immediately upon filing. The Commission notes that it recently approved Phlx's substantially similar proposal to list and trade Monday SPY Expirations.[18] The Exchange has stated that waiver of the operative delay will allow the Exchange to list and trade Monday SPY Expirations as soon as possible, and therefore, promote competition among the option exchanges.[19] For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal effective upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2018–05 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–MIAX–2018–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website *(http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2018–05 and should be submitted on or before March 15, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–03565 Filed 2–21–18; 8:45 am]

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[18] *See supra* note 4.

[19] The Exchange also proposes a number of non-substantive changes to its rulebook. The Exchange stated these changes will help to provide clarity and therefore are in the public interest.

[20] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82727; File No. SR–CHX–2016–20]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, Regarding the Acquisition of CHX Holdings, Inc. by North America Casin Holdings, Inc.

February 15, 2018.

I. Introduction

On December 2, 2016, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 proposed acquisition (''Proposed Transaction'') of CHX Holdings, Inc. (''CHX Holdings'') by North America Casin Holdings, Inc. (''NA Casin Holdings''). The Division of Trading and Markets, for the Commission pursuant to delegated authority, approved the proposed rule change as modified by CHX in Amendment No. 1. Pursuant to Section 4A of the Exchange Act, and Commission Rules of Practice, we have reviewed the action by the Division of Trading and Markets pursuant to delegated authority. As discussed in more detail below, during the period of our review, CHX further modified the proposed rule change in Amendment No. 2.

In conducting a *de novo* review of the proposed rule change—through which CHX seeks to effect a change in ownership—the Commission is mindful of the important role national securities exchanges, such as CHX, play in the securities markets.[3] Not only do they operate trading markets, but registered national securities exchanges are also self-regulatory organizations (''SROs'') ''charged with a public trust to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70881 (December 22, 1998) (''the self-regulatory role of registered exchanges is fundamental to the enforcement of the federal securities laws.''); and Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126, 71132 (December 8, 2004) (''As operators of trading markets, front-line regulators of securities firms, and standard-setters for listed issuers, national securities exchanges . . . are critical to the integrity of the U.S. securities markets.'').

implement and enforce the federal securities laws and rules, as well as their own rules with respect to their members.'' [4]

To minimize the potential for any person who has an ownership or voting interest in a national securities exchange to direct its operation so as to cause the exchange to neglect or otherwise fail to fulfill its obligations under the Exchange Act, the rules of national securities exchanges generally include ownership and voting limitations.[5] The proposed rule change before us contains such limitations. But as described more fully below, the Commission's review of the information before it—including, but not limited to, the staff's experiences in gathering information to assess the proposed rule change—leads us to conclude that CHX has not met its burden to demonstrate that the proposed rule change is consistent with the Exchange Act.

The information before the Commission has highlighted unresolved questions about whether the proposed new ownership structure would comply with the ownership and voting limitations, as well as whether certain aspects of the Proposed Transaction undermine the purpose of those ownership and voting limitations. Nor has the Exchange shown that it would be able to effectively monitor or enforce compliance with these limitations upon consummation of the Proposed Transaction, as it would be required to do in its role as an SRO under the federal securities laws. And the review process has also raised questions about whether the proposed ownership structure will allow the Commission to exercise sufficient oversight of the Exchange.

Because of these concerns, whether viewed independently or in combination, we are unable to find that CHX has met its burden of demonstrating that the proposed rule change is consistent with the Exchange Act and the applicable rules and regulations thereunder. We therefore disapprove the proposed rule change.

II. Background

A. Procedural History

The proposed rule change was published for comment in the **Federal Register** on December 12, 2016.[6] On January 12, 2017, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [7] to determine whether to approve or disapprove the proposed rule change.[8] The Commission received 28 comments on the proposed rule change,[9] and three responses from the Exchange to certain comments.[10] On June 6, 2017, pursuant to Section 19(b)(2) of the Exchange Act,[11] the Commission designated a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[12] On August 7, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.[13] On August 9, 2017, the Division of Trading and Markets, for the Commission pursuant to delegated authority,[14] approved the proposed rule change, as modified by Amendment No. 1.[15]

Pursuant to Exchange Act Section 4A[16] and Commission Rule of Practice 431,[17] the Delegated Order has been stayed,[18] and the Commission has reviewed the delegated action. On August 18, 2017, the Commission issued a scheduling order (''Scheduling Order''), pursuant to Commission Rule

[4] Exchange Act Release No. 50699, 69 FR 71126, 71131. The Commission has long recognized the inherent potential for conflicts between an exchange's regulatory functions as an SRO and its responsibilities to promote the economic interests of its members and owners. *See, e.g.,* Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256, 71259 (December 8, 2004).

[5] *See, e.g.,* Exchange Act Release Nos. 79585 (December 16, 2016), 81 FR 93988 (December 22, 2016) (SR–BatsBZX–2016–68); 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR–ISE–2016–11, SR–ISEGemini–2016–05, SR–ISEMercury–2016–10); 74270 (February 13, 2015), 80 FR 9286 (February 20, 2015) (SR–NSX–2014–017); 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGA–2013–34; SR–EDGX–2013–43); 71375 (January 23, 2014), 79 FR 4771 (January 29, 2014) (SR–BATS–2013–059, SR–BYX–2013–039); 70210 (August 15, 2013), 78 FR 51758 (August 21, 2013) (SR–NYSE–2013–42, SR–NYSEMKT–2013–50 and SR–NYSEArca–2013–62); 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (''EDGX and EDGA Registrations''); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182); 56955 (December 13, 2007), 72 FR 71979, 71982–84 (December 19, 2007) (SR–ISE–2007–101); 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120) (''NYSE Euronext Approval Order''); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77); 53963 (June 8, 2006), 71 FR 34660 (June 15, 2006) (File No. SR–NSX–2006–03); 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10–131); 51149 (February 8, 2005), 70 FR 7531 (February 14, 2005) (SR–CHX–2004–26); and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (SR–Phlx–2003–73); *see also* Exchange Act Release No. 50699 (November 18, 2004) 69 FR 71126, 71143 (December 8, 2004) (proposing release explaining the purpose of ownership and voting limitations in the rules of national securities exchanges).

[6] *See* Exchange Act Release No. 79474 (December 6, 2016), 81 FR 89543 (''Notice'').

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Exchange Act Release No. 79781, 82 FR 6669 (January 19, 2017) (''OIP'').

[9] *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 (''Hill Letter 1''); (3) John Ciccarelli, dated January 2, 2017 (''Ciccarelli Letter''); (4) Anonymous, dated January 3, 2017 (''Anonymous Letter 1''); (5) David E. Kaplan, Executive Director, Global Investigative Journalism Network, dated January 4, 2017 (''GIJN Letter''); (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, 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 1''); (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 1''); (19) John R. Prufeta, dated March 3, 2017 (''John R. Prufeta Letter 1''); (20) Anthony J. Saliba, Saliba Ventures Holdings, LLC, dated March 3, 2017 (''Saliba Letter 1''); (21) Aileen Zhong, dated March 5, 2017 (''Zhong Letter 1''); (22) Duncan Karcher, dated March 5, 2017 (''Duncan Karcher Letter 1''); (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.*

[10] *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'').

[11] 15 U.S.C. 78s(b)(2).

[12] *See* Exchange Act Release No. 80864, 82 FR 26966 (June 12, 2017).

[13] Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml. See also infra* note 15.

[14] 17 CFR 200.30–3(a)(12).

[15] *See* Exchange Act Release No. 81366, 82 FR 38734 (August 15, 2017) (''Delegated Order''). In the Delegated Order, the Commission also described and noticed the filing of Amendment No. 1 to the proposed rule change.

[16] 15 U.S.C. 78d–1.

[17] 17 CFR 201.431.

[18] *See* letter from Secretary of the Commission to Albert (A.J.) Kim, Vice President and Associate General Counsel, CHX, dated August 9, 2017 (providing notice of Commission review of delegated action and stay of order), available at *https://www.sec.gov/rules/sro/chx/2017/34-81366-letter-from-secretary.pdf.*

of Practice 431, allowing the filing of additional statements until September 17, 2017.[19] The Commission received 43 comment letters within that period, including two comment letters from the Exchange.[20] On November 6, 2017, the Exchange filed Amendment No. 2 to the proposed rule change.[21] Amendment No. 2 was published for comment in the **Federal Register** on November 20, 2017, and a new comment period ending on December 5, 2017 was established, with a deadline for the submission of rebuttals to comment of December 15, 2017.[22] After the Exchange filed Amendment No. 2, the Commission received an additional 21 comment letters on the proposed rule change, as modified by Amendments No. 1 and 2,[23] and three response letters from the Exchange.[24]

The Commission's Rules of Practice set forth procedures for reviewing actions made pursuant to delegated authority.[25] Pursuant to Rule 431(a) of the Rules of Practice, the Commission may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the action made pursuant to delegated authority. Here, the Commission set aside the Delegated Order and conducted a *de novo* review of, and gave careful consideration to, the record, which includes, among other items: (1) CHX's proposal and all amendments thereto; (2) supplemental information submitted by CHX, both in the public record and pursuant to confidential treatment requests; (3) all comments received in connection with the proposed rule change; (4) all comments received in connection with the Scheduling Order; and (5) information derived from a recent staff examination of the Exchange.

B. Summary of the Proposal, as Modified by Amendments No. 1 and No. 2

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 affiliates of Participants.[26] Pursuant to the terms of a Merger Agreement dated February 4, 2016, as amended on February 3, 2017, and August 29, 2017 (''Merger Agreement''), by and among NA Casin Holdings, Exchange Acquisition Corporation (''Merger Sub''), Chongqing Casin Enterprise Group Co., LTD. (''Chongqing Casin''), Richard G. Pane solely in his capacity as the

[19] *See* Exchange Act Release No. 81435, 82 FR 40187 (August 24, 2017).

[20] *See* letters from: (1) Frank Milton, dated August 15, 2017 (''Milton Letter''); (2) Richard R. Taylor, Head Trader, Taylor Trading, dated August 15, 2017 (''Richard R. Taylor Letter''); (3) Melanie Ayers, dated August 16, 2017 (''Ayers Letter''); (4) Walt H. Huskey, dated August 23, 2017 (''Huskey Letter''); (5) Darrell Simpson, dated August 23, 2017 (''Simpson Letter''); (6) Anonymous, dated August 24, 2017 (''Anonymous Letter 2''); (7) Edward L. Jones, dated August 24, 2017 (''Edward Jones Letter''); (8) John K. Kerin, President & Chief Executive Officer, CHX, dated August 25, 2017 (''CHX Response Letter 4''); (9) John Carney, dated August 28, 2017 (''Carney Letter''); (10) Michael Johnson, dated August 31, 2017 (''Michael Johnson Letter 1''); (11) Michael Johnson, Director Emeritus, Center for East Asian Political Economy, dated September 2, 2017 (''Michael Johnson Letter 2''); (12) Rick Helmer, dated September 4, 2017 (''Helmer Letter''); (13) Ruth Day, dated September 4, 2017 (''Day Letter''); (14) Catherine Jones, dated September 5, 2017 (''Catherine Jones Letter''); (15) Robert Denholm, dated September 6, 2017 (''Denholm Letter''); (16) Arthur Lee, Analyst, U.S. Strategic Defense Think Tank, dated September 6, 2017 (''Lee Letter''); (17) Olga Gouroudeva, dated September 7, 2017 (''Gouroudeva Letter 2''); (18) Timothy Watson, Investigator, DeepDive Background Research, dated September 8, 2017 (''Watson Letter''); (19) Vijay Vad, dated September 8, 2017 (''Vad Letter''); (20) Lyle Himebaugh, Managing Partner, Granite Group Advisors, dated September 8, 2017 (''Himebaugh Letter''); (21) Duncan Karcher, dated September 8, 2017 (''Duncan Karcher Letter 2''); (22) John Prufeta, Chief Executive Officer and Chairman, Medical Excellence International, LLC, dated September 11, 2017 (''John R. Prufeta Letter 2''); (23) Aileen Zhong, dated September 11, 2017 (''Zhong Letter 2''); (24) Robert Prufeta, Senior Vice President, Executive Search, Solomon Page Healthcare & Life Sciences, dated September 12, 2017 (''Robert Prufeta Letter''); (25) Stella Su, dated September 12, 2017 (''Su Letter''); (26) Tracy Xu, dated September 12, 2017 (''Xu Letter''); (27) John L. Prufeta, dated September 13, 2017 (''John L. Prufeta Letter''); (28) Thomas W. Alfano, Partner, Abrams Fensterman, dated September 13, 2017 (''Alfano Letter''); (29) Tara Prufeta, dated September 13, 2017 (''Tara Prufeta Letter''); (30) Rep. Randy Hultgren, Member of Congress, dated September 14, 2017 (''Hultgren Letter''); (31) Michael Johnson, Director Emeritus, Center for East Asian Political Economy, dated September 14, 2017 (''Michael Johnson Letter 3''); (32) Cheryl Karcher, dated September 15, 2017 (''Cheryl Karcher Letter''); (33) Stephen Johnson, Investigative Reporter, Money Network Media, dated September 15, 2017 (''Stephen Johnson Letter''); (34) Yong Xiao, Chief Executive Officer, North America Casin Holdings, Inc., dated September 15, 2017 (''NA Casin Holdings Letter 2''); (35) Manuel Pinho, dated September 15, 2017 (''Pinho Letter''); (36) Sandy Sapa, dated September 15, 2017 (''Sapa Letter''); (37) Bruce Rauner, Governor of the State of Illinois, dated September 15, 2017 (''Rauner Letter''); (38) Peter Strotz, Analyst, Center for Government Accountability, dated September 16, 2017 (''Strotz Letter''); (39) Susan Williams, Risk Analyst, Blue Stone Capital, dated September 17, 2017 (''Williams Letter''); (40) Representative Robert Pittenger, Representative Chris Smith, Representative Mo Brooks, Representative Rosa DeLauro, Representative Walter Jones, Representative Julia Brownley, Representative Doug LaMalfa, Representative Tom O'Halleran, Representative Peter DeFazio, Senator Joe Manchin, Senator Amy Klobuchar, Representative Steve King, Representative Marcy Kaptur, Representative Austin Scott, Representative David Joyce, Representative Glenn Grothman, Representative David Valadao, and Representative Mike Gallagher, dated September 26, 2017 (''Pittenger Letter 3''); (41) James G. Ongena, Executive Vice President & General Counsel, CHX, dated October 1, 2017 (''CHX Response Letter 5''); (42) Chris Monfort, dated October 5, 2017 (''Monfort Letter''); and (43) Anonymous, dated October 8, 2017 (''Anonymous Letter 3'').

[21] In Amendment No. 2, the Exchange modified the proposed rule change by: (1) Amending the proposed capitalization table for NA Casin Holdings due to the withdrawal of three proposed equity owners—Chongqing Jintian Industrial Co., Ltd., Chongqing Longshang Decoration Co., Ltd., and Xian Tong Enterprises, Inc.—from the investor group for the Proposed Transaction, *see infra* note 30; (2) amending the proposed NA Casin Holdings Certificate of Incorporation to: (i) require a supermajority vote for certain corporate actions related to change of control of NA Casin Holdings; (ii) reflect a recent name change of the registered agent from ''National Corporate Research'' to ''Cogency Global, Inc.''; and (iii) modify the term expiration years of the three classes of directors under Section (6) of Article V; (3) amending the put agreements for Raptor Holdco LLC (''Raptor'') and Saliba Ventures Holdings, LLC (''Saliba'') to, among other changes, reflect the increased ownership levels for Raptor and Saliba under the new capital structure; (4) providing a new put agreement for Penserra Securities LLC (new *Exhibit 5L*), which the Exchange states is substantively similar to the Raptor and Saliba put agreements; and (5) amending the language of the filing to update certain sections of the Form 19b-4 in order to conform that language with the above changes. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-chx-2016-20/chx201620.shtml.*

[22] *See* Exchange Act Release No. 82077 (November 14, 2017), 82 FR 55141 (''Amendment No. 2'').

[23] *See* letters from: (1) Samuel Garland, Regulatory Policy Group, dated November 9, 2017 (''Garland Letter''); (2) David Mcpherson, Market Transparency Think Tank, dated November 10, 2017 (''Mcpherson Letter''); (3) Daniel Azsai, dated November 12, 2017 (''Azsai Letter''); (4) Anonymous, dated November 12, 2017 (''Anonymous Letter 4''); (5) Richard Taylor, dated November 15, 2017 (''Richard Taylor Letter''); (6) Karl Montclair, dated November 20, 2017 (''Montclair Letter''); (7) Jeremy Johnson, Analyst, Citizens Alliance for Better Government, dated November 22, 2017 (''Jeremy Johnson Letter''); (8) Marc Gresack, dated November 21, 2017 (''Gresack Letter''); (9) Ruben May, dated November 21, 2017 (''May Letter''); (10) Claire Salters, dated November 22, 2017 (''Salters Letter''); (11) Gordon Faux, dated November 30, 2017 (''Faux Letter''); (12) Anthony Saliba, Saliba Ventures Holdings, LLC, dated December 1, 2017 (''Saliba Letter 2''); (13) Preston Briley, dated December 4, 2017 (''Briley Letter''); (14) G. Bleecher, dated December 4, 2017 (''Bleecher Letter''); (15) David Marden, dated December 4, 2017 (''Marden Letter''); (16) Yong Xiao, Chief Executive Officer, NA Casin Holdings, dated December 13, 2017 (''NA Casin Holdings Letter 3''); (17) Peter Strauss, Fraud Examiner, Fraud Detection Network, dated December 2, 2017 (''Strauss Letter''); (18) Steven Hart, Investigator, Center for Market Transparency, dated December 15, 2017 (''Hart Letter''); (19) James N. Hill, dated December 15, 2017 (''Hill Letter 3''); (20) Jon Horwitz, Market Structure Specialist, Compass Research Alert, dated December 15, 2017 (''Horwitz Letter''); and (21) Jason Friedman, Friedman Regulatory Transparency Group, dated December 15, 2017 (''Friedman Letter'').

[24] *See* letters from John K. Kerin, President and Chief Executive Officer, CHX, dated December 15, 2017 (''CHX Response Letter 6''); James G. Ongena, Executive Vice President and General Counsel, CHX, dated December 15, 2017 (''CHX Response Letter 7''); and James G. Ongena, Executive President and General Counsel, CHX, dated January 12, 2018 (''CHX Response Letter 8'').

[25] *See* 17 CFR 201.431.

[26] *See* Notice, *supra* note 6, at 89544. *See also* CHX Rules Article 1, Rule 1(s) (defining ''Participant'').

Stockholders Representative thereunder, and CHX Holdings, Merger Sub would merge into CHX Holdings, which would then become a wholly owned direct subsidiary of NA Casin Holdings.[27] Under the Merger Agreement, current CHX Holdings stockholders would have the right to receive cash in exchange for their shares.[28] The Exchange would continue to be a wholly owned subsidiary of CHX Holdings. Consummation of the Proposed Transaction is subject to the satisfaction of certain conditions precedent, including approval by the Commission of the proposed rule change.[29] The Exchange represents that, after the closing of the Proposed 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:[30]

- 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'')—29%
- 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,[31] a U.S. citizen and Vice President of NA Casin Group—11%
- Raptor, a limited liability company organized under the laws of the State of Delaware—25%
- Saliba, a limited liability company organized under the laws of the State of Illinois—24.5%
- Five members of the CHX Holdings management team, all U.S. citizens—collectively, 8.32%, with no one person attributed more than 5%
- Penserra, a limited liability company organized under the laws of the State of New York—2.18% [32]

After the closing of the Proposed Transaction, CHX would remain a national securities exchange, registered under Section 6 of the Exchange Act,[33] and an SRO, as defined in Section 3(a)(26) of the Exchange Act.[34] In addition, following the closing, the Exchange's affiliated routing broker, CHXBD, would remain a Delaware limited liability company of which CHX Holdings would remain the sole member.[35]

To effect the Proposed Transaction, the Exchange proposes to amend its certificate of incorporation and bylaws (''CHX Bylaws''),[36] the certificate of incorporation (''CHX Holdings Certificate'') and bylaws (''CHX Holdings Bylaws'') of CHX Holdings,[37] and the Exchange's rules.[38] The Exchange has also filed the following documents in connection with the Proposed Transaction: (1) The certificate of incorporation (''NA Casin Holdings Certificate'') and bylaws (''NA Casin Holdings Bylaws'') of NA Casin Holdings; [39] (2) text of a proposed resolution of CHX Holdings' board of directors to waive certain ownership and voting limitations to permit the Proposed Transaction; [40] (3) the proposed NA Casin Holdings Stockholders' Agreement,[41] 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''),[42] Raptor, NA Casin Group, and NA Casin Holdings (''Raptor Put Agreement''),[43] and Penserra, NA Casin Group, and NA Casin Holdings (''Penserra Put Agreement,'' and collectively with the Saliba and Raptor Put Agreements, the ''Put Agreements'').[44] The Put Agreements would grant Saliba, Raptor, and Penserra, respectively, the right to compel NA Casin Holdings to purchase or arrange for an unspecified third party to purchase all or a portion of Saliba's, Raptor's, or Penserra's equity interest in NA Casin Holdings, respectively, during a 30-day window commencing two years after the close of the Proposed Transaction.[45]

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[27] *See* Notice, *supra* note 6, at 89544; and Amendment No. 2, *supra* note 22, at 55143.

[28] *See id.*

[29] *See id.*

[30] *See* Amendment No. 2, *supra* note 22, at 55142.

[31] 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 6, at 89545, n.18. The Exchange represents that Castle YAC and NA Casin Group are related persons for the purpose of determining the ownership and voting concentration limits. *See* Amendment No. 2, *supra* note 22, at 55142.

[32] *See* Amendment No. 1, *supra* note 13, at 7 (explaining that Cheevers & Co., Inc., one of the original upstream owners, merged with Penserra, with Penserra as the surviving entity).

[33] 15 U.S.C. 78f.

[34] 15 U.S.C. 78c(a)(26).

[35] Prior to the change of proposed capital structure noticed in Amendment No. 2, the proposed capital structure for NA Casin Holdings following the close of the original proposed transaction would have been as follows: NA Casin Group, Inc.—20%; Chongqing Jintian Industrial Co., Ltd., a corporation incorporated under the laws of the PRC (''Chongqing Jintian'')—15%; Chongqing Longshang Decoration Co., Ltd., a corporation incorporated under the laws of the PRC (''Chongqing Longshang'')—14.5%; Castle YAC—19%; Raptor—11.75%; Saliba—11.75%; Xian Tong Enterprises, Inc., a corporation incorporated under the laws of the State of New York (''Xian Tong'')—6.94%; five members of the CHX Holdings management team, all U.S. citizens—0.88% (as equity incentives); and Penserra—0.18%. *See* Amendment No. 2, *supra* note 22, at 55142.

[36] *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.*

[37] *See* Exhibits 5A and 5B.

[38] *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, those portions of its certificate of incorporation and bylaws that are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Exchange Act) of the Exchange are rules 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.

[39] *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, those portions of its certificate of incorporation and bylaws that are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Exchange Act) of the Exchange are rules 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 NA Casin Holdings Certificate and NA Casin Holdings Bylaws with the Commission.

[40] *See* Exhibit 5H.

[41] *See* Exhibit 5I.

[42] *See* Exhibit 5J.

[43] *See* Exhibit 5K.

[44] *See* Exhibit 5L.

[45] The Put Agreements state that the price of shares sold pursuant to each Put Agreement would be an amount equal to the total number of shares that each stockholder determines to sell, multiplied by the sum of the average initial price per share, plus the amount of the preferred return, which is a certain percentage of the average price per share per year compounded annually through the date of the exercise of the put right, less any distributions previously paid by NA Casin Holdings to the holders of the shares.

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. 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. In particular, these provisions prohibit any Person,[46] either alone or with its Related Persons,[47] 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.[48] 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.[49] 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.[50] 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.[51] 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.[52] 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 be voted unless specific procedures are followed prior to entering into such an agreement, plan, or arrangement.[53] The certificates of incorporation would also require that CHX Holdings and NA Casin Holdings disregard any votes cast in excess of the voting limitations.[54] These restrictions are described herein as the ''voting limitations.''

Relevant to the ownership and voting limitations, the Exchange represents that there are two sets of Related Persons among the upstream owners: (1) Castle YAC and NA Casin Group and (2) the five members of the CHX Holdings management team.[55] Together, Castle YAC and NA Casin Group would hold a 40% ownership interest in NA Casin Holdings.[56] The five members of the CHX Holdings management team would collectively hold an 8.32% ownership interest.

The Exchange also 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

[46] 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).

[47] 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).

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

[49] *See* proposed CHX Holdings Certificate Article FOURTH, Section (c)(ii); proposed NA Casin Holdings Certificate Article IX, Section (10).

[50] *See* proposed CHX Holdings Certificate Article FOURTH, Section (d); and proposed NA Casin Holdings Certificate Article IX, Section (13).

[51] *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).

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

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

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

[55] *See* Amendment No. 2, *supra* note 22, at 55142. The Exchange represents that prior to the closing of the Proposed Transaction, these five members of the CHX Holdings management will enter into a voting agreement, which will require that, among other things, they vote as a block; the Exchange asserts that the terms of this voting agreement would render the members Related Persons. *See id.* at n.28.

[56] *See id.* As noted above, NA Casin Group would hold a 29% ownership interest and Castle YAC would hold an 11% ownership interest. *See supra* note 30 and accompanying text.

percent or more;[57] and (5) each Person having voting rights or beneficial ownership of stock of 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.[58]

Furthermore, Article VIII of the NA Casin Holdings Certificate sets forth a supermajority vote requirement for certain corporate actions.[59] Specifically, Article VIII, Section (2) provides that except as otherwise prohibited by applicable law, the affirmative vote of the holders of at least 85% of the then outstanding NA Casin Holdings voting shares entitled to be cast on such matter is required for the following: (1) Any merger or consolidation of NA Casin Holdings or any subsidiary with any or any other corporation or other entity; (2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any other corporation or other entity, of all or substantially all of the assets of NA Casin Holdings or any subsidiary; (3) the issuance or transfer by NA Casin Holdings or any subsidiary (in one transaction or a series of transactions) of any securities of NA Casin Holdings or any subsidiary that would result in any an individual, corporation, partnership, joint venture, limited liability company, governmental or regulatory body, unincorporated organization, trust, association or other entity: (i) Owning a majority of the shares of the common stock of NA Casin Holdings or (ii) owning a majority of the shares of voting stock of any subsidiary, unless the owner is NA Casin Holdings or a subsidiary; (4) the adoption of any plan or proposal for the liquidation or dissolution of NA Casin Holdings that is not the result of a transaction contemplated by the prior provisions; (5) any reclassification of securities (including any reverse stock split), recapitalization of NA Casin Holdings or any merger or consolidation of NA Casin Holdings with any of its subsidiaries or any other transaction which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class of equity or convertible securities of NA Casin Holdings or any subsidiary with the result that the owner or indirect owner of such shares becomes the holder of a majority of the shares of common stock of NA Casin Holdings; or (6) any agreement, contract, or other arrangement providing for any one or more of the previously listed actions.[60]

Additionally, CHX is amending the CHX Holdings Bylaws,[61] CHX Bylaws,[62] and NA Casin Holdings Bylaws,[63] 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 corporate books and records related to the activities of the Exchange. The proposed rule change also adopts provisions in the new NA Casin Holdings Certificate and NA Casin Holdings Bylaws relating to these matters.

III. Discussion and Commission Findings

Under Section 19(b)(2)(C) of the Exchange Act, the Commission must approve the proposed rule change of an SRO if the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule change.[64] Additionally, under Rule 700(b)(3) of the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change.'' [65] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.[66] Any failure of a self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization.[67]

Section 6(b)(1) of the Exchange Act requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and enforce compliance by its members, with the provisions of the Exchange Act and its own rules.[68] This encompasses not only a requirement that an exchange have the capacity to perform its functions as a self-regulatory organization, but also that it is so organized as to allow for sufficient Commission oversight.[69] Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, in general, to protect investors and the public interest.[70]

In reviewing the proposed rule change, the Commission has analyzed information provided by the Exchange, both in its public filings and subject to confidential treatment requests, as well as information derived from a recent staff examination of the Exchange.[71] Based on the information before the Commission, for each of the reasons discussed below (whether viewed independently or in combination), we are unable to find that the Exchange has met its burden to show that the proposed rule change is consistent with the Exchange Act and the applicable

[57] *See* proposed NA Casin Holdings Certificate Article IX, Section (19)(i); proposed CHX Holdings Certificate Article Fourth(g)(i).

[58] *See* proposed NA Casin Holdings Certificate Article IX, Section (19)(ii); proposed CHX Holdings Certificate Article Fourth(g)(ii).

[59] *See* Amendment No. 2, *supra* note 22, at 55144.

[60] *See id.* Moreover, such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that a lesser percentage may be permitted, by applicable law. *See id.*

[61] *See* proposed CHX Holdings Bylaws, Article XIII, Section 13.1.

[62] *See* proposed CHX Bylaws, Article XIII, Section 13.1.

[63] *See* proposed NA Casin Holdings Bylaws, Article 10, Section 10.1.3.

[64] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[65] 17 CFR 201.700(b)(3).

[66] *Id.*

[67] *Id.*

[68] 15 U.S.C. 78f(b)(1).

[69] *Id.*

[70] 15 U.S.C. 78f(b)(5).

[71] The Commission has also carefully considered the issues raised by commenters in its analysis of the information before it, and a more detailed description of the comments received, as well as the Exchange's responses, is included in the Appendix. As noted in the OIP (*see* OIP, *supra* note 8, at 6671), questions have been raised about the identity and veracity of a commenter. *See* GIJN Letter, *supra* note 9; *see also* CHX Response Letter 2 regarding the submitter of the Ciccarelli Letter, *supra* note 10. Additionally, four comment letters have been submitted anonymously. *See* Anonymous Letter 1, *supra* note 9; Anonymous Letters 2 & 3, *supra* note 20; Anonymous Letter 4, *supra* note 23. Our analysis and conclusions, however, do not depend on the identity or affiliation of the author of the Ciccarelli Letter or the veracity of the assertions in such letter, or the identity of any particular commenter more generally. Rather, the Commission has considered the *substance* of the concerns raised by commenters in light of the information before it.

rules and regulations thereunder. Accordingly, we disapprove the proposed rule change.[72]

A. Procedural Matters

Section 19(b)(2)(D) of the Exchange Act requires the Commission to ''issue an order'' approving or disapproving a proposed rule change within 240 days.[73] The Delegated Order was issued within that time period.[74] We disagree with the Exchange's assertions that: (1) The stay of that order pending Commission review ''nullified'' its effectiveness, and (2) the approval of the Exchange's original proposed rule—since superseded by the Exchange's amended filing—remains in effect.

First, nothing about a stay vitiates the issuance of the underlying order. Moreover, at the time Congress enacted the time restrictions in Section 19(b)(2)(D) of the Exchange Act, it was known that the Commission could delegate authority to approve SRO rule filings pursuant to Exchange Act Section 4A, and that such delegated actions could be reviewed by the Commission, either at the request of a person aggrieved or on the Commission's own initiative.[75] To construe Section 19(b)(2)(D) as requiring Commission review of an order by delegated authority to be completed within 240 days would undermine both the specific deadlines set forth in the statute and the Commission's ability to delegate functions. It would also leave the Commission insufficient time to engage in the independent, thoughtful analysis required by both the Exchange Act and the Administrative Procedure Act in cases in which either the Commission orders, or an aggrieved party seeks, review.

Nor is such a construction necessary to fulfill Congress's purpose in enacting the statutory timelines. Congress intended to ''streamline'' the rule filing process[76] and to encourage the Commission ''to employ a more transparent and rapid process for consideration of rule changes.''[77] This purpose has been achieved. With rare exception, rule filings are determined, by delegated authority or otherwise, within 240 days.[78] Only a few delegated orders have been subject to Commission review.[79]

Finally, the proposed rule change now before the Commission differs from that addressed in the Delegated Order because the Exchange itself filed a material amendment to its original proposal after the Commission review of the delegated authority action began. The practical implications of the Exchange's assertion that the *original* proposed rule is in effect—either by operation of law due to a failure to effectively meet the statutory time restrictions or because the delegated order approving the original proposed rules governs—are unclear. The transaction contemplated by the Exchange's original proposal was never consummated, and the revised proposal currently before the Commission contemplates a materially different transaction. Indeed, the actions of the Exchange make it clear that there is no substance to this argument. The Exchange itself opted to amend materially its prior proposal rather than submitting a new proposed rule change to alter the proposed rules it now argues had already been approved.[80]

B. Discussion of Substantive Findings

1. The Proposed Transaction's Compliance With the Ownership and Voting Limitations

As discussed above, in order to minimize the potential for persons who have ownership or voting interests in a national securities exchange to direct its operation so as to cause the exchange to neglect or otherwise fail to fulfill its obligations under the Exchange Act, the rules of such exchanges include ownership and voting limitations, as well as mechanisms to monitor for compliance with those limits.[81] Here, the Exchange's proposed ownership and voting limitations—which would govern the proposed upstream owners—are contained in the NA Casin Holdings Certificate.[82] And proposed changes to the corporate governance documents and rules of CHX Holdings provide for ongoing information collection and monitoring to ensure future compliance with these limitations, pursuant to Section 6(b)(1) of the Exchange Act.

In its original filing, the Exchange represented that the Proposed Transaction complied with these

[72] In disapproving the proposed rule change, as modified by Amendments No. 1 and No. 2, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation, *see* 15 U.S.C. 78c(f), and the points raised by the Exchange with regard to this consideration. The Exchange asserts that the Proposed Transaction would: (1) Result in substantial capital investment into the Exchange, which will better enable the Exchange to compete within the highly competitive U.S. securities market and better enable the Exchange to further the objectives of the Exchange Act (*see* Notice, *supra* note 6, at 89559); (2) enhance competition among the equity securities markets and provide new trading and capital formation opportunities for market participants and the investing public (*see* Notice, *supra* note 6, at 89558–59); and (3) enhance cooperation between market participants from the two largest economies in the world, encourage additional international trading and listings in the U.S., and enhance the ability of CHX to continue to provide innovative trading functionalities and to offer new capital formation opportunities for emerging growth companies (*see* CHX Response Letter 3, *supra* note 10, at 2–3). The Commission has considered the Exchange's assertions and the discussion of these issues in the comments. *See also* Appendix, *infra* note 142. We note that the basis of the Exchange's assertion that approving the Proposed Transaction would encourage additional international trading and listings is unclear and the Exchange has not provided any quantitative analysis to support this assertion. But even if the proposed rule change has the potential to promote efficiency, competition and/or capital formation, for the reasons discussed below, the Commission must disapprove the proposed rule change in light of its inability, on the current record, to find that it is consistent with the Exchange Act.

[73] *See* 15 U.S.C. 78s(b)(2)(D).

[74] *See supra* note 15.

[75] *See* 15 U.S.C. 78d–1 (enacted in 1987).

[76] H.R. Rep. No. 111–517, at 727 (2010) (Conf. Rep.).

[77] S. Rep. No. 111–176, at 106 (2010).

[78] During fiscal year 2017, 302 rule filings were either approved or disapproved pursuant to Section 19(b)(2). All of these were acted on, by delegated authority or otherwise, within the statutory time frame.

[79] Of the 302 rule filings that were either approved or disapproved in fiscal year 2017, four were brought before the Commission for review. Three of those were brought before the Commission on its own initiative, while one was subject to petitions for review filed by aggrieved persons.

[80] The Exchange also argues that the length of review is inconsistent with Rule 103(a) of the Commission's Rules of Practice and is inconsistent with Section 3(f) of the Exchange Act. Rule 103(a) provides that the Rules of Practice ''shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.'' We do not believe that the Commission's review violates this general principle in light of the material amendment made by the Exchange to the proposed rule change during the pendency of Commission review, the substantial comments received on the proposed rule change and amendments thereto, and, as discussed below, the fact that questions about the compliance of the proposed ownership structure with the Exchange's ownership voting limitations and the ability of the Exchange and the Commission to exercise sufficient oversight in the future remain outstanding. Moreover, the Exchange misconstrues Section 3(f), which does not focus on the efficiency of the *Commission review process.* Instead, it focuses on whether the *proposed rule* promotes efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f) (''Whenever pursuant to this title 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, the Commission shall also consider . . . whether *the action* will promote efficiency, competition, and capital formation.'') (emphasis added).

[81] *See supra* note 5 and accompanying text.

[82] *See* proposed NA Casin Holdings Certificate Article IX, Sections (5) (prohibiting any person, either alone or with its Related Persons from voting or causing the voting of shares of stock of the NA Casin Holdings representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter) and (9) (prohibiting any person, either alone or with its Related Persons, from beneficially owning 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). As explained *supra* note 39, those portions of NA Casin Holdings' certificate of incorporation and bylaws that are stated policies, practices, or interpretations of the Exchange are rules of the Exchange.

ownership and voting limitations, stating that the only Related Persons among the proposed upstream owners were Castle YAC and NA Casin Group, which would collectively hold a 39% interest in NA Casin Holdings. Commenters, however, asserted that NA Casin Group had undisclosed connections, financial and otherwise, to other proposed upstream owners such that it could exercise undue influence over the Exchange.[83] In an effort to clarify the relationships among the proposed investors in the consortium and to verify the source of funds used for the Proposed Transaction by the various entities involved—including whether NA Casin Group or related entities were providing, directly or indirectly, undisclosed funding for other proposed upstream owners' participation in the Proposed Transaction—Commission staff reviewed information derived from an ongoing examination of CHX and, beginning in July of 2017, requested additional documents and information from CHX.

CHX responded with documents and information, accompanied by a request for confidential treatment, that gave rise to additional questions. In a series of follow-up requests for information pertaining to the proposed upstream owners, Commission staff continued to seek additional information from CHX.[84] While CHX provided documents and information in response to the staff's successive requests, the information made available to the Commission was insufficient to verify the ultimate source of the funds certain of the proposed upstream owners were using to fund their part of the transaction. It also raised questions about potential undisclosed connections between purportedly unrelated members of the investor consortium.

For example, the information provided, as well as information derived from the Commission staff's own due diligence, indicated potential connections between Shengju Lu, his son Jay Lu (who controls Castle YAC), or Chongqing Casin (the entity Shengju Lu controls) on one hand and the funds used by one of the members of the original investor consortium, Xian Tong, on the other hand. It appeared from Commission staff research and a review of certain bank records and supporting documents provided by the Exchange that Xian Tong received funding from an individual and entities that may have familial and financial connections to Shengju Lu or Jay Lu (neither of whom, according to representations submitted by the Exchange, was a Related Person to Xian Tong).

As another example, the funds used by Chongqing Longshang and Chongqing Jintian to fund their respective shares of the Proposed Transaction were purportedly derived from payments owed to them under pre-existing business contracts. But the amount of each of those payments (which approximated the amount of their respective levels of investment in the Proposed Transaction), and the timing of their receipt of those payments, raised questions about whether they were, in fact, bona fide payments under those business contracts.

Shortly after Commission staff requested additional documents and information in an attempt to resolve questions about the source of funds used by these three entities and whether there were, in fact, undisclosed connections between those funds and other proposed investors, Chongqing Jintian, Chongqing Longshang, and Xian Tong withdrew from the Proposed Transaction.[85] CHX then stated that it was unable to provide certain documents and information the Commission staff requested regarding those proposed owners,[86] leaving various questions unanswered.

The significance of these unanswered questions to the Commission's review did not disappear with the withdrawal of the former proposed upstream owners. Although Xian Tong, Chongqing Longshang, and Chongqing Jintian are no longer parties to the Proposed Transaction, as described in Amendment No. 2, Shengju Lu and Chongqing Casin remain central to the Proposed Transaction. Together with Jay Lu's Castle YAC, they would control the largest block (40%) of the outstanding shares in NA Casin Holdings following consummation of the Proposed Transaction. If, in fact, Shengju Lu or Chongqing Casin had undisclosed relationships with, or provided undisclosed funding directly or indirectly to, the withdrawn investors, the representations made in connection with the initial rule filing and Amendment No. 1 would have been inaccurate. That potential (and unresolved) inaccuracy, in turn, would raise questions about the accuracy of the representations made regarding the current structure of the Proposed Transaction and its compliance with the ownership and voting limitations.[87] Thus, regardless of the reasons for the withdrawal of these three members of the original investment consortium, their withdrawal and CHX's inability to provide the information requested by Commission staff prior to that withdrawal leaves the Commission unable to resolve questions that bear on its assessment of the current structure of the Proposed Transaction.

These concerns about the possibility of, and the risks posed by, undisclosed relationships are exacerbated by the terms of the Put Agreements, which heighten the potential for circumvention of the ownership limitations.[88] Under those agreements, Raptor, Saliba, and Penserra can sell their shares to NA Casin Holdings, or an unspecified third-party purchaser, after 24 months for a guaranteed return on their investment. These entities—which would collectively receive 51.68% of NA Casin Holdings' outstanding shares in the Proposed Transaction—therefore appear to be taking only minimal economic risk, with the bulk of the economic risk appearing to be borne by the remaining investors, primarily Chongqing Casin and its related entities. Said another way, while their proposed ownership is described as including a substantial purchase of equity with a put option, in many ways, from an economic perspective, this portion of the Proposed Transaction resembles a loan arrangement with an option to convert the loan into equity (which, as described below, would be acquired at a discounted price vis-à-vis the price

[83] *See* Appendix, *infra* notes 112–117 and accompanying text.

[84] The staff orally requested information from CHX on July 27, 2017, and August 4, 2017, and provided CHX with a written document request on September 18, 2017.

[85] Commenters and the Exchange disagreed regarding the reason for these investors' withdrawal. *Compare, e.g.,* Appendix, *infra* notes 244–247 and accompanying text *with* notes 278–282 and accompanying text.

[86] While NA Casin Holdings and the Exchange contend that these investors provided all of the information requested by staff, this is not borne out by the confidential record before the Commission. *See* NA Casin Holdings Letter 2, *supra* note 20, at 2; and CHX Response Letter 7, *supra* note 24, at 2.

[87] In response to comments raising questions about potential undisclosed relationships between the original upstream owners, the Exchange pointed to opinions of counsel provided to the Commission regarding the proposed upstream owners as well as to the approval of the Proposed Transaction by the Committee for Foreign Investment in the United States (''CFIUS''). But the opinions of counsel proffered by the Exchange expressly relied upon, and assumed the accuracy and completeness of, certificates, letters and oral and written statements and representations provided by others, including the investors themselves. They are therefore insufficient to obviate the questions raised by the specific facts before us. Similarly, it is not clear from the record available to us that CFIUS's consideration of national security concerns included an analysis of the relationship between the proposed upstream owners in light of the Exchange's ownership and voting limitations.

[88] Commenters also raised this concern. *See, e.g.,* Appendix, *infra* notes 223–230, and accompanying text.

paid by other investors in the Proposed Transaction). This raises concerns, which the Exchange has not allayed, both about the economic realities of the Proposed Transaction and about whether the ownership group would as a practical matter be dominated by those entities that appear to be bearing the bulk of the risk of equity ownership.[89]

The Exchange states that concerns about circumvention of the ownership and voting limitations are mitigated by the fact that NA Casin Holdings cannot compel exercise of the puts. But regardless of who initiates any transactions triggered by the Put Agreements, the proposed investors who are parties to those agreements are guaranteed a return on a discounted investment. In other words, the Exchange's arguments regarding the voluntary nature of the Put Agreements do not fully take into account or explain the underlying and asymmetric economic relationship between the investors who have the benefit of puts and those who do not. The Exchange also asserts that the Put Agreements are similar to other such agreements that have been approved by the Commission.[90] But the economic substance of the prior agreements the Exchange cites as comparable is materially different from the substance present here. The Miami International Securities Exchange, LLC (''MIAX'') agreements do not provide for a guaranteed return on investors' initial purchase price.[91] Rather, they allow for a put option at a fixed percentage of fair market value at the time of the sale, which may not lead to the receipt of a premium on investment.[92] And, while there may be—as the Exchange asserts—reasonable business purposes for the premium guaranteed by the terms of the Put Agreements here, neither the Exchange nor the proposed upstream owners have sufficiently explained what those purposes are.[93]

Commission staff's inability to obtain sufficient documentation to verify the relationships between, and the source of funds used by, the original and subsequent proposed upstream owners leaves us unable to find that the Exchange has met its burden of showing that—upon consummation of the Proposed Transaction—the Exchange would be organized in compliance with its own rules and, accordingly, unable to find that the Exchange has met its burden of showing that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act.

2. Monitoring for Future Compliance With the Exchange's Own Rules

The fact that the Commission staff's extensive, iterative requests to the Exchange during the review process resulted in an insufficient basis for us to find that the Proposed Transaction complies with the ownership and voting limitations separately calls into question the Exchange's ability to ensure *ongoing* compliance with those limitations. If approved, the proposed rule change would require extensive information gathering and monitoring in order to ensure continuing compliance with the ownership and voting limitations. For example, the Exchange would be required to monitor compliance with:

- Voting limits on a person (individually or with its Related Persons) subject to any statutory disqualification;
- a requirement that CHX Holdings or NA Casin Holdings call shares held in excess of ownership limits;
- a prohibition on registering shares transferred in violation of ownership limits;
- procedural requirements to ensure compliance with the voting limitations; and
- a range of notice requirements relating to various changes in ownership or Related Person status.[94]

Similarly, if the Put Agreements are exercised, the Exchange would be required to ensure that any new investors satisfy the many restrictions on ownership (including on ownership by Related Persons).

The inability of the Exchange to obtain documents and information necessary for it and the Commission to resolve key questions regarding the funding of, and relationships between, upstream investors—notwithstanding its strong incentive to do so in light of the pending Commission review of the proposed rule change—raises significant doubts about the Exchange's ability to engage in this extensive monitoring following approval of the Proposed Transaction.[95] We therefore find that the Exchange has not provided a sufficient basis for us to conclude that it would be able to ensure compliance with the ownership and voting limitations following consummation of the Proposed Transaction.[96]

As a result, the Commission is unable to find on the current record that the Exchange has met its burden [97] of showing that the proposed rule change is consistent with the requirement under Section 6(b)(1) that the Exchange be so organized and have the capacity to comply with its own rules.

We are also not moved by the Exchange's suggestion that we should be comfortable with the proposed ownership arrangements, including the puts and the discount, and nonetheless approve the proposed rule change because we have broad oversight authority, will receive notice of the transfer of shares, and can take recourse to mitigate non-compliance with the

[89] Questions about the economic realities of the Proposed Transaction, as well as the appearance that certain investors may have an out-sized influence over the Exchange—in circumvention of the purpose of the ownership and voting limitations—are compounded by the pricing structure of the Proposed Transaction, which was provided to the Commission subject to confidential treatment requests. For example, investors are paying significantly different amounts for shares that appear to have the same rights. The proposed investors who are parties to the Put Agreements are paying significantly less, reinforcing the appearance that they are taking less risk in the Proposed Transaction. NA Casin Group and Castle YAC, in turn, are paying significantly more than the other investors, on a per share basis. Therefore, the ownership percentages may not accurately reflect the relative investment amounts committed or risks undertaken by the various entities. This raises concerns that the percentage of ownership does not accurately reflect the investors' relative influence over the Exchange.

[90] *See* Appendix, *infra* notes 303–304 and accompanying text. *See also* Appendix, *infra* note 288 and accompanying text.

[91] *See* Appendix, *infra* note 303 and accompanying text.

[92] *See id.*

[93] *See* Appendix, *infra* note 304 and accompanying text (stating only that there are ''legitimate and well-established business purposes'' for the Put Agreements); NA Casin Holdings Letter 3, *supra* note 23, at 3 (stating that the Put Agreements serve as a ''liquidity mechanism'' and ''provide a window of opportunity for certain investors to exit their investment during a brief window two years after the closing''); and Saliba Letter 2, *supra* note 23, at 3 (explaining the Put Agreements but not explaining why they were put in place).

[94] *See supra* notes 57–58 and accompanying text.

[95] Commenters express similar concerns, asserting that it would be difficult, if not impossible, for the Exchange and the Commission to monitor compliance with these rules after approval and consummation of the Proposed Transaction. *See, e.g.,* Appendix, *infra* note 152 and accompanying text.

[96] The Exchange asserts that its board, which is subject to independence requirements under the Exchange Act, would approve future material changes to the Exchange. *See* Appendix, *infra* note 163 and accompanying text. Given the Exchange's inability to obtain information necessary to ascertain whether potential investors satisfied the proposed ownership limitations, we question whether the Exchange or its board would be able to monitor for such changes, much less ensure that any such changes are made only following approval by the board. The Exchange also notes that the upstream owners pledge to maintain relevant books and records in the United States, thus allowing it and the Commission to monitor compliance. *See also* CHX Response Letter 6, *supra* note 24, at 3. In light of the Exchange's difficulty obtaining necessary information in connection with the Proposed Transaction and for the additional reasons described in Subsection 4, below, we are not persuaded that the potential availability of books and records in the United States adequately addresses the concerns described in this section.

[97] *See supra* notes 65–67 and accompanying text.

ownership and voting limitations in the future through suspending, censuring, or deregistering CHX as an SRO pursuant to Section 19(h)(1) of the Exchange Act.[98] In other words, the Exchange is arguing that we should not be concerned about the risk of subsequent transfers that are inconsistent with the Exchange Act, or an inability on its part to monitor for such transactions, because we have the authority to take action to prevent any such transfers in the future. But Section 19(b)(2)(C) of the Exchange Act requires disapproval of a proposed rule change in the absence of an affirmative finding by the Commission that the rule change is consistent with the Exchange Act and rules and regulations thereunder. This includes a finding of consistency with Section 6(b)(1) of the Exchange Act. Our ability to seek recourse for future violations (assuming they are reported to us or we are otherwise able to detect them) is not a sufficient basis on which to make this finding if we are unable to find, at the time we consider the proposed rule change, that the proposed rules as implemented would meet this requirement.[99] As discussed above, we are unable to conclude that the proposed rules meet the requirement.

3. The Supermajority Approval Requirement

The Commission is also unable to find that the provision in the NA Casin Holdings Certificate requiring supermajority approval for certain transactions is consistent with Section 6(b)(1) of the Exchange Act. As discussed above, the NA Casin Holdings Certificate would require approval by the holders of 85% of the shares of the company's common stock to undertake certain corporate transactions related to NA Casin Holdings or any of its subsidiaries, including CHX Holdings and the Exchange.[100] In effect, this provision would allow each stockholder that holds 15% or more of the voting stock of NA Casin Holdings to veto certain transactions, including those designed to raise capital to fund the regulatory operations of the Exchange.[101] Based on its terms, such a veto appears contrary to the goal underlying voting limitations: Preventing a single stockholder from exercising undue influence over a national securities exchange or interfering with its SRO obligations. And there is nothing in the record that otherwise explains why this provision does not undermine that regulatory goal. Moreover, the introduction of the supermajority restriction after the withdrawal of three of the original proposed investors, and the revisions to the pricing structure of the Proposed Transaction, reinforces the concerns discussed above regarding whether certain investors could in effect dominate the ownership group.[102] Therefore, based on the current record, the Commission is unable to find that the proposed rule change is consistent with Section 6(b)(1) of the Exchange Act.

4. Ability To Conduct Sufficient Oversight

Finally, the Exchange's inability to obtain sufficient information to ensure compliance with the ownership and voting limitations during the rule filing process leaves us unable to find that the proposed transaction satisfies Section 6(b)(1)'s requirement that an exchange have the capacity to carry out the purposes of the Exchange Act, which includes allowing for sufficient Commission oversight.

Congress has charged the Commission ''with supervising the exercise of . . . self-regulatory power in order to [ensure] that it is used effectively to fulfill the responsibilities assigned to the self-regulatory agencies[.]'' [103] Access to books and records plays an integral role in the Commission's exercise of such oversight. To facilitate that access, Exchange Act Rule 17a–1(c) requires every national securities exchange, ''upon request of any representative of the Commission, [to] promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it[.]'' [104]

The Exchange asserts that it will be able to ensure that the Commission has access to such books and records, notwithstanding the significant role played by foreign investors in the Proposed Transaction. In particular, the Exchange notes that the remaining foreign upstream owner has submitted to United States jurisdiction and that this owner pledges to maintain relevant books and records in the United States. But we are unable to conclude that these assurances are sufficient to support a finding that the proposed rule change is consistent with the requirements of the Exchange Act, including the provisions of Section 17(b)(1) and Exchange Act Rule 17a–1.

Because under the terms of the Proposed Transaction the most significant stockholder of NA Casin Holdings would be wholly owned by a foreign entity, material portions of the relevant records may not be under the Exchange's control. As a result, the judgment about which of those books and records are sufficiently related to the activities of the Exchange that they must be maintained in the United States would rest in the first instance with the foreign indirect upstream owner.[105] Indeed, the Exchange was unable to obtain necessary information about sources of funds for, and relationships between, certain investors in the Proposed Transaction, which further supports our conclusion that the Exchange has not demonstrated that it will be able to identify or access books and records that may relate to ownership of the Exchange or to its activities, much less to ensure that such books and records are in fact kept in the United States.

This concern is particularly significant in our analysis because the nature of the reviews that we and the Exchange must conduct—including monitoring compliance with the ownership and voting limitations and compliance with Exchange Act requirements more broadly—requires prompt access to documents. Without the assurance of such access, neither the Commission nor the Exchange will be able to reliably assess compliance with the requirements in the proposed corporate documents, to look behind the attestations made by stockholders, or to monitor compliance with the ownership and voting limitations more broadly.

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[98] *See* Appendix, *infra* note 307 and accompanying text.

[99] Similarly, the Exchange asserts that its board, which is subject to independence requirements under the Exchange Act, would approve future material changes to the Exchange. *See* Appendix, *infra* note 163 and accompanying text. But in light of the particular questions raised in our review of the Proposed Transaction, we do not believe a general assurance that we can rely on future board processes is sufficient to resolve these concerns.

[100] *See supra* notes 59–60 and accompanying text.

[101] The Exchange has acknowledged the importance of raising additional capital to further capitalize the Exchange so that it may continue to meet its regulatory obligations. *See* Notice, *supra* note 6, at 89549.

[102] This requirement also limits the extent to which the compliance of CHX's board with independence requirements can be seen as mitigating concerns about undue influence by certain stockholders, as the Exchange contends.

[103] S. Rep. No. 94–75, at 23 (1975).

[104] 17 CFR 240.17a–1; *see also* 15 U.S.C. 78q(b)(1).

[105] The Commission periodically encounters difficulties in arranging for the on-site review of, or production of, books and records held by foreign entities due to a variety of reasons, including privacy and blocking statutes and difficulties in obtaining assistance from foreign authorities in connection with inspections and examinations. Chinese entities, even those seeking to be directly regulated by the Commission, have presented significant challenges in connection with ensuring compliance with these requirements. *See, e.g., Matter of Dagong Global Credit Rating Co., Ltd.,* Rel. No. 34–62968 (September 22, 2010).

We have approved exchange rules that may, at least theoretically, raise similar questions about access to books and records.[106] We also recognize that some exchange rules do not provide for the maintenance of such books and records in the United States.[107] The Proposed Transaction, however, raises particular concerns not present in these other transactions approved by the Commission. Unlike approved rule changes for other exchanges, the proposed rule change here does not include specific provisions to facilitate and incentivize non-U.S. exchange owners to provide the Commission access to books and records.[108]

Because we cannot conclude, on the current record, that such access will be assured or that the Exchange will be able to satisfy Rule 17a–1(c), we are unable to find that the proposed rule change is consistent with Section 6(b)(1)'s requirement that the Exchange be so organized and have the capacity to comply with the Exchange Act, and to perform its functions as a self-regulatory organization, which includes allowing for sufficient Commission oversight.

Separately, we note that Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, in general, to protect investors and the public interest. Here, the proposed rules are designed to effect the Proposed Transaction as currently structured and, if approved, the amended rules would be implemented through consummation of the Proposed Transaction. In light of the concerns discussed above regarding the effect of the Proposed Transaction on the ability of the Exchange and the Commission to ensure regulatory compliance now and in the future, as well as concerns raised by the confidential information, we cannot determine that the rules, as proposed, meet this requirement. Congress has stressed the importance of Commission oversight to ensure that such self-regulatory authority ''is not used in a manner inimical to the public interest or unfair to private interests.'' [109] Given the uncertainty about our access to sufficient information to fulfill this role, the Commission is currently unable to find that the proposed rule change is designed to protect investors and the public interest as required by Section 6(b)(5).

* * * * *

A number of other issues have been raised by commenters in arguing that the proposed rule change should be disapproved, including questions about the involvement of the Chinese government or the impact of Chinese foreign investment in an SRO or in U.S. markets more generally. On the record before us, for the independently sufficient reasons discussed in more detail above, we have concluded that the Exchange has not met its burden to show that approval of the proposed rule change is appropriate. Accordingly, it is not necessary for us to consider either the relevance of such foreign investment concerns to our statutory review of this proposed rule change or the merits of the concerns themselves.

IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Sections 6(b)(1) and 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 81366, (August 8, 2017), 82 FR 38734 (August 15, 2017), is set aside and, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–CHX–2016–20), as modified by Amendments No. 1 and No. 2, be, and hereby is, disapproved.

By the Commission.

Brent J. Fields,

Secretary.

Appendix: Summary of Comments and the Exchange's Response

In total, the Commission received 90 comment letters on the proposal and 8 response letters from the Exchange.[110] Sixty-nine of these comments and five of these responses were submitted prior to the Exchange filing Amendment No. 2. Twenty-one of these comments were submitted in response to the Commission noticing Amendment No. 2, and the Exchange submitted three rebuttals in response to those comments.

A. Summary of Comments and Exchange's Response Prior to the Filing of Amendment No. 2

As explained above, in Amendment No. 2, the Exchange noticed, among other items, a change in the proposed capital structure for the upstream owners.[111] In the comment letters that were received prior to the filing of Amendment No. 2, several commenters expressed concern about the original proposed capital structure of CHX as it related to the ownership and voting limitations. Some of these commenters questioned the identities of the proposed upstream owners and the validity of the Exchange's representation that there were no Related Persons among the proposed upstream owners other than Castle YAC and NA Casin Group.[112] Several commenters also questioned the Exchange's representations regarding the backgrounds and identities of the upstream owners.[113] In addition, commenters asserted that, contrary to the Exchange's representations, several of those

[106] *See, e.g.,* Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (approving the application of BOX Options Exchange, which had Canadian upstream ownership, for registration as a national securities exchange); NYSE Euronext Approval Order, *supra* note 5 (approving proposed rule changes designed to effect the combination of the NYSE Group, Inc. and the Dutch company Euronext); 56955 (December 13, 2007), 72 FR 71979, 71982–84 (December 19, 2007) (SR–ISE–2007–101) (approving a proposed rule change designed to effect a transaction in which ISE became a wholly owned subsidiary of Eurex Frankfurt AG, which has Swiss and German upstream ownership) (''ISE Approval Order''); and EDGX and EDGA Registrations, *supra* note 5 (approving the applications of EDGX Exchange, Inc. and EDGA Exchange, Inc., which were partially, indirectly owned by ISE, for registration as national securities exchanges).

[107] *See, e.g.,* Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012); NYSE Euronext Approval Order, *supra* note 5; ISE Approval Order, *supra* note 106; and EDGX and EDGA Registrations, *supra* note 5.

[108] *See, e.g.,* ISE Approval Order, *supra* note 106, at 71983–84 (describing a procedure developed between the Commission and the Swiss Federal Banking Commission to facilitate access to books and records and noting that the failure of a non-U.S. upstream owner to adhere to its commitment to provide access to books and records would trigger a call option that would cause the non-U.S. upstream owners to lose control of the exchange); EDGX and EDGA Registrations, *supra* note 5, at 13153 (noting that the safeguards described in the ISE Order would apply equally to books and records related to EDGX and EDGA).

[109] S. Rep. No. 94–75, at 23 (1975).

[110] *See supra* notes 9, 10, 20, 23, and 24.

[111] *See supra* note 21.

[112] *See* Ciccarelli Letter, *supra* note 9; Ferris Letter 1, *supra* note 9; Ferris Letter 2, *supra* note 9; Brennan Letter, *supra* note 9; Mayer Letter, *supra* note 9; Bass Letter, *supra* note 9, at 2–4; and Strotz Letter, *supra* note 20. Another commenter asserted: ''[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 9, at 4.

[113] *See* Ciccarelli Letter, *supra* note 9, at 2–9; Mayer Letter, *supra* note 9; Brennan Letter, *supra* note 9, at 1–2; Ferris Letter 1, *supra* note 9, at 2–3; Ferris Letter 2, *supra* note 9, at 1–3; Park Letter, *supra* note 9, at 2; Bass Letter, *supra* note 9, at 2–4; Milton Letter, *supra* note 20; Simpson Letter, *supra* note 20, at 2–3; Carney Letter, *supra* note 20, at 1–2; Michael Johnson Letter 1, *supra* note 20, at 4–5; Williams Letter, *supra* note 20; Strotz Letter, *supra* note 20; Watson Letter, *supra* note 20, at 3; Michael Johnson Letter 3, *supra* note 20, at 1–3; and Stephen Johnson Letter, *supra* note 20. In addition, one commenter stated that the Information Statement CHX sent to its stockholders in connection with the Proposed Transaction represented that two entities, Beijing Guoli Energy Investment Co. Ltd. and Beijing Casin Investment Holding Co. Ltd, which were not disclosed in the proposed rule change, would be involved in the Proposed Transaction. *See* Anonymous Letter 2, *supra* note 20, at 1.

proposed upstream owners may be affiliated.[114] Some of these commenters stated that, after the closing of the Proposed 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.[115] Several of these commenters stated that they believe that the ownership post consummation of the Proposed Transaction would deviate from the 40% ownership limitation.[116]

Several commenters also opined that the proposed upstream ownership of CHX was opaque.[117] Some of these commenters stated their views that approval of the proposal would have promoted the improper consolidation of ownership and coordinate voting control over CHX, and also materially harm the public trust in the independent and objective operation of U.S. capital markets.[118] These commenters expressed a belief that the Proposed Transaction would have concentrated ownership and voting power under Chongqing Casin and its ''coordinate'' investment entities in China.[119] And commenters expressed concern that the Commission would have been unable to monitor the ownership structure of Chongqing Casin after approval because they believed that the Commission would have little or no insight and transparency into what the commenters stated are government-dominated Chinese markets.[120] The commenters expressed a belief that this scenario would leave CHX open to undue, improper, and possibly state-driven influence via coordinated voting control by its upstream ownership.[121] Seven commenters also expressed concern about the source of funding for the Proposed Transaction.[122]

In addition, one commenter stated that as a result of the proposed ownership, there would have been ''reputational risks'' for CHX, and that ''compliance frustrations'' related to the Foreign Corrupt Practices Act and Anti-Money Laundering rules would have been at the ''front and center'' in the Commission's oversight of CHX.[123] Accordingly, the commenters stated that, given these actual or potential outcomes, the Proposed Transaction appeared inconsistent with Sections 6(b)(l) and 6(b)(5) of the Exchange Act.[124]

Commenters also expressed concern about the ability of the Commission to exercise regulatory oversight over the Exchange following the closing of the Proposed Transaction.[125] One commenter questioned whether the Commission could effectively regulate the Exchange and protect the market from abuses if the Commission staff did not know, and could not independently confirm, the backgrounds of what the commenter characterized as ''Chinese shell companies'' involved in the Proposed Transaction.[126] Another commenter argued 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 believed to be misleading.[127] Two commenters, in support of the proposed rule change, stated their beliefs that compliance will be ''strong'' regardless of the upstream owners.[128]

In response to these concerns, the Exchange stated that it did not misrepresent any facts regarding the Proposed Transaction.[129] The Exchange reaffirmed the representations that it made in the Notice that the only Related Persons among the upstream owners were Castle YAC and NA Casin Group, that there were no other Related Persons among the original proposed upstream owners, and that none of the upstream owners directly, or indirectly through one or more intermediaries, controlled, or was controlled by, or was under common control with, a governmental entity or subdivision thereof.[130] The Exchange asserted that each of these representations was supported by an opinion of counsel provided by outside counsel for CHX to the Commission, subject to a confidential treatment request.[131] The Exchange, NA Casin Holdings, and one of the proposed upstream owners also asserted that some of the comment letters contained false accusations regarding the identity, ownership, relationships, and business activities of certain upstream owners.[132] In addition, the Exchange, NA Casin Holdings, and several other commenters asserted that the proposed upstream owners are reputable businesses.[133] The Exchange also stated that the author of the Ciccarelli Letter was employing deception and xenophobia, and was attempting to undermine the Commission's rule filing process and the integrity of the government. The Exchange also requested that the Commission consider the Ciccarelli Letter ''absolutely unpersuasive.'' [134]

The Exchange further asserted that it provided detailed information regarding the upstream owners to CFIUS and that CFIUS determined that there are no unresolved national security concerns with respect to the Proposed Transaction.[135] In response to this assertion, some of the commenters stated that CFIUS's approval of the Proposed 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.[136] The Exchange responded

[114] *See* Ciccarelli Letter, *supra* note 9, at 2–3; Ferris Letter 1, *supra* note 9, at 2–3; Bass Letter, *supra* note 9, at 2; Ferris Letter 2, *supra* note 9, at 4; and Carney Letter, *supra* note 20, at 1. *See also* Mayer Letter, *supra* note 9 (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).

[115] *See* Ciccarelli Letter, *supra* note 9, at 1–2. *See also* Ferris Letter 2, *supra* note 9, at 4; and Bass Letter, *supra* note 9, at 3.

[116] *See* Brennan Letter, *supra* note 9, at 1; Ciccarelli Letter, *supra* note 9, at 2; Ferris Letter 1, *supra* note 9, at 1; Bass Letter, *supra* note 9, at 1; Ferris Letter 2, *supra* note 9, at 4.

[117] *See* Pittenger Letter 2, *supra* note 9, at 1; Bass Letter, *supra* note 9, at 1–5; Mayer Letter, *supra* note 9; Ciccarelli Letter, *supra* note 9, at 1–4; Ferris Letter 1, *supra* note 9, at 1–4; Ferris Letter 2, *supra* note 9, at 1–5; Simpson Letter, *supra* note 20, at 2; Lee Letter, *supra* note 20; Strotz Letter, *supra* note 20, at 2; Anonymous Letter 3, *supra* note 20, at 1. *See also* Hill Letter 2, *supra* note 9 (stating that ''it is easy to become confused about exactly who wants to own this exchange'').

[118] *See* Pittenger Letter 2, *supra* note 9, at 1.

[119] *See id.*

[120] *See id. See also* Anonymous Letter 3, *supra* note 20, at 1–2 (stating the voting and ownership limitations are ''meaningless'' because there is no ''verifiable mechanism'' to monitor such limitations).

[121] *See* Pittenger Letter 2, *supra* note 9, at 1.

[122] *See* Park Letter, *supra* note 9, at 2–3 (stating that none of the 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 Proposed Transaction); Ferris Letter 1, *supra* note 9, at 2; Ferris Letter 2, *supra* note 9, at 3; Bass Letter, *supra* note 9, at 3; Carney Letter, *supra* note 20, at 1; Williams Letter, *supra* note 20; Strotz Letter, *supra* note 20, at 2; Watson Letter, *supra* note 20, at 2. In response, NA Casin Holdings asserted that the investors have available the necessary funds to close the Proposed Transaction, and that the Chinese stockholders have obtained necessary approvals from the State Administration of Foreign Exchange of China required to transfer funds to NA Casin Holdings. *See* NA Casin Holdings Letter 2, *supra* note 20, at 2.

[123] *See* Park Letter, *supra* note 9, at 3. *See also* Ferris Letter 2, *supra* note 9, at 2 (stating that concerns over possible money laundering are not addressed by NA Casin and therefore are conceded).

[124] *See* Park Letter, *supra* note 9, at 3–4.

[125] *See* Pittenger Letters 1 and 2, *supra* note 9, at 2; Ciccarelli Letter, *supra* note 9, at 1–2; Bass Letter, *supra* note 9, at 1; and Ferris Letter 1, *supra* note 9, at 4.

[126] *See* Brennan Letter, *supra* note 9, at 1.

[127] *See* Ferris Letter 1, *supra* note 9, at 4.

[128] *See* John L. Prufeta Letter, *supra* note 20; and Tara Prufeta Letter, *supra* note 20. These commenters also asserted that the voting control risk is ''mitigated by [NA Casin Group's] decision to have less voting power.'' *See id.*

[129] *See* CHX Response Letter 2, *supra* note 10, at 2, 5–6.

[130] *See id. at 5.* NA Casin Holdings also asserted that there were no other Related Persons among the investors other than Castle YAC and NA Casin Group. *See* NA Casin Holdings Letter 2, *supra* note 20, at 2.

[131] *See* CHX Response Letter 2, *supra* note 10, at 5.

[132] *See* CHX Response Letter 3, *supra* note 10, at 3–5; Saliba Letter 1, *supra* note 9, at 2; NA Casin Holdings Letter 1, *supra* note 9, at 7; NA Casin Holdings Letter 2, *supra* note 20, at 2.

[133] *See* CHX Response Letter 3, *supra* note 10, at 3; NA Casin Holdings Letter 1, *supra* note 9, at 7; NA Casin Holdings Letter 2, *supra* note 20, at 3; Gouroudeva Letter 1, *supra* note 9; Gouroudeva Letter 2, *supra* note 20; John R. Prufeta Letter 1, *supra* note 9; and Su Letter, *supra* note 20; and Xu Letter, *supra* note 20.

[134] *See* CHX Response Letter 2, *supra* note 10, at 6.

[135] *See* CHX Response Letter 2, *supra* note 10, at 5; CHX Response Letter 3, *supra* note 10, at 6; and CHX Response Letter 4, *supra* note 20, at 3. Other commenters also pointed to the CFIUS approval in support of the Proposed Transaction. *See* Richard R. Taylor Letter, *supra* note 20; Catherine Jones Letter, *supra* note 20, at 1; John R. Prufeta Letter 2, *supra* note 20; Hultgren Letter, *supra* note 20, at 2; NA Casin Holdings Letter 2, *supra* note 20, at 2–3; and Rauner Letter, *supra* note 20.

[136] *See* Ferris Letter 1, *supra* note 9, at 3; Brennan Letter, *supra* note 9, at 2; and Bass Letter, *supra* note 9, at 4–5. *See also* Strotz Letter, *supra* note 20, at 2 (stating that the CFIUS approval ''does not

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.[137] The Exchange also stated 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 government control over the investors.[138] The Exchange asserted that CFIUS conducted a thorough, deep, and wide-ranging investigation of the Proposed Transaction and the proposed upstream owners, and that it concluded that there were no unresolved national security concerns.[139]

Commenters expressed further concern about whether the Chinese government could have influence or control over the Exchange and its upstream owners.[140] Some of these commenters asserted that one of the proposed upstream owners has ties to the Chinese government.[141] Several commenters also questioned 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.[142]

Commenters also asserted that Chongqing Casin owns an entity that has large outstanding debts to a Chinese-government controlled bank, and that Chongqing Casin has been using its stock and the stock of its subsidiaries to collateralize those loans, which make Chongqing Casin subject to Chinese government control.[143] NA Casin Holdings responded that Chongqing Casin has not used the equity of CHX or CHX Holdings as collateral for any financing or borrowing in connection with the Proposed Transaction.[144]

Commenters also stated that Chongqing 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.[145] These commenters stated 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 asserted that this has cost American companies billions of dollars annually.[146] Commenters stated that the Proposed Transaction may therefore present financial security risks to investors and the U.S. marketplace.[147] Some commenters expressed a belief that the proposal will materially harm the public trust in the independent and objective operation of U.S. capital markets.[148] Another commenter expressed a belief that the proposal is a threat to Americans' faith in the U.S.'s national financial market infrastructure.[149] One commenter also raised 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 phishing, blackmail attempts, and other similar attacks.[150]

Another commenter expressed concern that the original proposed upstream ownership structure would have left CHX and U.S. markets open to ''undetectable manipulation'' by Chongqing Casin and the Chinese government.[151] Several commenters expressed a belief that it will be impossible for the Commission to fully monitor Chinese government involvement or manipulation over CHX.[152] These commenters further asserted that no mitigation steps can fully insulate CHX's activities and ensure that the U.S.'s interests are protected, not only in line with the intent of the Exchange Act, but also with the U.S.'s broader national security interests.[153] The commenters stated that the Chinese government has been unwilling to compromise and agree to U.S. transparency standards in their markets and that the Chinese entities involved in the Proposed Transaction have not yielded themselves to full U.S. jurisdiction or agreed to make their records available to the Exchange to ensure compliance with ownership and voting limitations, as the commenters state have been historically done in international transactions of this nature.[154] In addition, a commenter believes that the ownership of a U.S. exchange could provide enormous new opportunities for Chinese firms to list on U.S. markets and expose U.S. investors to new and unknown risks; these commenters advocated that the Proposed Transaction must be evaluated not only for its present impact, but its potential impact as well.[155]

In response, CHX denied the claim that it would be impossible for the Commission to fully monitor Chinese government

permit Casin and CHX to lie to the SEC''). Another commenter expressed concern that CFIUS disregarded the concerns of Congress when it closed its review of the Proposed Transaction. *See* Hill Letter 2, *supra* note 9. In a comment letter submitted after the filing of Amendment No. 2, this commenter expressed a view that Congress has also ''recognize[d] flaws, deficiencies and partisanship of [CFIUS].'' *See* Hill Letter 3, *supra* note 23.

[137] *See* CHX Response Letter 3, *supra* note 10, at 6.

[138] *See id.*

[139] *See id.*

[140] *See* Pittenger Letter 1, *supra* note 9, at 1–2; Pittenger Letter 2, *supra* note 9, at 1; Bass Letter, *supra* note 9, at 4; Mayer Letter, *supra* note 9; Hill Letter 2, *supra* note 9; Jones Letter, *supra* note 20; Lee Letter, *supra* note 20; Michael Johnson Letter 1, *supra* note 20, at 1; Michael Johnson Letter 2, *supra* note 20, at 3; Michael Johnson Letter 3, *supra* note 20, at 3; Pittenger Letter 3, *supra* note 20, at 1; and Anonymous Letter 3, *supra* note 20, at 2–3. One commenter also stated that there are ties between Chongqing Casin and Chinese government officials. *See* Simpson Letter, *supra* note 20, at 1–2. NA Casin Holdings denied that there are such ties, and asserted that Chongqing Casin is a privately-owned company. *See* NA Casin Holdings Letter 2, *supra* note 20, at 3.

[141] *See* Pittenger Letter 1, *supra* note 9, at 1–2; Bass Letter, *supra* note 9, at 4 (asserting that Chongqing Casin could be 40% owned and controlled by Chinese government entities and Chinese government officials); Mayer Letter, *supra* note 9; Hill Letter 2, *supra* note 9 (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); and Simpson Letter, *supra* note 20, at 2 (asserting that Chongqing Casin is 40% owned and controlled by Chinese government officials). In response, NA Casin Holdings asserted that the allegation that Chongqing Casin is 40% owned and controlled by Chinese government officials is false, and that 74.36% of Chongqing Casin is owned by Shengju Lu and the balance is owned by other persons involved in the management of Chongqing Casin. *See* NA Casin Holdings Letter 2, *supra* note 20, at 4.

[142] *See* Pittenger Letter 1, *supra* note 9, at 1. *See also* Pittenger Letter 2, *supra* note 9, at 1 (stating that the Chinese government dominates all sectors of society and consistently fails to abide by international agreements). Additionally, several commenters expressed concerns about the risks posed by CHX's plans to list shares of Chinese companies. *See, e.g.,* Pittenger Letter 1, *supra* note 9, at 1; Mayer Letter, *supra* note 9; Park Letter, *supra* note 9; Milton Letter, *supra* note 20; Anonymous Letter 3, *supra* note 20, at 2. However, one commenter and the Exchange asserted that the listing of Chinese companies would be beneficial. *See* Nobile Letter, *supra* note 9; and CHX Response Letter 5, *supra* note 20, at 2–3. The Commission notes that the Exchange does not currently list shares of such companies, and the proposed rule change under consideration would not modify the Exchange's listing rules. Any future 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. In addition, as a practical matter, to restart its primary listing program, the Exchange would likely seek an amendment to Rule 146 under the Securities Act of 1933 to obtain ''covered securities'' status for the stocks it lists.

[143] *See* Michael Johnson Letter 1, *supra* note 20; Michael Johnson Letter 2, *supra* note 20; Watson Letter *supra* note 20, at 1; Michael Johnson Letter 3, *supra* note 20, at 1–2; and Anonymous Letter 3, *supra* note 20, at 2. These and other commenters also expressed general concerns about the financial status of Casin Development, an affiliate of Chongqing Casin, and asserted that its trading has been halted by Chinese regulators. *See* Watson Letter, *supra* note 20, at 1; Williams Letter, *supra* note 20; and Strotz Letter, *supra* note 20, at 1 (asserting that the trading in the stock has remained halted). NA Casin Holdings responded that Casin Development has a strong asset base and a healthy business, and that due to the announcement of a major asset transfer, Casin Development applied to the Shenzhen Stock Exchange to suspend its share trading. *See* NA Casin Holdings Letter 2, *supra* note 20, at 6.

[144] *See* NA Casin Holdings Letter 2, *supra* note 20, at 2.

[145] *See* Pittenger Letter 1, *supra* note 9, at 1.

[146] *See id. See also* Huskey Letter, *supra* note 20 (expressing concern that the Proposed Transaction could allow China a ''sinister entry point'' into the U.S. financial system). Other commenters expressed general concern about Chinese involvement in the Proposed Transaction. *See* Day Letter, *supra* note 20; and Sapa Letter, *supra* note 20.

[147] *See* Pittenger Letters 1 and 2, *supra* note 9, at 1; Manchin Letter, *supra* note 9, at 1; Anonymous Letter 1, *supra* note 9; and Dandolu Letter, *supra* note 9. *See also* Watson Letter, *supra* note 20, at 3 (asserting that the Proposed Transaction is a cyber security threat); Monfort Letter, *supra* note 20 (expressing opposition to the Proposed Transaction based on national security concerns); and Anonymous Letter 3, *supra* note 20, at 1.

[148] *See* Pittenger Letter 2, *supra* note 9, at 1.

[149] *See* Manchin Letter, *supra* note 9, at 1.

[150] *See* Anonymous Letter 1, *supra* note 9.

[151] *See* Mayer Letter, *supra* note 9.

[152] *See* Pittenger Letter 3, *supra* note 20, at 1.

[153] *See id.*

[154] *See id.* at 2.

[155] *See id.*

involvement or manipulation over the Exchange.[156] CHX interpreted the commenters' statement to be implying that Chinese foreign investment should never be allowed in the U.S. because it is inherently risky and impossible to fully monitor and disagreed with that premise.[157] CHX reiterated that none of the proposed Chinese investors are owned or controlled by the Chinese government,[158] and stated that this fact has been vetted by the Exchange, outside counsel, and CFIUS.[159] CHX also emphasized CFIUS's approval in response to concerns about access to the Consolidated Audit Trail.[160] And CHX disagreed with the statement that there are no mitigation steps that can fully insulate the Exchange's activities and ensure that the U.S.'s interests are protected.[161] CHX first noted that the original capital structure of the Proposed Transaction would have resulted in the Exchange being majority owned by U.S. citizens; it also asserted that the proposed ownership limitation, voting limitation, and cure provisions would ensure that no stockholder would exercise undue influence over the Exchange.[162] CHX also pointed to the fact that members of the CHX board must meet certain independence requirements and that material changes to the Exchange must be approved by both the CHX board subject to such independence requirements and the SEC.[163] CHX further stated that, pursuant to the Exchange Act, CHX is subject to direct and rigorous oversight by the SEC, which CHX stated entails, among other things, frequent examinations of various aspects of CHX operations by Commission staff, including security and trading protocols, as well as Commission approval of certain regulatory, operational and strategic initiatives prior to implementation by CHX.[164]

CHX also disagreed with the commenters' claim that the Chinese entities involved in the Proposed Transaction had not yielded themselves to full U.S. jurisdiction or agreed to make their records available to the Exchange to ensure compliance with ownership and voting limitations.[165] CHX noted that the Chinese upstream owners had agreed to permanently and irrevocably submit to the jurisdiction of the Commission and the U.S. courts, and had appointed registered agents in the U.S. for the service of process.[166] CHX also stated that the upstream owners agreed to open books and records, as well as agreeing to keep records related to the Exchange here in the United States.[167]

CHX next responded to commenters' prediction that Chinese ownership of a U.S. exchange could provide enormous new opportunities for Chinese firms to list on U.S. markets and expose U.S. investors to new and unknown risks.[168] CHX agreed that the Proposed Transaction will provide enormous new opportunities for Chinese firms to list on U.S. markets, and stated that this is why it viewed the Chinese investors as strategically important to the Proposed Transaction.[169] CHX further stated that many firms in China desire a listing on a foreign exchange, and that the U.S. is seen as the ''gold standard.'' [170] CHX stated that it strongly believes that listing quality Chinese companies in the U.S., according to the U.S. listing rules, using U.S. accounting standards, and under the regulatory supervision of the Commission is by far the safest way for U.S. investors to get exposure to the growing Chinese market.[171]

The Exchange also stated that the Proposed Transaction will enable it to accelerate implementation of its strategic plan, which includes implementing a primary listing program focused on capital formation for emerging growth companies.[172] The Exchange further asserted that the Proposed Transaction would help empower it to meet its strategic goals and enhance its participation in the national market system.[173] The Exchange also expressed a belief that by enabling the Exchange to expand its listing program, the Proposed Transaction would promote efficiency and capital formation in the U.S. market.[174] Furthermore, a number of other commenters expressed a belief that the Proposed Transaction would benefit the U.S. capital markets and have positive economic effects.[175]

In addition, some commenters expressed concern that the Saliba Put Agreement and the Raptor Put Agreement could create voting collusion between Raptor and Saliba, resulting in an aggregate voting interest that exceeds the 20% voting limitation.[176] The

[156] *See* CHX Response Letter 5, *supra* note 20, at 1.

[157] *See id.*

[158] CHX Response Letter 1, *supra* note 10, at 2; CHX Response Letter 5, *supra* note 20, at 1.

[159] CHX Response Letter 5, *supra* note 20, at 1–2. *But see supra* note 87.

[160] CHX Response Letter 1, *supra* note 10, at 5.

[161] *See id.* at 2.

[162] *See id.*

[163] *See id.*

[164] *See id.*

[165] *See* CHX Response Letter 5, *supra* note 20, at 3.

[166] *See id.*

[167] *See id.*

[168] *See id.* at 2–3.

[169] *See id.*

[170] *See id.*

[171] *See id. See also infra* note 175.

[172] *See* CHX Response Letter 1, *supra* note 10, at 2; CHX Response Letter 3, *supra* note 10, at 2–3.

[173] *See* CHX Response Letter 4, *supra* note 20, at 5.

[174] *See id.*

[175] *See* Caban Letter, *supra* note 9 (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 1, *supra* note 9, at 8 (stating that the Proposed Transaction will help establish links between the capital markets of China and the U.S. and explaining how the Proposed 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 9, at 1 (stating the beliefs that the Proposed Transaction will make CHX an important bridge between capital markets in the U.S. and China and that connecting U.S. and Chinese stock markets would allow the U.S. to benefit further from China's growth); Nobile Letter, *supra* note 9 (stating that the Proposed Transaction will result in some very clear benefits to the global financial community and that NA 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 1, *supra* note 9 (stating the belief that ownership of CHX by a respected Chinese company will greatly increase direct Chinese investment into the U.S. economy.); John R. Prufeta Letter 1, *supra* note 9 (stating the belief that the Proposed Transaction will provide a unique and exceedingly valuable window to major cross-border investment between the world's largest economies); Saliba Letter 1, *supra* note 9, 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 Proposed Transaction will enable); Zhong Letter 1, *supra* note 9 (expressing support for the Proposed 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); Duncan Karcher Letter 1, *supra* note 9 (expressing support for investment by Chinese companies in the U.S. because the increased ties through trade will benefit both countries); Gottlieb Letter, *supra* note 9 (stating that the Proposed Transaction will provide a needed opportunity and valuable window for cross-border investments and world economies); Denholm Letter, *supra* note 20 (stating that the Proposed Transaction will help grow the business of a local stock exchange and offer the resources to connect its businesses with the global market); Vad Letter, *supra* note 20; Himebaugh Letter, *supra* note 20 (asserting that the Proposed Transaction will have multiple beneficial political and economic effects by promoting transparency into Chinese companies by causing them to adhere to U.S. accounting standards, protecting U.S. investors investing in Chinese securities, causing money to flow into the U.S. from China, and fostering better relationships between corporate leaders that could ''translate into better political relations.''); John R. Prufeta Letter 2, *supra* note 20 (stating that Proposed Transaction would attract new businesses to CHX and spur public companies in China to list on U.S. exchanges and to be subject to the applicable accounting and transparency rules); Su Letter, *supra* note 20; Zhong Letter 2, *supra* note 20 (stating that the NA Casin Group may influence potential entities to list on U.S. exchanges); Robert R. Prufeta Letter, *supra* note 20 (stating that the Proposed Transaction will improve the business climate, spur investment, and create investment and partnership opportunities in a well-regulation environment); Xu Letter, *supra* note 20 (asserting that the Proposed Transaction would give CHX a major technology boost and attract more foreign companies to CHX, which would benefit the business community in the greater Chicago area); John L. Prufeta Letter, *supra* note 20; Alfano Letter, *supra* note 20; Tara Prufeta Letter, *supra* note 20; Pinho Letter, *supra* note 20 (stating that the Proposed Transaction could create jobs in the U.S., permit a relatively small U.S. stock exchange to develop a more ambitious agenda set benchmarks of higher governance standards for the companies from China, and promote investment flows from China to the U.S.); and Rauner Letter, *supra* note 20 (stating that the capital raised from the Proposed Transaction and a CHX primary listing program could help stimulate the Illinois economy by providing companies with access to additional capital they require to fund operations, hire staff, and grow their businesses, as well as create demand for ancillary services). Other commenters questioned these positive effects, stating that the purchase price for the Proposed Transaction would be received by CHX's existing stockholders, not CHX. *See* Stephen Johnson Letter, *supra* note 20; and Strotz Letter, *supra* note 20, at 1.

[176] *See* Brennan Letter, *supra* note 9, at 2; Mayer Letter, *supra* note 9; Ferris Letter 1, *supra* note 9, at 2; Ferris Letter 2, *supra* note 9, at 3–4; Bass Letter, *supra* note 9, at 2; and Park Letter, *supra*

Exchange responded that under the terms of the put agreements of Saliba and Raptor, 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.[177] Some of the commenters asserted that Raptor is Saliba's nominee or business partner.[178] NA Casin Holdings and Saliba responded that Raptor and Saliba have never had any relationship, are located in different cities, and are owned by different families.[179] In addition, one commenter asserted 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.[180] In response, the Exchange explained 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.[181] The Exchange also noted that any exercise of the put rights would be subject to compliance with the ownership and voting limitations.[182]

Moreover, two commenters expressed 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.[183] One of these commenters asserted 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.[184] The other commenter asserted that neither the Exchange nor the Commission would know if capital stock in China is being consolidated, resold, collateralized, or collusively voted in violation of the 20% voting limitation.[185] The commenter expressed 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.[186] In addition, the commenter asserted that the upstream owners are not being required to amend their governing documents to restrict collusive voting or resale of the Exchange.[187]

In response, the Exchange stated that to the contrary, the governing documents of NA Casin Holdings and CHX Holdings do restrict the voting and sale of the Exchange's shares.[188] In addition, as noted above, the Exchange affirmed its representation that no prospective owner or any of its Related Persons under the original capital structure would have maintained an equity interest, or exercised voting power, in violation of the ownership and voting limitations.[189] The Exchange also responded 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.[190] *The* Exchange also noted that the CHX's 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.[191]

Commenters also expressed concern about the ability of the Commission to exercise regulatory oversight over the Exchange following the closing of the Proposed Transaction.[192] Characterizing the proposed upstream ownership of CHX as ''opaque,'' several commenters stated that approval of the proposal would strip the Commission of its ability to carry out its statutorily mandated oversight of exchange ownership.[193] These commenters also stated 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.[194] These commenters asserted 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.[195] These commenters further stated 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—to avoid compliance with U.S. regulatory requirements.[196] The commenters expressed a belief that these actions erode investor trust and adversely affect U.S. regulatory interests.[197]

Similarly, another commenter opined 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.[198] The commenter stated that while the harms caused by NA Casin Group's acquisition of CHX may not become apparent immediately, allowing this acquisition to proceed could have a devastating effect on the health of U.S. financial markets.[199] The commenter further stated 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.[200]

Furthermore, another commenter asserted that, due to jurisdiction limitations and transparency concerns, under the current proposal, the Commission would not be able to exercise proper regulatory oversight.[201] Some commenters also expressed concern about the ability of U.S. regulators to access the books and records of the Chinese-owned upstream owners.[202] Three commenters

note 9, at 4. Under the original proposed capital structure, the aggregate holdings of Saliba and Raptor would have been 24%.

[177] *See* CHX Response Letter 2, *supra* note 10, at 6.

[178] *See* Ferris Letter 1, *supra* note 9, at 2, n. 5; and Brennan Letter, *supra* note 9, at 2.

[179] *See* NA Casin Holdings Letter 1, *supra* note 9, at 7; and Saliba Letter 1, *supra* note 9, at 2.

[180] *See* Ciccarelli Letter, *supra* note 9, at 3.

[181] *See* CHX Response Letter 2, *supra* note 10, at 6. In addition, some commenters asserted 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 9, at 2–3; Ferris Letter 1, *supra* note 9, at 2; Ferris Letter 2, *supra* note 9, at 5; Bass Letter, *supra* note 9, at 2; Park Letter, *supra* note 9, at 4; Carney Letter, *supra* note 20, at 2; Strotz Letter, *supra* note 20, at 2; and Watson Letter, *supra* note 20, at 2. In response to these concerns, the Exchange noted 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 Proposed Transaction. *See* CHX Response Letter 3, *supra* note 10, at 5. In addition, NA Casin Holdings stated that Saliba did not join the consortium of investors until after the merger agreement between NA Casin Holdings and CHX Holdings was executed. *See* NA Casin Holdings Letter 2, *supra* note 20, at 2.

[182] *See* CHX Response Letter 2, *supra* note 10, at 6.

[183] *See* Ciccarelli Letter, *supra* note 9, at 1; and Mayer Letter, *supra* note 9.

[184] *See* Ciccarelli Letter, *supra* note 9, at 2.

[185] *See* Mayer Letter, *supra* note 9. The commenter asserted 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.*

[186] *See id.*

[187] *See id.*

[188] *See* CHX Response Letter 1, *supra* note 10, at 3–4; and CHX Response Letter 2, *supra* note 10, at 2–3.

[189] *See* CHX Response Letter 1, *supra* note 10, at 3; and CHX Response Letter 2, *supra* note 10, at 2.

[190] *See* CHX Response Letter 1, *supra* note 10, at 3. *See also* CHX Response Letter 2, *supra* note 10, at 3; and CHX Response Letter 4, *supra* note 20, at 4.

[191] *See* CHX Response Letter 2, *supra* note 10, 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 10, at 2.

[192] *See* Pittenger Letters 1 and 2, *supra* note 9, at 2; Ciccarelli Letter, *supra* note 9, at 1–2; Bass Letter, *supra* note 9, at 1; and Ferris Letter 1, *supra* note 9, at 4.

[193] *See* Pittenger Letter 2, *supra* note 9, at 1.

[194] *See id.*

[195] *See id.* at 2.

[196] *See id.*

[197] *See id.*

[198] *See* Manchin Letter, *supra* note 9, at 1.

[199] *See id.* at 1–2.

[200] *See id.* at 2.

[201] *See* Ciccarelli Letter, *supra* note 9, at 1–2.

[202] *See* Bass Letter, *supra* note 9, at 5; and Ferris Letter 1, *supra* note 9, at 4. *See also* Pittenger Letter

Continued

stated that they believe that the proposed foreign upstream owners will not submit to U.S. jurisdiction.[203] Another commenter stated its view that foreign ownership of the Exchange may result in lax enforcement of its rules.[204]

The Exchange responded 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.[205] Further, the Exchange stated that the CHX rules, along with the voting and ownership limitations, are designed to prevent undue influence on CHX.[206] The Exchange also asserted that, pursuant to the Exchange Act, the Exchange is subject to ''direct and rigorous'' oversight by the Commission, which the Exchange described 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 Commission approval of certain regulatory, operational, and strategic initiatives prior to implementation by the Exchange.[207]

In addition, NA Casin Holdings asserted 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.[208] Other commenters expressed confidence that the regulatory controls currently in place are adequate to monitor the proposed investors.[209] In addition, some commenters asserted that CHX has shown willingness to submit to oversight.[210]

The Commission also received several comments regarding the approval process of the proposed rule change. One commenter expressed concern that the staff's approval order was issued so soon after CHX submitted Amendment No. 1, which the commenter stated did not allow time for the public to comment.[211] Three commenters indicated support for the proposed rule change, and raised concerns that the Commission has delayed the Proposed Transaction, or has allowed politics to interfere with the approval process.[212] Another commenter asserted that there is no reason for ''further unjustified delay'' of the Commission's approval.[213] The Exchange asserted that the upstream owners have complied with applicable laws and that therefore, the Commission should approve the proposed rule change, in furtherance of fair competition.[214]

Summary of Comments and Exchange's Response Following the Filing of Amendment No. 2

On October 2, 2017, during the Commission's review of the delegated action, CHX informed the Commission that three of the proposed upstream investors were withdrawing from the investor group. On November 6, 2017, CHX filed Amendment No. 2 to the proposed rule change to update its proposal to reflect this change in the investor group and to reflect other changes to the terms of the Proposed Transaction and the proposed rule change.[215]

In Amendment No. 2, the Exchange asserts that the new proposed capitalization structure complies with the ownership and voting limitations set forth in the NA Casin Holdings Certificate because the proposed upstream owners and their Related Persons will neither exceed the proposed 40% ownership limitation nor be permitted to vote in excess of the proposed voting limitation.[216] The Exchange represents that there are now two sets of Related Persons among the proposed upstream owners: (1) Castle YAC and NA Casin Group, which would hold a combined 40% ownership interest in NA Casin Holdings and (2) the five members of the CHX Holdings management team, which would hold an aggregate 8.32% ownership interest in NA Casin Holdings.[217] The Exchange further represents that 71% of the voting shares of NA Casin Holdings will be owned by U.S. citizens and, due to the proposed voting limitation, no less than 80% of the voting power of NA Casin Holdings will be held by U.S. citizens.[218] The Exchange also restates its prior representation 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 any political subdivision thereof.[219]

In response to Amendment No. 2, the Commission received 21 comment letters.[220] Ten of these commenters raise concerns about the proposed ownership structure of NA Casin Holdings, with a particular focus on the terms of the Put Agreements.[221] One commenter also states that the Exchange mischaracterizes NA Casin Holdings as a ''large private company that is not owned or controlled by the Chinese government.'' [222] Another commenter alleges that CHX removed ''fake'' companies from the capitalization structure and replaced them with new shell nominees through what the commenter calls the ''sham'' Put Agreements.[223] The commenter states that NA Casin Group is an empty shell company controlled by Jay Lu, who the commenter states is a college student and whose actions

1, *supra* note 9, 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).

[203] *See* Ciccarelli Letter, *supra* note 9, at 3–4; Mayer Letter, *supra* note 9; and Anonymous Letter 3, *supra* note 20, at 2.

[204] *See* Hill Letter 2, *supra* note 9. This commenter also alleged that the Exchange has a record of non-compliance with regulations and failure to fully enforce its rules. This commenter reiterated this point in a comment letter submitted following the filing of Amendment No. 2. *See* Hill Letter 3, *supra* note 23.

[205] *See* CHX Response Letter 1, *supra* note 10, at 4; and CHX Response Letter 2, *supra* note 10, at 3–4.

[206] *See* CHX Response Letter 4, *supra* note 20, at 5.

[207] *See* CHX Response Letter 2, *supra* note 10, at 3–4. In addition, the Exchange stated that if CHX or the upstream owners fail to meet the requirements of the Exchange Act, or the rules and regulations thereunder, the Commission has broad authority and recourse to compel compliance or mitigate non-compliance, including suspending, censuring, or deregistering CHX as an SRO, pursuant to Section 19(h)(1) of the Exchange Act. *See* CHX Response Letter 4, *supra* note 20, at 5.

[208] *See* NA Casin Holdings Letter 1, *supra* note 9, at 1–2. Specifically, NA Casin Holdings observed 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.

[209] *See* John R. Prufeta Letter 1, *supra* note 9 (stating that ''the continual scrutiny of the U.S. 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 1, *supra* note 9 (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); Duncan Karcher Letter 1, *supra* note 9 (stating that commenter ''trust[s] [the Commission's] process much more than relying on the ad hominem attacks [the commenter] read[s] within the comments section''); and Zhong Letter 2 (expressing faith in the U.S. regulatory system), *supra* note 20. *See also* Catherine Jones Letter, *supra* note 20, at 1 (asserting that the rules of CHX will remain largely unchanged with respect to the purposes of promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of the free and open market and a national market system, and in general, protecting investors and the public interest).

[210] *See* Richard R. Taylor Letter, *supra* note 20; Duncan Karcher Letter 2, *supra* note 20; and Cheryl Karcher Letter, *supra* note 20.

[211] *See* Milton Letter, *supra* note 20. *See also* Watson Letter, *supra* note 20, at 3.

[212] *See* Richard R. Taylor Letter, *supra* note 20; Ayers Letter, *supra* note 20; Duncan Karcher Letter 2, *supra* note 20; and Cheryl Karcher Letter, *supra* note 20.

[213] *See* Hultgren Letter *supra* note 20, at 1 (also asserting that the additional review period following the stay of the Division of Trading and Markets' approval ''arguably violates the Commission's time restrictions under the Exchange Act'').

[214] *See* CHX Response Letter 4, *supra* note 20, at 6.

[215] *See supra* notes 21, 27, and 30 and accompanying text.

[216] *See* Amendment No. 2, *supra* note 22, at 55142.

[217] *See id.*

[218] *See id.*

[219] *See id.*

[220] *See supra* note 23.

[221] *See* Garland Letter, *supra* note 23; Jeremy Johnson Letter, *supra* note 23, Azsai Letter, *supra* note 23; Anonymous Letter 4, *supra* note 23; Montclair Letter, *supra* note 23; Mcpherson Letter 4, *supra* note 23; Strauss Letter, *supra* note 23; Horwitz Letter, *supra* note 23; Hart Letter, *supra* note 23, at 3; and Friedman Letter *supra* note 23, at 2.

[222] *See* Friedman Letter, *supra* note 23, at 1.

[223] *See* Garland Letter, *supra* note 23.

the commenter states are controlled by his father, Shengju Lu.[224] Arguing that the holdings of Shengju Lu and Jay Lu should be aggregated with the holdings of Raptor, Saliba, and Penserra because of the Put Agreements, the commenter asserts that the Lus will control 91.68% of the shares of NA Casin Holdings.[225] The commenter states that the Put Agreements can compel NA Casin Holdings to purchase the shares of Saliba, Raptor, and Penserra or arrange for the purchase of those shares by a third-party chosen by NA Casin Holdings.[226] Likewise, another commenter asserts that the terms of the Put Agreements would place approximately 91.5% of CHX under Chongqing Casin's immediate control.[227] This commenter further asserts that the Put Agreements are designed to circumvent Commission scrutiny.[228]

Several commenters also raise the possibility that, under the Put Agreements, NA Casin Holdings may be able to force the transfer of Saliba's, Raptor's, and Penserra's shares to someone from a Chinese government agency, unknown foreign third-party entities, or a ''non-descript affiliated company.'' [229] These commenters assert that the proposed Chinese upstream owners are trying to determine who controls CHX through the terms of the Put Agreements.[230]

Similarly, and citing one of the commenters above, another commenter asserts that the Put Agreements make the entities that are parties to them ''fake'' investors, and that those investors are entering into risk-free transactions that involve the Chinese upstream owners ''pulling all the strings'' and ''dictating terms on both the timing and pricing of the put.'' [231] Another commenter asserts that the Put Agreements would obligate the Chinese owners to repurchase 50% ownership in CHX at any time, and represent ''risk-free transactions.'' [232] This commenter concludes that Saliba and Raptor therefore do not appear to be ''bona fide investors.'' [233] Two commenters also claim that Anthony Saliba has a conflict of interest by both investing in CHX through Saliba and approving the Proposed Transaction as a member of CHX's board.[234] One of these commenters further asserts that what the commenter calls the ''so-called 'American Investors' '' would hold 60% of CHX on behalf of the Chinese upstream owners due to the terms of the Put Agreements.[235]

Likewise, another commenter asserts that the parties subject to the Put Agreements are ''merely placeholders for un-disclosed third parties.'' [236] This commenter asserts that the Put Agreements ensure that the purchasers subject to them will have zero risk associated with their purchase because NA Casin Holdings will cover any losses to the investor and that the Chinese upstream owners would be ''pulling the strings on the 'Puts.' '' [237] Due to this lack of risk on behalf of the upstream owners subject to the Put Agreements, the commenter states that those investors are not bona fide investors, but merely placeholders so that CHX can obtain Commission approval of the proposed rule change.[238]

Two commenters question why CHX management would obtain an aggregate 8.32% ownership interest in NA Casin Holdings, which the commenters speculate would be granted to management at no cost.[239] One of these commenters asserts that CHX management are ''place holders'' for the Chinese owners, and that as a result, Jay Lu would ''control'' 95% of CHX's ownership.[240] In addition, another commenter questions the increase in ownership of CHX management, noting that it went from 0.88% to 8.32%, and questions whether the CHX management is contributing cash for their respective shares.[241] Another commenter claims that the terms providing this equity to CHX management amount to ''bribes and hush money to abet a fraud'' on the Commission.[242] In addition, one commenter asserts that the funds paid in the Proposed Transaction would not be invested in CHX and that no jobs would be created in Chicago as a result of the Proposed Transaction.[243]

Several commenters also assert that Chongqing Jintian, Chongqing Longshang, and Xian Tong exited the Proposed Transaction only when faced with due diligence by the Commission regarding their ownership structure.[244] One commenter suggests that the Commission should review the bank statements and sources of funds for the three proposed upstream owners who withdrew from the Proposed Transaction,[245] stating that continued review is necessary as no new investors have been added to the Proposed Transaction.[246] Another commenter asserts that the three investors' source of funds for the Proposed Transaction was Shengju Lu, an owner of Chongqing Casin.[247]

In addition, one commenter does not express support or opposition to the proposed rule change, but encourages the Commission to carefully examine the bank statements and other sources of funding for both the current proposed upstream owners and the previous upstream owners who left the group.[248] This commenter states that a ''huge red flag was raised'' when some upstream owners left the ownership group after the Commission began to investigate their backgrounds.[249] This commenter also states that the terms of the Put Agreements suggest that Saliba, Raptor, and Penserra do not intend to be long-term investors in CHX.[250] This commenter opines that the Commission must investigate the origins of the Put Agreements, and whether they were demanded by the U.S. upstream owners, another party to the Proposed Transaction, or otherwise.[251] The commenter believes that the Commission's review of bank statements and the origin of funds for the upstream owners will disclose whether the upstream owners subject to the Put Agreements are using their own funds to finance their share of the Proposed Transaction.[252]

One commenter states his belief that Chongqing Casin's source of funding is at issue, asserting that Shengju Lu leveraged stock of his company in return for loans from Chinese-government controlled banks.[253] This commenter suggests that the Chinese government is playing a role in the Proposed Transaction.[254] In addition, this commenter questions whether the Commission can carry out its duty to properly regulate the Exchange given the limits of the Commission's authority in China.[255] Another commenter states that investors from China have taken U.S. shell corporations and, through reverse mergers, acquired listed U.S. corporations that were ''defunct'' for the purpose of executing ''pump and dump'' schemes.[256] This commenter implies that such past actions might be cause for concern with regard to the Proposed Transaction.[257]

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[224] *See id. See also* Hart Letter, *supra* note 23, at 2; and Friedman Letter, *supra* note 23, at 2.

[225] *See* Garland Letter, *supra* note 23.

[226] *See id.*

[227] *See* Mcpherson Letter, *supra* note 23.

[228] *See id.*

[229] *See* Garland Letter, *supra* note 23; Anonymous Letter 4, *supra* note 23; Mcpherson Letter, *supra* note 23; and Horwitz Letter, *supra* note 23 (expressing concern that, because NA Casin Holdings has the authority to identify a third-party purchaser to purchase shares sold under the put options and Jay Lu is the current signatory for NA Casin Holdings, such arrangement could result in conflicts of interest and collusion).

[230] *See id.*

[231] *See* Jeremy Johnson Letter, *supra* note 23 at 2 (citing Garland Letter, *supra* note 23).

[232] *See* Strauss Letter, *supra* note 23 at 2.

[233] *See id. See also* Hart Letter, *supra* note 23, at 3 (claiming that Saliba and Raptor are ''guaranteed handsome profits which would allow them to 'put' their CHX holdings to the Chinese at any price they would demand'').

[234] *See* Jeremy Johnson Letter, *supra* note 23 at 2; and Strauss Letter, *supra* note 23 at 2. *See also* Hart Letter, *supra* note 23, at 3; and Friedman Letter, *supra* note 23, at 3.

[235] *See id.* at 3. *See also* Gresack Letter, *supra* note 23, at 2.

[236] *See* Montclair Letter, *supra* note 23.

[237] *See id.*

[238] *See id.*

[239] *See* Strauss Letter, *supra* note 23, at 2–3; and Garland Letter, *supra* note 23 at 1. One of these commenters also questions whether the full terms of the Proposed Transaction, including any grant of stock to management, were disclosed to CHX stockholders. *See* Strauss Letter, *supra* note 23, at 3.

[240] *See id.* at 1.

[241] *See* Gresack Letter, *supra* note 23, at 2.

[242] *See* Hart Letter, *supra* note 23, at 3. *See also* Friedman Letter, at 2 *supra* note 23, at 2 (suggesting that the grant of stock to CHX management should be reviewed for violations of the Foreign Corrupt Practices Act); and Strauss Letter, *supra* note 23, at 1.

[243] *See* Strauss Letter, *supra* note 23, at 1.

[244] *See* Garland Letter, *supra* note 23, at 1; Montclair Letter, *supra* note 23; Jeremy Johnson Letter, *supra* note 23, at 1; Azsai Letter, *supra* note 23; Mcpherson Letter, *supra* note 23; Azsai Letter, *supra* note 23; Gresack Letter, *supra* note 23, at 2; Strauss Letter, *supra* note 23, at 1; and Horwitz Letter, *supra* note 23, at 1.

[245] *See supra* note 21 and accompanying text.

[246] *See* Gresack Letter, *supra* note 23, at 2.

[247] *See* Strauss Letter, *supra* note 23, at 1.

[248] *See* Gresack Letter, *supra* note 23, at 2.

[249] *See id.*

[250] *See id.*

[251] *See id.*

[252] *See id.*

[253] *See* Horwitz Letter, *supra* note 23, at 1.

[254] *See id.*

[255] *See id.* at 2.

[256] *See* Hill Letter 3, *supra* note 23.

[257] *See id.*

The Commission also received nine comment letters advocating that the Commission approve the proposed rule change.[258] One commenter states that the Proposed Transaction was approved by CFIUS and Commission staff, and agreed to by all the parties involved.[259] The commenter states that the Proposed Transaction poses no risk and urges the Commission to approve the proposed rule change as soon as possible.[260] In addition, another commenter states that CFIUS concluded that there were no unresolved national security concerns with respect to the Proposed Transaction.[261] Another commenter opines that CHX has a very good business model and that it is in an advantageous position that will drive its growth.[262] This commenter believes that the U.S. regulatory regime has proven over the years that the U.S. has a robust and successful market, and that the U.S. must continue to try to build a stronger connection for financial services between the U.S. and the world.[263]

In addition, one commenter asserts that nothing will change with the acquisition of the Exchange, and that the operational processes of the Exchange, which it states conform to guidelines set by the Commission and observed by the Financial Industry Regulatory Authority (''FINRA''), must remain the same.[264] Another commenter states that China has given global financial companies what the commenter calls unprecedented access to its economy and that the U.S. should remain open-minded when embracing a diversity of market participants in the financial sector.[265] This commenter states that both countries can benefit from increased access to each other's respective markets.[266] The fourth commenter believes that the upstream owners' investment in CHX could ''create the bridge for China-based companies to list their IPOs on the Chicago Stock Exchange thereby also providing Americans a more direct opportunity to potentially participate in Asia's major engine of growth.'' [267] This commenter further opines that if these companies do not list on the Chicago Stock Exchange, they will list on competing exchanges in other countries, which the commenter believes would further erode ''[CHX's] global market share and prominence.'' [268] Another commenter states that the Proposed Transaction ''stands to create many jobs'' in Chicago and to ''increase the popularity of CHX internationally.'' [269] Another commenter, however, counters the point that job creation should be an important consideration for this proposed rule change.[270]

In addition, one commenter asserts that the NA Casin Group is a privately-owned company and that it is not the Chinese government and should not be treated as such.[271] Another commenter states that the international company involved with the Proposed Transaction would have 29% ownership and 20% voting rights, and therefore asserts that its influence would be ''minimal.'' [272]

NA Casin Holdings states that no new investors were added to the investor consortium under the revised ownership structure in Amendment No. 2, and asserts that the arrangements among the investors were the result of arm's-length negotiations among the parties.[273] NA Casin Holdings further asserts that the identities, management, and sources of funds for the stockholders have been thoroughly disclosed in CHX's filings with the Commission.[274] NA Casin Holdings also responds to commenters' assertions about the ownership of NA Casin Group, stating that Jay Lu does not independently control either NA Casin Group or Chongqing Casin.[275] In addition, NA Casin Holdings asserts that the U.S. upstream owners are independent and unaffiliated with any investor, and that statements made in other comment letters that Jay Lu or Casin Group would control 90% of the shares of NA Casin Holdings are false.[276] NA Casin Holdings further asserts that following the closing of the Proposed Transaction, the majority of its voting power would be in the hands of the U.S. upstream owners.[277]

Two commenters respond to questions about why Chongqing Jintian, Chongqing Longshang, and Xian Tong withdrew from the Proposed Transaction.[278] NA Casin Holdings states that withdrawal of these investors from the investor consortium was the result of each such entity's ''independent decision,'' and that these entities cited a number of factors as responsible for their withdrawal, including delays in the Proposed Transaction and that funds necessary for the investment were ''tied up and unavailable for use in alternative investment opportunities.'' [279] Further, NA Casin Holdings asserts that prior to their withdrawal, these entities provided all information requested by the Commission, the Commission's staff, CFIUS, and FINRA.[280] Another commenter also denies claims that some of the Chinese companies withdrew from the Proposed Transaction because they have something to hide, stating that instead, these companies withdrew from the Proposed Transaction due to the length of the regulatory process.[281] In response, three commenters that oppose the Proposed Transaction assert that NA Casin Holdings' statement that the three investors did not have available funds necessary to complete the Proposed Transaction raises questions about who was funding the entities' purchase.[282]

Two commenters deny other commenters' assertions regarding the Put Agreements.[283] Specifically, NA Casin Holdings states that contrary to the assertions of other commenters, the Put Agreements would not permit NA Casin Group to force the sale of the U.S. upstream owners' shares to unknown third parties; instead, the Put Agreement would permit NA Casin Holdings to find a third party purchaser only after a holder of a put option determines to exercise such option.[284] In addition, NA Casin Holdings asserts that the NA Casin Holdings Certificate, which imposes the voting and ownership limitations, is ''virtually indistinguishable'' from exchange applications previously approved by the Commission, and that any sale of the proposed U.S. upstream owners' shares, including transactions pursuant to the Put Agreements, would be subject to the ownership and voting limitations.[285] In addition, NA Casin Holdings states that the Put Agreements would only provide certain investors an opportunity to exit from their investments for a ''brief window'' two years after closing.[286] According to NA Casin Holdings, it would not assume all risks or liabilities of the investment of the holders of the Put Agreements, and suggestions that the proposed U.S. upstream owners would not be long-term owners are without merit.[287] NA Casin Holdings further asserts that agreements similar to the Put Agreements are common for investors in private companies, and other privately-held exchanges also provide put rights to their equity holders.[288] In addition, another commenter asserts that the NA Casin Group would not control the Put Agreements, and notes that the put right cannot be exercised for two years.[289]

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[258] *See* Salters Letter, *supra* note 23; May Letter, *supra* note 23; and Richard Taylor Letter, *supra* note 23; Faux Letter, *supra* note 23; Saliba Letter 2, *supra* note 23, at 2; Briley Letter, *supra* note 23; Bleecher Letter, *supra* note 23; Marden Letter, *supra* note 23; and NA Casin Holdings Letter 3, *supra* note 23.

[259] *See* Richard Taylor Letter, *supra* note 23. *See also* Faux Letter, *supra* note 23 (stating that CFIUS cleared the sale of the exchange); and Marden Letter, *supra* note 23 (asserting that the presence of national security issues is non-existent as evident by the approval from CFIUS).

[260] *See* Richard Taylor Letter, *supra* note 23.

[261] *See* Saliba Letter 2, *supra* note 23, at 2.

[262] *See* Salters Letter, *supra* note 23.

[263] *See id.*

[264] *See* Briley Letter, *supra* note 23.

[265] *See* May Letter, *supra* note 23.

[266] *See id.*

[267] *See* Faux Letter, *supra* note 23.

[268] *See id.*

[269] *See* Marden Letter, *supra* note 23.

[270] *See* Hill Letter 3, *supra* note 23.

[271] *See* Saliba Letter 2, *supra* note 23, at 2.

[272] *See* Marden Letter, *supra* note 23.

[273] *See* NA Casin Holdings Letter 3, *supra* note 23, at 1–2.

[274] *See id.* at 2.

[275] *See id.* at 2.

[276] *See id.* at 3.

[277] *See id.* at 3.

[278] *See* Saliba Letter 2, *supra* note 23, at 2; and NA Casin Holdings Letter 3, *supra* note 23, at 2.

[279] *See* NA Casin Holdings Letter 3, *supra* note 23, at 2.

[280] *See id.; but see supra* note 86.

[281] *See* Saliba Letter 2, *supra* note 23, at 2.

[282] *See* Horwitz Letter, *supra* note 23, at 1; Hart Letter, *supra* note 23, at 1; and Friedman Letter *supra* note 23, at 3.

[283] *See* Saliba Letter 2, *supra* note 23, at 2; and NA Casin Holdings Letter 3, *supra* note 23, at 2–3.

[284] *See* NA Casin Holdings Letter 3, *supra* note 23, at 3. One commenter questions the authenticity of this third comment letter submitted by NA Casin Holdings. *See* Hart Letter, *supra* note 23, at 1.

[285] *See* NA Casin Holdings Letter 3, *supra* note 23, at 3.

[286] *See id.*

[287] *See id.*

[288] *See id.*

[289] *See* Saliba Letter 2, *supra* note 23, at 3.

The Exchange submitted three response letters following its filing of Amendment No. 2.[290] First, the Exchange asserts that the Proposed Transaction would create access to capital, attract new businesses and jobs to the U.S., and grow the U.S. economy.[291] In addition, the Exchange asserts that the Proposed Transaction is ''safe,'' stating that NA Casin Holdings would be majority-owned by U.S. owners, NA Casin Group is not owned or controlled by the Chinese government, and CFIUS concluded that there were no unresolved national security concerns with the Proposed Transaction.[292] Further, CHX asserts that the Commission would be able to verify compliance by NA Casin Holdings stockholders with the Exchange's rules, noting that CHX rules would require NA Casin Holdings stockholders to make annual attestations to the Commission and the Exchange related to their ownership levels and the existence of any voting agreements, and that the Exchange's oversight of the ownership and voting limitations would be subject to regular independent audits by a PCAOB registered auditor.[293] The Exchange states that the Commission has broad authority to compel compliance or mitigate non-compliance, including suspending, censuring or deregistering the Exchange pursuant to Section 19(h)(1) of the Exchange Act.[294] In addition, the Exchange states that NA Casin Group has agreed to permanently and irrevocably submit to the jurisdiction of the Commission and the U.S. courts, has appointed a registered agent in the U.S. for the service of process, has agreed to open books and records, and is required to keep such records in the U.S.[295]

The Exchange asserts that the three investors that withdrew from the Proposed Transaction did so due to the length of the approval process.[296] The Exchange asserts its view that: (1) The Commission's review violates Section 19(b) of the Exchange Act [297] because more than 240 days have elapsed since the date of publication of the proposed rule change; (2) the length of the Commission's review violates Rule 103 of the Commission's Rules of Practice [298] (which provides that the Rules of Practice ''shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding'') and that where such rules conflict with statute, the statute will control; and (3) the length of the Commission's review violates Section 3(f) of the Exchange Act [299] (which requires the Commission to consider efficiency, competition, and capital formation within the national market system) by delaying (and potentially jeopardizing) the consummation of the Proposed Transaction.[300]

The Exchange asserts that, in response to Commission requests, it provided the Commission staff with various financial statements and other evidence of financial wherewithal and sources of funds from all of the prospective investors, including the three prospective investors that withdrew from the investor group.[301] Further, the Exchange asserts that there are no outstanding Commission requests for information related to the Proposed Transaction.[302]

Regarding the Put Agreements, the Exchange notes that the MIAX has offered similar put options as an incentive to its prospective stockholders through an equity rights program through which MIAX offered shares and warrants for shares in MIAX International Holdings, Inc. (''MIH'') to MIAX members that met certain financial order flow requirements, and included a provision whereby all MIAX members that received equity through the program retained a put option to require MIH to buy back shares at a fixed percentage of fair market value.[303] The Exchange submits that given the similarities between the MIAX put options and the proposed CHX put options, as well as what it characterizes as the legitimate and ''well-established'' business purposes of the Put Agreements, the Put Agreements are appropriate and consistent with Commission precedent.[304]

The Exchange also describes provisions in the CHX Holdings and NA Casin Holdings corporate documents that it believes would facilitate the ability of the Commission and the Exchange to ensure that the put options are exercised in a manner consistent with CHX rules and the Exchange Act.[305] The Exchange asserts that such provisions, the Rule 19b–4 rule filing requirement for any proposed change of control, and the Commission's broad authority to compel compliance or mitigate non-compliance with CHX rules, including suspending, censuring, or deregistering the Exchange pursuant to Section 19(h)(1) of the Exchange Act, the Commission would be able to effectively monitor and review any changes to CHX ownership.[306] The Exchange notes that, pursuant to provisions of the proposed corporate governance documents of CHX Holdings and NA Casin Holdings: (1) Each person involved in an acquisition of shares of stock of NA Casin Holdings or CHX Holdings would be required to provide NA Casin Holdings or CHX Holdings, as applicable, with written notice 14 days prior to, and such corporation would be required to provide the Commission with written notice 10 days prior to, the closing date of any acquisition that would result in any person, alone or together with its Related Persons, having voting rights or beneficial ownership of 5% or more of the outstanding stock of the corporation; (2) each stockholder of NA Casin Holdings and CHX Holdings would be required to make annual attestations to the Commission and NA Casin Holdings regarding its equity ownership level in the corporation and the identity of its Related Persons, and the existence of any agreement, arrangement, or understanding between the stockholder and any person for the purpose of acquiring, voting, holding, or disposing of shares of stock of the corporation; and (3) each person having voting rights or beneficial ownership of stock of NA Casin Holdings or CHX Holdings would be required to promptly provide the corporation with written notice of any change in its status as a Related Person of another person that owns voting stock of the corporation.[307]

In addition, in response to comments that question the details of the NA Casin Holdings shares that would be held by CHX management,[308] the Exchange states that more than half of such shares would be purchased on terms similar to other proposed upstream owners,[309] and the remaining shares would be granted by NA Casin Holdings as restricted stock subject to a customary vesting period.[310]

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[290] *See supra* note 24.

[291] *See* CHX Response Letter 6, *supra* note 24, at 1–2.

[292] *See id.* at 2–3.

[293] *See id.* at 3.

[294] *See id.*

[295] *See id.*

[296] *See id.*

[297] *See* 15 U.S.C. 78s(b).

[298] *See* 17 CFR 201.103(a).

[299] *See* 15 U.S.C. 78c(f) (requiring that the Commission consider whether a proposed rule change will promote efficiency, competition, and capital formation).

[300] *See* CHX Response Letter 8, *supra* note 24, at 1–5. The Exchange also asserts that the merger agreement could be terminated by ''regulatory *inaction*'' due to the end of the exclusivity period and ''drop dead'' termination date under the merger agreement, and expresses concern regarding the perception of such result by the international business community. *See id.* at 6.

[301] *See* CHX Response Letter 7, *supra* note 24, at 2.

[302] *Id.; but see supra* note 86. The Exchange also states that on July 11, 2017, CHXBD filed a Form CMA (a continuing membership application that the Exchange's broker-dealer affiliate is required to file with FINRA under NASD Rule 1017 prior to consummation of the Proposed Transaction) with FINRA, which was deemed ''substantially complete'' on July 28, 2017. According to CHX, CHXBD provided FINRA with several large document productions in response to seven separate information requests from FINRA staff, which included, among other things, financial statements, evidence of funds transfers, corporate governance documents and descriptions of business activities, as applicable, for all current prospective investors, as well as the three former prospective investors. The Exchange states that there are no outstanding FINRA requests related to the Proposed Transaction. *See id.* at 2–3. Nevertheless, the Commission notes that, to date, the Exchange has not notified the Commission that FINRA has approved CHXBD's continuing membership application.

[303] *See id.* at 3.

[304] *See id.*

[305] *See id.* at 4.

[306] *See id.* at 5.

[307] *See id.* at 4–5.

[308] *See supra* notes 239–242.

[309] *But see supra* note 89.

[310] *See* CHX Response Letter 7, *supra* note 24, at 4–5.