Securities Regulation Daily Wrap Up, EXCHANGES AND MARKET REGULATION—Congressmen raise concerns by proposed merger of Chicago Exchange with Chinese entity, (Dec. 27, 2016)

Securities Regulation Daily Wrap Up

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By Jacquelyn Lumb

Five members of Congress have written to the SEC about their concerns with the proposed sale of the Chicago Stock Exchange to a group of investors led by the Chinese firm Chongqing Casin Enterprise Group. They urged the SEC to consider the potential impact on national security and the financial security of the American marketplace. In addition, they asked the SEC to extend the comment period given the gravity of the proposal, the brief duration of the comment period, and the fact that it was open over the holiday season. The comment period is currently set to expire on January 3, 2017 (Release No. 34-79474).

Attempt to block proposal. The congressmen noted that in February, over 40 members of Congress wrote to the Committee on Foreign Investment in the U.S. urging that the government block the sale of CHX. CHX filed the proposal with the SEC on December 2, 2016 and the SEC published notice of the proposal on December 6. Following the merger, CHX would remain a Delaware for-profit stock corporation and a registered self-regulatory organization.

Transparency concerns. The congressmen reminded the SEC that the private sector in the U.S. is built on transparent operations and the separation of government and industry, qualities that are currently represented by the exchanges, and the integrity of which the SEC is charged with protecting. The Chinese markets are not transparent and are heavily dominated by the Chinese State Council, they wrote. In addition, Chinese companies often receive illegal subsidies from the government and are used as conduits for the Communist party to disrupt and distort foreign markets, businesses and governments.

Cyber threat. The congressmen also expressed concern with the transaction due to the Chinese government's sponsorship of cyber-espionage and corporate threats. The Chinese government has stolen intellectual property and proprietary data from U.S. firms, costing them billions of dollars, according to the congressmen. If a Chinese-owned and possibly government-affiliated firm acquires a U.S. exchange, it will have the ability to manipulate the $22 trillion equity marketplace, they warned, which is an unprecedented and unacceptable risk to the country's financial security.

State connections. Chongqing is involved in market sectors with close ties to the state, according to the congressmen, particularly in the environmental protection areas that are state-sensitive. The congressman advised that Chongqing's financial assets originally were state-owned, and that its chairman serves on an industry council that is directed by the mayor of the Chongqing municipality, which exhibits a direct political connection.

PCAOB connection. While Chinese investments in the U.S. continue to grow, the congressman said the U.S. government has not been able to adequately address transparency concerns with respect to the operations of Chinese businesses. They pointed, for example, to the PCAOB's problems in gaining access to Chinese audit information to inform and protect investors. At a minimum, they said the PCAOB's ability to access this information should be a prerequisite to allowing a Chinese firm to purchase a U.S. stock exchange.

Request to extend comment period. The proposed transaction raises questions beyond the scope of the limited review that has occurred, in their view. They urged the SEC to consider rejecting the transaction, but also to extend the public comment period given the weight of the matter. They also requested a response to their letter within seven days.

The letter was signed by Robert Pittenger (R-NC), Peter DeFazio (D-OR), David Joyce (R-Ohio), Earl "Buddy" Carter (R-GA), and Collin Peterson (D-Minn).

The release is No. 34-79474.

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