James G. Ongena
Executive President and
General Counsel

January 12, 2018

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

Re: Release No. 34-81435;[1] In the Matter of the Chicago Stock Exchange, Inc. ("CHX") - For an Order Granting the Approval of Proposed Rule Change Regarding the Acquisition of CHX Holdings, Inc. ("CHX Holdings") by North America Casin Holdings, Inc. ("NACH") (File No. SR-CHX-2016-20)[2]

Dear Mr. Fields:

The Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submits this letter with respect to the ongoing review ("Review"), pursuant to Rule 431(c) of the Rules of Practice,[3] by the U.S. Securities and Exchange Commission ("SEC" or "Commission"), of the Approval Order related to a transaction ("Proposed Transaction") involving CHX Holdings, the parent company of the Chicago Stock Exchange, Inc. ("CHX" or "Exchange"), and NACH.[4] With the Commission now at full complement, the Exchange submits this letter to request that the Commission consider the resolution of this matter as a top priority, for several reasons. First, the Review itself violates

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1 Securities Exchange Act Release No. 81435 (August 18, 2017), 82 FR 40187 (August 24, 2017) ("Review Order").

2 See Exchange Act Release No. 82077 (November 14, 2017), 82 FR 55141 (November 20, 2017) ("Amendment No. 2"); see also Securities Exchange Act Release No. 81366 (August 9, 2017), 82 FR 38734 (August 15, 2017) ("Approval Order" or "Amendment No. 1"); see also Securities Exchange Act Release No. 79474 (December 6, 2016), 81 FR 89543 (December 12, 2016) (SR-CHX-2016-20) ("Initial Filing").

3 17 CFR 201.431(c).

4 See Letter to Brent J. Fields, Secretary, Commission, from John K. Kerin, President and CEO, CHX (January 5, 2017) ("First CHX Letter"); see also Letter to Brent J. Fields, Secretary, Commission, from Albert J. Kim, Vice President and Associate General Counsel, CHX (January 6, 2017) ("Second CHX Letter"); see also Letter to Brent J. Fields, Secretary, Commission, from John K. Kerin, President and CEO, CHX (March 6, 2017) ("Third CHX Letter"); see also Letter to Brent J. Fields, Secretary, Commission, from Albert J. Kim, Vice President and Associate General Counsel, CHX (August 8, 2017) ("Fourth CHX Letter"); see also Letter to Brent J. Fields, Secretary, Commission, from John K. Kerin, President and CEO, CHX (August 25, 2017) ("Fifth CHX Letter"); see also Letter to Brent Fields, Secretary, Commission, from James G. Ongena, Executive Vice President and General Counsel, CHX (October 1, 2017) ("Sixth CHX Letter"); see also Letter to Brent J. Fields, Secretary, Commission, from Albert J. Kim, Vice President and Associate General Counsel, CHX (November 6, 2017) ("Seventh CHX Letter"); see also Letter to Eduardo A. Aleman, Assistant Secretary, Commission, from John K. Kerin, President and CEO (December 15, 2017) ("Eighth CHX Letter"); see also Letter to Eduardo A. Aleman, Assistant Secretary, Commission, from James G. Ongena, Executive Vice President and General Counsel (December 15, 2017) ("Ninth CHX Letter"). All comment letters on the proposal may be found at https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml.

Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[5] as amended by Sec. 916(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), as more than 240 days have elapsed since the date of publication of the proposed rule change.[6] Second, the Review violates the Commission's own Rules of Practice, specifically Rule 103 governing the construction of the Rules of Practice.[7] Third, the ongoing delay has undermined efficiency, competition and capital formation within the national market system, which is inconsistent with the Commission's mandate pursuant to Section 3(f) of the Act, by significantly delaying (and potentially jeopardizing) the consummation of the Proposed Transaction and denying the Exchange the support and capital infusion from its anticipated new owners, which is critical to the Exchange's competitiveness and ability to facilitate capital formation within the national market system.[8] Accordingly, the Exchange respectfully requests that the Commission lift the ill-advised and improper stay and affirm the Approval Order, as amended by Amendment No. 2,[9] without further delay.

1. The Review Violates Section 19(b) of the Act

Section 19(b) of the Act requires in pertinent part that the Commission approve or disapprove a proposed rule change submitted by a national securities exchange not later than 240 days after the date of publication of the proposed rule change in the Federal Register.[10] Notably, Section 19(b) of the Act utilizes the terms "approve" and "disapprove" without qualification and makes no distinction between direct Commission action and Commission action by delegated authority. In addition, Section 19(b) of the Act provides absolutely no allowances for reviews of delegated authority beyond the 240th day. A failure to issue an effective approval or disapproval order within the time limits set forth under Section 19(b) would trigger Section 19(b)(2)(D)(ii) of the Act, which provides that if the Commission fails to approve or disapprove a proposed rule change within the 240-day period, the proposed rule change shall be deemed to have been approved by the Commission. Thus, the Exchange submits that the time limits set forth under Section 19(b) of the Act control and any review pursuant to Rule 431(c) of the Rules of Practice must be conducted and concluded within the time requirements of Section 19(b) of the Act. The review process in support of the Commission's decision to delegate authority cannot be

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5 15 U.S.C. 78s(b).

6 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. 78o).

7 17 CFR 201.103.

8 15 U.S.C. 78c(f).

9 The Exchange notes that Amendment No. 2 would not have been filed, but for the Commission's actions pursuant to Rule 431(c) of the Rules of Practice. At the time the Review was commenced, all of the then current prospective investors had complied with every request for information and restriction on their investment as required by the Commission and, for several weeks thereafter, were prepared to close the Proposed Transaction. It was only after two months of Commission inaction that in October 2017 three of the prospective investors withdrew from the investor group, which in turn necessitated the filing of Amendment No. 2 to amend, among other things, the NACH capitalization table.

10 See 15 U.S.C. 78s(b).

used to abrogate the provisions of a statute that states, unequivocally that a rule will be considered approved if not disapproved within the 240-day period.

Nor, the Exchange submits, can the Commission properly evade the dictates of the statute through the artifice of saying that the rule has been approved but that approval is stayed indefinitely. Moreover, the Exchange submits that an approval or disapproval order that is not effective (e.g., an approval order that is stayed) does not constitute a valid Commission action under Section 19(b) of the Act. Any interpretation to the contrary would render these provisions of Section 19 meaningless and send the ominous signal to self-regulatory organizations ("SROs") that the Commission can choose to "pocket veto" proposals it does not want to decide.

In this matter, the Commission, by the Commission staff, pursuant to delegated authority,[11] issued the Approval Order on August 9, 2017, which was issued 240 days after the Initial Filing was published in the Federal Register on December 12, 2016. However, on the same day, the Commission notified the Exchange that the Commission would review the delegated action and stayed the Approval Order.[12] Under these circumstances, the Exchange submits that either:

> (1) the stay of the Approval Order nullified the effectiveness of the Approval Order, as the Exchange cannot act upon the stayed Approval Order, and the 240-day statutory period expired on August 9, 2017, in which case the Commission did not approve or disapprove the rule within the statutory required time, and therefore the proposed rule change is deemed approved pursuant to Section 19(b)(2)(D)(ii) of the Act, or
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> (2) the stay of the Approval Order was invalid, as the Review Order was issued after, and any subsequent review was not concluded prior to, the expiration of the 240-day statutory period, and therefore the Approval Order is effective.

2. The Review Violates Rule 103 of the Commission's Rules of Practice

Rule 103(a) of the Commission's Rules of Practice provides that the Rules of Practice "shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding."[13] It has been over five months since the Commission initiated its stay of the Approval Order and nearly four months since the close of the time period for the filing of additional statements on the Commission's Review.[14] The length of this delay cannot be construed as the "just and speedy" administration of the Commission's Rules of Practice. Consequently, the Exchange believes that the Commission's stay of the Approval Order is inconsistent with the Commission's Rules of Practice as the Commission has failed to resolve the Review in a timely

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11 See 17 CFR 200.30-3(a)(12).

12 See Letter to Albert J. Kim, VP and Associate General Counsel, CHX, from Brent J. Fields, Secretary, Commission (August 9, 2017).

13 17 CFR 201.103(a).

14 See Review Order, supra note 1 (setting September 17, 2017 as the date by which any party or other person may file any additional comment).

manner.

Moreover, Rule 103(b) of the Rules of Practice provides that "[i]n any particular proceeding, to the extent that there is a conflict between these rules and a procedural requirement contained in any statute, or any rule or form adopted thereunder, the latter shall control."[15] Section 19(b) of the Exchange Act sets forth in specific detail the procedural requirements and timeline for the SRO rule filing process, providing no mechanism by which the Commission may further delay the approval or disapproval of a SRO's proposed rule change beyond 240 days, even if the SRO were to consent to such a delay. Any fair reading of Rule 103(b) of the Rules of Practice reaffirms that the Commission has recognized in its own rules that the procedure set forth in Rule 431 of the Rules of Practice must yield to the statutory procedural requirements of Section 19(b). Under that provision, the Approval Order became effective on August 9, 2017. To interpret these provisions otherwise subverts the clear intent of Congress in enacting Section 19(b).

3. The Review Violates Section 3(f) of the Act

Section 3(f) of the Act provides in pertinent part that whenever pursuant to the Act the Commission is engaged in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest,[16] the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[17]

The Exchange submits that, even if it somewhat passed muster under Section 19(b), the Review is inconsistent with Section 3(f) of the Act. As the Exchange has previously noted,[18] the Exchange has complied with every request made by the Commission and Commission staff, whether it be modifications to CHX rules to adopt unprecedented corporate governance, audit and compliance requirements or producing documents related to the source of funds and financial wherewithal of the prospective investors. It has also repeatedly provided fulsome responses to every legitimate comment letter related to the Proposed Transaction.[19] In fact, pursuant to its comprehensive review of the Proposed Transaction, in its Approval Order, the Commission staff outlined precisely why the proposed rule change related to the Proposed Transaction is consistent with the requirements of the Act. Moreover, the Committee on Foreign Investment in the United States ("CFIUS") thoroughly vetted the Proposed Transaction and, after three months of intensive review, concluded that there were no unresolved national security concerns with the Proposed

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15 17 CFR 201.103(b).

16 Section 6(b)(5) of the Act provides in pertinent part that an exchange shall not be registered as national securities exchange unless the Commission determines that the rules of the exchange are designed to protect investors and the public interest. 15 U.S.C. 78f(b)(5).

17 15 U.S.C. 78c(f).

18 See e.g., Eighth and Ninth CHX Letters, supra note 4.

19 See supra note 4.

Transaction.[20] Yet, the Commission's formal review of the Proposed Transaction has lasted 13 months and purportedly continues on, committing even more taxpayer dollars to a Review that violates the Act. That, the Exchange asserts, is not consistent with the promotion of efficiency.

Moreover, the Review has undermined the Exchange's competitiveness and ability to facilitate capital formation within the national market system, as the Review has denied the Exchange of the support and capital infusion from the new ownership, which is crucial to the implementation of the Exchange's strategic goal of starting a listing program for emerging growth companies.[21]

Accordingly, any further delay, especially one in violation of Section 19(b) of the Act, is inconsistent with Section 3(f) of the Act.

4. Timing

The Exchange provided the Commission with the merger agreement dated February 4, 2016, by and between, CHX Holdings and NACH, and all subsequent amendments thereto. As such, the Commission is aware of the imminent expiration of the exclusivity period and "drop dead" termination date under the merger agreement. The Exchange asks that the Commission be mindful of the inequity that would result if the merger agreement were to be terminated by the parties due to regulatory inaction, despite the Commission having had 13 months to review the Proposed Transaction, and the message that such a "pocket veto" would send to the international business community: that a foreign investor who has complied with every regulatory request and accepted every condition on its investment may ultimately not receive a timely answer from the Commission.

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20 See Fifth CHX Letter, supra note 4, at 2 and 3.

21 See First CHX Letter, supra note 4, at 2.

In light of the foregoing, as well as the reasons described under the Exchange's previous Rule 19b-4 filings and comment letters, the Exchange respectfully requests that the Commission conclude its Review and affirm the Approval Order, as amended by Amendment No. 2, without further delay.

Sincerely,

James G. Ongena

cc: Chair Jay Clayton
Commissioner Robert J. Jackson Jr.
Commissioner Hester M. Peirce
Commissioner Michael S. Piwowar
Commissioner Kara M. Stein

Robert Stebbins, General Counsel, Office of the General Counsel