanying text.

¹⁶⁵ See supra note 69 and accompanying text. See also infra note 185 and accompanying text.

attestations;¹⁶⁶ (3) within one year of the closing of the Transaction and every two years thereafter, an independent auditor will audit CHX Holdings' oversight of compliance with such voting and ownership limitations;¹⁶⁷ and (4) each of the upstream owners has irrevocably submitted to the jurisdiction of U.S. federal courts, the Commission and CHX, designated and authorized an agent in the United States for service of process, and committed to promptly inform the Commission in writing of any change of its designated and authorized agent.¹⁶⁸ The Commission believes that these requirements are reasonably designed to assist the Exchange in monitoring for and enforcing compliance with the voting and ownership limitations.

The Commission also notes that although neither NA Casin Holdings nor CHX Holdings would directly perform any regulatory function, their activities with respect to the operation of the Exchange must be consistent with, and must not interfere with, the self-regulatory obligations of the Exchange and the Commission's oversight of the Exchange. The Commission believes that the above-discussed corporate governance provisions of the NA Casin Holdings Certificate, the NA Casin Holdings Bylaws, and the CHX Holdings Bylaws relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records are reasonably designed to allow: (1) CHX to independently perform its self-regulatory function; (2) CHX to operate in a manner that complies with federal securities laws, including Sections 6(b) and 19(g) of the Exchange Act;¹⁶⁹ and (3) the Commission to fulfill its regulatory and oversight obligations under the Exchange Act with

¹⁶⁶ See supra note 72 and accompanying text.

¹⁶⁷ See supra note 79 and accompanying text.

¹⁶⁸ See infra note 71 and accompanying text.

¹⁶⁹ 15 U.S.C. 78f(b) and 15 U.S.C. 78s(g), respectively.

respect to the Exchange.¹⁷⁰ The Commission believes that these provisions should assist CHX in fulfilling its self-regulatory obligations in administering and complying with the requirements of the Exchange Act.

In response to commenters' concerns regarding the ability of CHX and the Commission to exercise jurisdiction over the upstream owners,¹⁷¹ the Commission notes that each upstream owner has irrevocably submitted to the jurisdiction of the U.S. federal courts, the Commission, and CHX for the purposes of any action relating to the certification to the Commission and CHX regarding its ownership levels and Related Persons, among other things, or the activities of CHX, and designated an agent for the service of process of such claims.¹⁷² The Commission believes that this will enhance the ability of the Commission to fulfill its regulatory and oversight obligations and of CHX to fulfill its self-regulatory obligations under the Exchange Act.

As discussed above, various commenters express concern about the identity and motives of the upstream owners and, in light of these issues, the Commission's ability to effectively regulate the Exchange.¹⁷³ Based on the information in the record,¹⁷⁴ the Commission believes that the proposed requirements applicable to the Exchange, CHX Holdings, and NA Casin

¹⁷⁰ The Commission notes that these requirements are consistent with other such provisions previously approved by the Commission. See supra note 153.

¹⁷¹ See supra notes 145 and 147 and accompanying text.

¹⁷² See Amendment No. 1, supra note 10, Exhibit 2.

¹⁷³ See supra note 92 and accompanying text.

¹⁷⁴ CHX makes representations regarding the identities of the upstream owners, the relationships between the upstream owners, and their relationship to the Chinese government. Specifically, the Exchange states that the only Related Persons among the Indirect Upstream Owners are Castle YAC and NA Casin Group; 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. See Notice, supra note 3, 81 FR at 89545.

Holdings are reasonably designed to allow the Commission to oversee the Exchange and for CHX to independently discharge its SRO responsibilities.¹⁷⁵ In particular, the Commission notes that, under the NA Casin Holdings Certificate, for as long as a stockholder maintains a direct or indirect equity interest in the Exchange, (1) the books, records, officers, directors (or equivalent) and employees of the stockholder will be deemed to be the books, records, officers, directors, and employees of the Exchange 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 the Exchange; (2) the stockholder's books and records related to the activities of the Exchange must be made available for inspection and copying by the Commission and the Exchange at all times; and (3) the stockholder's books and records related to the activities of the Exchange must be maintained within the United States. The Commission also notes that the upstream owners have irrevocably submitted to the jurisdiction of U.S. federal courts, the Commission, and CHX.¹⁷⁶

Commenters also express concern regarding the potential for malfeasance whether by individuals or on behalf of government actor.¹⁷⁷ We note that the Exchange stated that CFIUS investigated the Transaction and the upstream owners, and concluded that there are no

¹⁷⁵ As CHX states, the Commission directly oversees national securities exchanges (such as CHX), which are subject to inspections that examine various aspects of their exchange operations and which must submit for prior Commission approval certain regulatory, operational, and strategic initiatives. See supra note 150 and accompanying text. In light of the description of the owners provided by CHX, the Commission agrees with NA Casin that the Commission's jurisdiction coupled with the proposed governance safeguards will empower the Commission and the Exchange to prevent any influence over CHX and its operations that is improper or a violation of U.S. securities laws and regulations. See supra note 151 and accompanying text.

¹⁷⁶ See supra note 71 and accompanying text.

¹⁷⁷ See supra notes 108-112, and 114 and accompanying text.

unresolved national security concerns. Furthermore, in response to commenters' concerns regarding potential financial security risks of the proposed ownership structure,¹⁷⁸ the Commission notes that CHX will limit access to CAT Data to only CHX regulatory personnel.¹⁷⁹ In addition, the requirement that CHX engage an independent auditor to monitor for CHX's oversight of compliance with the policies and procedures relating to access to CAT Data will assist CHX in meeting its self-regulatory obligations.¹⁸⁰

In addition, if NA Casin Holdings, CHX Holdings, or CHX provides information of any kind to a U.S. governmental entity or U.S. authority pursuant to any agreement, then the company will contemporaneously provide such information to the Commission as well.¹⁸¹ The Commission believes that receiving such information will further assist the Commission in fulfilling its mission to oversee and regulate the Exchange by helping to ensure that the Commission is aware of activities – by CHX, CHX Holdings, NA Casin Holdings, and perhaps the upstream beneficial owners – that may be relevant under the Exchange Act.

The Commission believes that CHX's rule changes requiring it to confirm that any RSA it may enter into will comply with U.S. federal securities laws and the rules and regulations thereunder,¹⁸² that its chief regulatory officer will monitor provisions of the RSA on an on-going basis,¹⁸³ and that it will engage an independent and PCAOB-registered auditor that would perform oversight of the RSA within one year after the closing of the Transaction and every two

¹⁷⁸ These concerns are discussed above. See supra notes 111-114.

¹⁷⁹ See supra note 78 and accompanying text.

¹⁸⁰ This requirement is discussed above. See supra note 79 and accompanying text.

¹⁸¹ See supra notes 40-42 and accompanying text.

¹⁸² See supra note 75 and accompanying text.

¹⁸³ See supra note 76 and accompanying text.

years thereafter,¹⁸⁴ respond to concerns and will assist the Exchange in complying with federal securities laws and monitoring for compliance with federal securities laws on an on-going basis.

Furthermore, the Commission notes that the attestations submitted by the stockholders of NA Casin Holdings, and the annual attestations that will be submitted by the shareholders of NA Casin Holdings and CHX Holdings starting September 1, 2018, will be made directly to the Commission, and therefore potential liability for misrepresentations would attach.¹⁸⁵

Additionally, to the extent that CHX (a) violated any provision of the Exchange Act, including Section 19(b), any rule or regulation under the Exchange Act, or any Exchange rule, (b) is unable to comply with any provision of the Exchange Act, any rule or regulation under the Exchange Act, or any Exchange rule, or (c) without reasonable justification or excuse failed to enforce compliance with any such provision by any Participant or person associated with a Participant, the Commission may take action to either revoke or suspend for up to 12 months its registration as a national securities exchange or limit CHX's activities, functions, and operations.¹⁸⁶ Further, to the extent that any officer or director of the Exchange either willfully violated any provision of the Exchange Act, including Section 19(b), any rule or regulation under the Exchange Act, or any Exchange rule, or without reasonable justification or excuse failed to enforce compliance with any such provision by any Participant or person associated with a Participant, the Commission may take action to remove such person from office.¹⁸⁷

Finally, the Commission notes that: (1) under Section 20(a) of the Exchange Act, any person with a controlling interest in CHX shall be jointly and severally liable with and to the

¹⁸⁴ See supra note 79 and accompanying text.

¹⁸⁵ See, e.g., 18 U.S.C. § 1001.

¹⁸⁶ See 15 U.S.C. 78s(h)(1).

¹⁸⁷ See 15 U.S.C. 78s(h)(4).

same extent that the CHX is liable under any provision of the Exchange Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action; (2) Section 20(e) of the Exchange Act creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder; and (3) Section 21C of the Exchange Act authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Exchange Act through an act or omission that the person knew or should have known would contribute to the violation.

For these reasons, the Commission believes that the proposed rule change – including restrictions on the ownership and voting of stockholders and the above-discussed corporate governance provisions relating to compliance with U.S. law, consent to jurisdiction, due regard to the regulatory obligations and functions of the Exchange, and books and records, and statements from the upstream owners committing to submit to jurisdiction -- is consistent with the Exchange Act, including Section 6(b)(1).

B. Board Composition and Procedures; Committees; Special Meetings of the Stockholders

The Exchange proposes to amend the composition of the CHX and CHX Holdings boards of directors, and to make other changes to the governance of these entities. For example, CHX proposes that the CHX board of directors consist of at least 10 and not more than 25 directors.¹⁸⁸ The CHX board of directors would be comprised as follows: (1) the Chief Executive Officer of CHX; (2) at least 50% Non-Industry Directors¹⁸⁹ (at least one of whom must be an Independent

¹⁸⁸ See proposed CHX Bylaws Article III, Section 3.2.

¹⁸⁹ CHX would define “Non-Industry Director” as a member of the board who is (1) an Independent Director (as defined below); or (2) any other individual who would not be an

Director¹⁹⁰); (3) such number of Participant Directors¹⁹¹ as necessary to comprise at least 20% of the board; and (4) such number of CHX Holdings Directors¹⁹² as necessary to comprise at least 20% of the board.¹⁹³ The directors (other than the Chief Executive Officer) shall serve one-year terms, and any director may be removed from office by a majority vote of the stockholders at any time with or without cause, provided that any Participant Director or CHX Holdings Director may only be removed for cause.¹⁹⁴

In addition, CHX proposes to amend its bylaws to require that the board's Regulatory Oversight Committee be composed entirely of Non-Industry Directors.¹⁹⁵ The proposed CHX Bylaws also require that the Nominating and Governance Committee will have four members and be comprised of at least two Non-Industry Directors, and set forth the process that the Nominating and Governance Committee will follow in submitting nominees for board

Industry Director (as defined in Article I, Section 1.1(m) of the CHX Bylaws). See proposed CHX Bylaws Article I, Section 1.1(n).

¹⁹⁰ CHX would define "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. See proposed CHX Bylaws Article I, Section 1.1(l).

¹⁹¹ CHX would define "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. See proposed CHX Bylaws Article I, Section 1.1(g).

¹⁹² CHX would define "CHX Holdings Director" as a member of the Board who is a director of CHX Holdings, Inc. See proposed CHX Bylaws Article I, Section 1.1(g).

¹⁹³ See CHX Bylaws Article III, Section 3.2(b).

¹⁹⁴ Under the CHX Bylaws, "cause" means 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. See proposed CHX Bylaws Article III, Section 3.8.

¹⁹⁵ See CHX Bylaws Article V, Section 5.7.

positions.¹⁹⁶ Among other things, the proposed CHX Bylaws also provide that a majority of the directors would constitute a quorum,¹⁹⁷ action by the board requires a majority of directors,¹⁹⁸ and that vacancies on the board may be filled by a majority of directors then in office, or by a sole remaining director, except that vacancies in the Participant Director or CHX Holding director position must be recommended by the Participant Director Nominating Committee, or the CHX Holdings board, as applicable.¹⁹⁹ In addition, CHX proposes that special meetings of its stockholders may be called at any time by the board of directors or the chief executive officer, or upon written notice to CHX by the stockholders holding one-third of the votes entitled to be cast.²⁰⁰

With respect to CHX Holdings, CHX proposes that the number of directors on the board be established by resolution, eliminating the requirement that the board have no less than 10 and no more than 16 directors.²⁰¹ CHX also proposes to eliminate the three classes of CHX Holdings directors and their associated three-year staggered terms and to instead provide 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.²⁰² In addition, CHX proposes to amend the CHX Holdings

¹⁹⁶ See proposed CHX Bylaws Article III, Section 3.6. In addition, proposed CHX Bylaws Article V, Section 5.11 provides that the Participant Director Nominating Committee will be composed solely of Participant Directors or representatives of Participant Directors and will be responsible for submitting names of candidates for the position of Participant Director.

¹⁹⁷ See proposed CHX Bylaws Article III, Section 3.13.

¹⁹⁸ See id.

¹⁹⁹ See proposed CHX Bylaws Article III, Section 3.7.

²⁰⁰ See proposed CHX Bylaws Article IV, Section 4.2.

²⁰¹ See proposed CHX Holdings Bylaws Article II, Section 2.2(a).

²⁰² See proposed CHX Holdings Bylaws Article II, Section 2.2(c).

Bylaws to change the required number of directors on the Nominating and Governance Committee from six to one or more directors.²⁰³ CHX also proposes that special meetings of the CHX Holdings stockholders may be called at any time by the board of directors or the Chief Executive Officer, or upon written notice to CHX Holdings by the stockholders holding one-third of the votes entitled to be cast.²⁰⁴ In addition, CHX proposes that any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote.²⁰⁵

With respect to NA Casin Holdings, its proposed certificate of incorporation contains provisions that, according to the Exchange, are designed to ensure that a new NA Casin Holdings board is elected by the upstream owners as soon as practicable after closing of the Transaction, as well as provisions to facilitate the ability of NA Casin Holdings to maintain board members that are experienced with the operation of the Exchange.²⁰⁶ Specifically, within 30 days after the consummation of the Transaction, NA Casin Holdings must convene a special meeting of its stockholders for the purpose of electing a new board of directors.²⁰⁷ The NA Casin Holdings board will be divided into three classes from and after that initial special meeting, with the term of each Class I director expiring in 2017, the term of each Class II director expiring in 2018, and the term of each Class III director expiring in 2019.²⁰⁸ Other than those initial terms, each director will serve for a term ending on the date of the third annual meeting following the

²⁰³ See proposed CHX Holdings Bylaws Article II, Section 2.3.

²⁰⁴ See proposed CHX Holdings Bylaws Article IV, Section 4.2.

²⁰⁵ See proposed CHX Holdings Bylaws Article II, Section 2.16.

²⁰⁶ See Notice, supra note 3, 81 FR at 89556.

²⁰⁷ See proposed NA Casin Holdings Certificate Article V, Section (5).

²⁰⁸ See proposed NA Casin Holdings Certificate Article V, Section (6).

meeting at which such director was elected.²⁰⁹ The number of directors on the NA Casin Holdings board will be determined by the board of directors.²¹⁰ The Exchange asserts that the proposed class board structure of NA Casin Holdings would ensure overlap of board member terms, which would provide continuity and stability in the board's composition and, thereby, facilitate the ability of the NA Casin Holdings board to meet its obligations with regard to CHX as set forth in Article IX of the NA Casin Holdings Certificate.²¹¹

The Commission believes that the proposed changes to the CHX Bylaws related to the structure, composition, and committee composition of CHX's board of directors are consistent with Section 6(b)(3) of the Exchange Act in that they assure the fair representation of CHX members on the CHX board and in the administration of exchange affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. In particular, the Commission finds that the requirement that at least 20% of the board be comprised of Participant Directors is consistent with the fair representation requirements under Section 6(b)(3). In addition, the Commission finds that the proposed provisions of the CHX, CHX Holdings, and NA Casin Holdings governing documents relating to the proposed structure, composition, and governance of their boards of directors,²¹² are consistent with Section 6(b)(1) of the Exchange Act in that they are designed to assist the Exchange in fulfilling its self-regulatory obligations and in administering and complying with the requirements of the Exchange Act. For example, the Commission believes that the requirement that the CHX board of directors be comprised of at least 50% Non-

²⁰⁹ See id.

²¹⁰ See proposed NA Casin Holdings Bylaws Article 3, Section 3.2.

²¹¹ See Notice, supra note 3, 81 FR at 89556.

²¹² See supra Section III.B.

Industry Directors, and that the CHX Regulatory Oversight Committee be comprised entirely of Non-Industry Directors, is consistent with Section 6(b)(1) because it reduces the likelihood of conflicts of interest and therefore, enables the independence of the Exchange in administering and complying with the requirements of the Exchange Act. The Commission emphasizes that following the Transaction, the board of directors of the Exchange – not its parent companies or the upstream owners²¹³ – will continue to be the governing body of the Exchange and possess all the authority necessary for the management of the business and affairs of the Exchange and the execution of the responsibilities of the Exchange as an SRO.

C. Future Amendments to the Governing Documents of CHX Holdings and NA Casin Holdings

The Exchange also has proposed to harmonize provisions under the CHX Holdings Bylaws, the CHX Holdings Certificate, the NA Casin Holdings Certificate, and the NA Casin Holdings Bylaws regarding the effectuation of amendments to those documents. The proposed CHX Holdings Bylaws, proposed CHX Holdings Certificate, NA Casin Holdings Bylaws, and NA Casin Holdings Certificate provide that, for so long as CHX Holdings and NA Casin Holdings control CHX, they must submit any changes to their bylaws or certificates of incorporation to the board of directors of CHX.²¹⁴ If the board of directors of CHX determines that the changes must be filed with or filed with and approved by the Commission under Section

²¹³ One commenter asserts that foreigners will be ultimately in charge of oversight of enforcement of trading rules and regulations on CHX. See Hill Letter 2, supra note 6. As discussed above, the Commission believes the proposal is designed to mitigate the ability of stockholders from exercising undue influence over CHX through the ownership structure, the governance arrangements, the attestations of the stockholders, and the requirements for CHX Holdings to monitor the ownership structure on an ongoing basis.

²¹⁴ See proposed CHX Holdings Certificate Article ELEVENTH; proposed CHX Holdings Bylaws Article VIII; proposed NA Casin Holdings Certificate Article X; proposed NA Casin Bylaws, Article 11.1.

19 of the Exchange Act and the rules thereunder, then the proposed changes would not be effective until filed with or filed with and approved by the Commission, as the case may be.²¹⁵

The Commission believes that these provisions are consistent with the Exchange Act because they enable continued oversight of CHX Holdings and NA Holdings by the Exchange and the Commission, which should help assure that the Exchange remains organized in a manner that will allow it to fulfill its self-regulatory obligations and to comply with the requirements of the Exchange Act.

D. Waiver of CHX Holdings' Ownership and Voting Limitations

With respect to the Transaction, pursuant to the CHX Holdings Certificate, CHX has filed for approval of a waiver of certain restrictions on ownership and voting contained in the CHX Holdings Certificate. Specifically, the current certificate prohibits, among other things: (1) any Person, either alone or together with its Related Persons, from owning, directly or indirectly, of record or beneficially, shares of stock of the CHX Holdings representing in the aggregate more than 40% of the then outstanding votes entitled to be cast on any matter; and (2) any Person, either alone or together with its Related Persons, from directly, indirectly or pursuant to any voting trust, agreement, plan or other arrangement, voting or causing the voting of shares of the capital stock (whether such shares be common stock or preferred stock) of CHX Holdings or giving any consent or proxy with respect to shares representing more than 20% of the voting power of the then issued and outstanding capital stock of CHX Holdings.²¹⁶ A waiver of these

²¹⁵ See id.

²¹⁶ See CHX Holdings Certificate Article FIFTH, Sections (b)(ii)(A) and (C). The CHX Holdings board of directors may waive these voting and ownership limitations, if, in connection with taking such action, the board of directors adopts a resolution determining that: (1) the waiver will not impair the ability of CHX to carry out its functions and responsibilities as an “exchange” under the Exchange Act, and the rules under the

ownership and voting limitations is required to effect the Transaction because, after the closing of the Transaction, CHX Holdings would become a wholly-owned subsidiary of NA Casin Holdings. CHX states that the board of directors of CHX Holdings adopted resolutions necessary to waive the ownership and voting limitations, and that Commission approval of the proposed rule change will effectuate a waiver of these requirements under the CHX Holdings Bylaws.²¹⁷

The Commission believes that it is consistent with the Exchange Act to allow NA Casin Holdings to own and vote all of the outstanding common stock of CHX Holdings. In particular, NA Casin Holdings will be subject to the ownership and voting limitations described above, which are consistent with CHX Holdings' current ownership and voting limitations.²¹⁸ In addition, and as discussed above, CHX Holdings and NA Casin Holdings have also included in their corporate documents certain provisions designed to maintain the independence of the Exchange's regulatory functions.²¹⁹ Accordingly, the Commission believes that the revised rules of the Exchange, including the corporate documents of NA Casin Holdings, CHX Holdings, and the Exchange, are reasonably designed to support the ability of the Exchange to carry out its responsibilities under the Exchange Act and the rules and regulations promulgated thereunder and the Commission to enforce the Exchange Act and the rules and regulations promulgated thereunder.

Exchange Act; (2) the waiver is otherwise in the best interests of CHX Holdings, its stockholders, and CHX; (3) the waiver will not impair the ability of the Commission to enforce the Exchange Act; and (4) the action will not be effective until approved by the Commission. See CHX Holdings Certificate Article FIFTH, Section (b)(iii)(B).

²¹⁷ See Notice, supra note 3, 81 FR at 89551-52.

²¹⁸ See text accompanying notes 28-33.

²¹⁹ See supra Section III.A.

Going forward, the proposed CHX Holdings Certificate provides that, for any Person to acquire ownership or exercise voting rights in excess of the ownership and voting limitations:²²⁰ (1) such Person must deliver, not less than 45 days prior to such acquisition of ownership or exercise of voting rights, a notice in writing to the board of directors expressing its intention to acquire such ownership or exercise such voting rights; (2) the CHX Holdings board must resolve to expressly permit such ownership or exercise of voting rights;²²¹ and (3) such resolution must be filed with and approved by the Commission under Section 19(b) of the Exchange Act.²²² The proposed NA Casin Holdings Certificate contains substantially identical provisions.²²³ The Commission believes that these provisions are reasonably designed to assist the Exchange in fulfilling its self-regulatory obligations, and in administering and complying with the requirements of the Exchange Act, by ensuring that the Commission will review and approve, if appropriate, any future change in ownership or voting power that gives rise to its concerns about a stockholder exercising undue control over the operation of the Exchange.²²⁴ Similarly, the Commission believes that this protection against such future changes in ownership or voting

²²⁰ The ownership and voting of CHX Holdings stock would continue to be subject to certain limitations discussed above following the Transaction. See supra notes 57-66 and accompanying text.

²²¹ The CHX Holdings Bylaws require that the board must make a determination that: (1) such acquisition of ownership or exercise of voting rights will not impair any of CHX Holdings' or the Exchange's ability to discharge its responsibilities under the Exchange Act and the rules and regulations thereunder and is otherwise in the best interests of CHX Holdings and its stockholders; (2) such acquisition of ownership or exercise of voting rights will not impair the Commission's ability to enforce the Exchange Act; and (3) 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. See CHX Holdings Certificate Article FOURTH, Sections (b)(iii) and (c)(i)(B).

²²² See CHX Holdings Certificate Article FOURTH, Sections (b)(ii)-(iii) and (c)(ii)(A)-(B).

²²³ See NA Casin Holdings Certificate Article IX, Sections (6)-(7), and (9).

²²⁴ See supra Section III.A.

concentration without careful Commission review and approval is reasonably designed to promote just and equitable principles of trade and to protect investors and the public interest under the standards set forth in Section 6(b)(5) of the Exchange Act. The Commission also notes that these requirements for acquiring ownership or exercising voting rights in excess of the ownership and voting limitations are consistent with other such provisions previously approved by the Commission.²²⁵

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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

²²⁵ See, e.g., NSX Approval Order, *supra* note 153, 80 FR at 9288-89.

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 this filing will also 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].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. As noted above, Amendment No. 1 does not change the structure or purpose of the proposed rule change as it was previously published for notice and comment.²²⁶ Rather, the Exchange modified its proposed rule change to address certain concerns raised by commenters. The Commission believes that an additional notice and comment period for Amendment No. 1 before approval of the proposed rule change would not be in furtherance of the public interest or the protection of investors. Accordingly, the Commission finds good cause,

²²⁶ See supra note 10.

pursuant to Section 19(b)(2) of the Exchange Act,²²⁷ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act²²⁸ that the proposed rule change (SR-CHX-2016-20), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²⁹

Brent J. Fields
Secretary

²²⁷ 15 U.S.C. 78s(b)(2).

²²⁸ 15 U.S.C. 78s(b)(2).

²²⁹ 17 CFR 200.30-3(a)(12).

