



January 17, 2024

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**Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies**

*Comments prepared by James Broughel, Competitive Enterprise Institute*

To the Honorable Gary Gensler, Chair of the Securities and Exchange Commission, and the Honorable Commissioners Hester M. Peirce, Caroline A. Crenshaw, Mark T. Uyeda, and Jaime Lizárraga:

The Competitive Enterprise Institute (CEI) is a non-profit public interest organization committed to advancing the principles of free markets and limited government. CEI has a longstanding interest in applying these principles to the rulemaking process and has frequently commented on issues related to oversight of rulemaking and the regulatory process. On behalf of CEI, I am pleased to provide comments to the Securities and Exchange Commission (SEC) on its order titled “Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies.”<sup>1</sup>

**Background.**

The Securities and Exchange Commission is instituting proceedings to determine whether to approve or disapprove a proposed rule change by the New York Stock Exchange (NYSE) to adopt listing standards for a new type of public company called Natural Asset Companies (NACs).<sup>2</sup> The NYSE has proposed updating its NYSE Listed Company Manual to permit the listing and trading of common stock of NACs on the NYSE.<sup>3</sup> NACs would be a new type of corporation whose purpose is to “actively manage,

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<sup>1</sup> Securities and Exchange Commission, “Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the NYSE Listed Company Manual To Adopt Listing Standards for Natural Asset Companies,” 88 *Federal Register* 89788, December 28, 2023, <https://www.federalregister.gov/documents/2023/12/28/2023-28611/self-regulatory-organizations-new-york-stock-exchange-llc-order-instituting-proceedings-to-determine>.

<sup>2</sup> Securities Exchange Commission, “Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies,” 88 *Federal Register* 68811, Oct. 4, 2023, <https://www.federalregister.gov/documents/2023/10/04/2023-22041/self-regulatory-organizations-new-york-stock-exchange-llc-notice-of-filing-of-proposed-rule-change>.

<sup>3</sup> New York Stock Exchange, “NYSE Listed Company Manual,” accessed January 12, 2024, <https://nyse.wolterskluwer.cloud/listed-company-manual>; New York Stock Exchange, Natural Asset Companies (NACs), accessed January 12, 2024, <https://www.nyse.com/introducing-natural-asset-companies>.

maintain, restore (as applicable), and grow the value of natural assets and their production of ecosystem services.”<sup>4</sup> “Ecosystem services” refer to benefits stemming from natural assets like forests, wetlands, etc.

If allowed to be listed on the NYSE, NACs would be required to meet similar quantitative listing standards as regular operating public companies in the sense that revenues and expenses would need to be reported in the financial statements of the NAC and to be prepared according to Generally Accepted Accounting Principles (GAAP). The proposal would also impose additional requirements, including certain disclosures related to the environment, human rights, and equitable benefit sharing with communities.<sup>5</sup> Importantly for the purposes of this comment, NACs also would be required to publish annual Ecological Performance Reports (EPRs), which include metrics on the condition and economic value of the natural assets they manage. These EPRs would be examined by an independent reviewer each year.<sup>6</sup>

The NYSE has an exclusive license agreement in place with a private company called Intrinsic Exchange Group (IEG) related to the framework and methodology NACs would use for the EPRs.<sup>7</sup> Furthermore, the NYSE has a financial interest in IEG, as it owns a minority stake in the company and also has a seat on IEG’s board of directors.<sup>8</sup> The SEC has received some comments supporting the proposal and some opposing it or suggesting changes. It is instituting the current proceedings to further analyze whether the proposal is consistent with statutory requirements around investor protection, transparency, conflicts of interest, and competition. The SEC is requesting public comment on all aspects of the proposal to inform its decision on whether to approve or disapprove the proposed rule change.

As a senior fellow with the Competitive Enterprise Institute, I have a strong interest in ensuring federal agencies conduct high-quality economic and regulatory analysis. Previously, I submitted a public comment to the Office of Management and Budget (OMB) on its draft guidance on accounting for ecosystem services in benefit-cost analysis (that comment is included as an attachment to this one).<sup>9</sup> I wish to share similar concerns with the SEC about its proposal to create a new class of corporation in the form of NACs, since many of the same problems likely to arise with EPRs will mirror those found in environmental accounting more generally, including what is being promoted by the Biden administration’s OMB.

The problems I previously flagged with OMB’s ecosystem services guidance are highly relevant to the SEC’s current proposal. The OMB guidance aims to assist regulatory analysts with monetizing, i.e., assigning dollar values to, unpriced natural assets. That methodology draws heavily from the UN System of Environmental Economic Accounting framework (SEEA).<sup>10</sup> Similarly, the proposed EPRs would also

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<sup>4</sup> 88 *Federal Register*, at 89788.

<sup>5</sup> 88 *Federal Register*, at 89791.

<sup>6</sup> 88 *Federal Register*, at 89789.

<sup>7</sup> 88 *Federal Register*, at 89789; Intrinsic Exchange Group, “Ecological Performance Reporting Framework,” September 2023, <https://www.sec.gov/files/rules/sro/nyse/2023/34-98665-ex3.pdf>; Intrinsic Exchange Group, accessed January 18, 2024, <https://www.intrinsicexchange.com/>.

<sup>8</sup> House Committee on Natural Resources, “Members Initiate Probe Into SEC’s Rule Change Permitting Foreign Agents and Radical Activists to Control America’s National Parks and Lands,” Press Release, January 11, 2024, <https://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=415387>.

<sup>9</sup> James Broughel, “Comments on Proposed Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis,” Competitive Enterprise Institute, September 20, 2023, [https://cei.org/regulatory\\_comments/ceis-james-broughel-comments-on-proposed-guidance-for-assessing-changes-in-environmental-and-ecosystem-services-in-benefit-cost-analysis/](https://cei.org/regulatory_comments/ceis-james-broughel-comments-on-proposed-guidance-for-assessing-changes-in-environmental-and-ecosystem-services-in-benefit-cost-analysis/).

<sup>10</sup> United Nations, About SEEA, accessed January 18, 2024, <https://seea.un.org/content/about-seea>; United Nations, Ecosystem Accounting, accessed January 18, 2024, <https://seea.un.org/ecosystem-accounting>.

rely on the SEEA approach to place values on nonfinancial natural assets not traded in markets. This raises comparable concerns about conflating priced and unpriced assets, introducing various forms of bias into reporting, and consequently misallocating resources across society.

The SEEA approach is, to put it bluntly, pseudoscience. It is to economics what astrology is to astronomy. While traditional accounting frameworks, such as GAAP financial reporting, are reasonable modes of evaluating companies, the EPR methodology lacks any rational economic basis. Moreover, there is no evidence that the public would desire to invest in a company that produces “ecosystem services benefits” as opposed to traditional financial returns. As a colleague of mine at CEI has noted in his own comment to this SEC on this order, “NACs do not exist in any shape or manner,” and “there are no common equity securities for NACs to possess.”<sup>11</sup> They would exist solely because the SEC has allowed them to be created, and it is entirely possible that there will be no investor demand for NAC securities, since they are a completely unproven concept.

This comment concludes that the SEC should decline approval of the NAC company class on the NYSE. Short of this, the SEC should drop reporting requirements surrounding EPRs. An environmental management company should be judged based on the same criteria as any other public companies listed on the NYSE, namely based on financial returns as evaluated by GAAP or similar accounting standards. Note that there are significant benefits that could be realized from allowing public lands to be managed by private entities. However, existing corporate structures already exist that could satisfy this aim without the need for creating a new corporation designation in the form of NACs.

### **Concerns About Valuation and Accounting Framework.**

The proposal unnecessarily subjugates a NAC’s financial returns as secondary to ecosystem services benefits and conservation goals. Specifically, the SEC’s notice states, that while NACs can engage in “sustainable revenue-generating operations (e.g., eco-tourism in a natural landscape or production of regenerative food crops in a working landscape)”, their “the core purpose of a NAC would be to maximize ecological performance.”<sup>12</sup>

The implication is that the value of NACs would be assessed first based on their ecosystem services benefits, as presumably measured in the required EPS, with financial returns, as measured by GAAP accounting, playing a secondary role. However, GAAP represents decades of established accounting practices, while the EPR methodology is experimental and based on an unscientific UN accounting approach. Moreover, profits are money that is actually earned by the corporation, and therefore easier to objectively measure and track, while ecosystem services benefits have a public good-like character, meaning they will often accrue to society more generally and not the corporation. Therefore, they will tend not to have accounting entries that can be logged on a corporation’s books.

The SEC should make unambiguously clear that GAAP reporting takes precedence over and supersedes any conflicting findings based on the EPR framework. Requiring experimental EPR disclosures to displace or supersede GAAP risks undermining confidence in financial reporting generally. The EPR methodology draws heavily on the controversial UN SEEA accounting framework that is, by any reasonable standard, ideology and not science. Moreover, such subjective reporting is prone to manipulation, and this is not mere speculation. Environmental accounting statements and similar

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<sup>11</sup> Stone Washington, “Comment to the SEC on its Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies,” January 18, 2023.

<sup>12</sup> 88 *Federal Register*, at 89788.

reporting produced by federal agencies in the U.S. are often referred to as “advocacy documents,”<sup>13</sup> due to their tendency to be manipulated to achieve political ends. Before requiring experimental environmental accounting, the SEC must rigorously scrutinize the theoretical foundation and rationality of the underlying valuation techniques. There are reasons to doubt the EPR framework on both of these grounds.

For example, the monetization techniques prescribed for assets not traded in markets are highly dubious. As I explained in my previous comment to OMB on its ecosystem services guidance,<sup>14</sup> natural capital assets generate consumption benefits that fall into three categories based on whether returns are priced, unpriced and recurring, or unpriced one-time experiences. The EPR approach risks conflating these very different outcomes by monetizing and aggregating all of them into a single estimate of value. Yet, priced assets that yield compounding financial returns over time fundamentally differ from one-time aesthetic pleasures. In short, one can’t invest utility in an account, but one can reinvest financial returns earned from market production.

Equating these incommensurable values introduces systematic bias into the valuation and investment process. By relying on these specious forms of natural asset valuation, the SEC risks codifying irrationality and market failure into the financial system. As I explained in my OMB comment, individual behavioral biases like present bias, anthropomorphic bias, and exponential growth bias creep into public decision making when analysts assign dollar values to nature. The result is government failure. More concretely, when an analyst assigns a dollar value to nonmarket outcomes, he or she is implicitly assuming society should value nature in a manner akin to how an individual would value it. But in reality, individuals have much shorter time horizons than society writ large. Thus, individual preferences tend to undervalue the compounding benefits of capital accumulation, while short term experiences receive relatively too much weight, relative to how society—with its much longer time horizon—would value these benefits. Contrary to claims by the NYSE that its proposal would help to rectify “overconsumption of and underinvestment in nature,”<sup>15</sup> the NYSE’s proposal would actually exacerbate overconsumption and underinvestment problems, except by encouraging overconsumption of ecosystem services and underinvestment in capital accumulation, relative to what is economically efficient.

The OMB’s ecosystems services guidance nearly guarantees government failure if its recommendations are influential in shaping public policy. This is the case because it encourages an extreme, short-termist perspective that ignores the benefits of compound growth. Likewise, if the SEC mandates that investors value companies based on the EPR framework, the agency will similarly induce biased decision-making, in this case, in the financial markets. This will lead to inefficient capital allocation as too many investments flow into NACs relative to companies evaluated solely on their financial returns. This result conflicts with two of the SEC’s core mandates, which are to promote efficiency and to facilitate capital formation.<sup>16</sup> The SEC should acknowledge the likelihood that economic efficiency and capital formation will be hindered by the misleading nature of EPR disclosures and the corresponding likelihood that such reporting will trigger valuation errors on the part of investors.

### **Conflicts of Interest and Risk Concerns.**

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<sup>13</sup> E. Donald Elliott, “Rationing Analysis of Job Losses and Gains: An Exercise in Domestic Comparative Law,” in *Does Regulation Kill Jobs?*, eds. Cary Coglianese et al., 2014, 256, 265; Christopher Carrigan and Stuart Shapiro, “What’s Wrong with the Back of the Envelope? A Call for Simple (and Timely) Benefit–Cost Analysis,” *Regulation & Governance* 11, 2017: 203-12.

<sup>14</sup> James Broughel, “Comments on Proposed Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit–Cost Analysis.”

<sup>15</sup> 88 *Federal Register*, at 89788.

<sup>16</sup> 15 U.S. Code § 77b.

The SEC should not enable a single private entity to dictate experimental disclosure practices impacting an entire asset class, especially when its techniques introduce valuation bias. I am deeply troubled that the proposal grants a monopoly to the IEG as the sole provider of the EPR framework and methodology. This is all the more concerning given that the NYSE has a financial stake in IEG, a relationship that casts doubt on the NYSE's ability to act as an objective party when it determines whether NACs should be allowed to be listed.

There is a complete lack of experience with NACs as a viable investment vehicle. The NAC structure remains an unproven concept without evidence investors actually desire exposure to this new class of company. Allowing NACs to list on an exchange that carries the prestige of the NYSE serves as a sort of regulatory seal of approval. Providing this seal of approval before properly vetting the concept itself will mislead investors. This violates one of the SEC's core missions of protecting retail investors.

It is all the more strange that the SEC and NYSE are trying to create a new type of corporation when responsibility for incorporation of businesses is an authority usually controlled by the states. At the same time, other types of corporations already exist that have similar missions as NACs. For example, a public benefit corporation "is a corporation created to generate social and public good, and to operate in a responsible and sustainable manner."<sup>17</sup> The SEC must explain what value NACs add above and beyond the value public benefit corporations already add to the marketplace.

The SEC should not be endorsing experimental corporate structures that are prone to potential conflicts of interest. Given the SEC's mandate to protect investors, exposing them to the risks associated with NACs seems inappropriate at a minimum. The SEC should instead adopt a cautious approach that shields investors from an unprecedented experiment until concrete evidence of viability emerges.

### **Benefits of Privatization Efforts.**

While I have raised serious concerns about NACs and the environmental accounting framework they would be utilizing, privatization efforts more generally could yield substantial societal benefits by encouraging the productive use of America's considerable natural capital wealth. As I explained in my comment to OMB, the U.S. federal government alone owns more than 600 million acres of land and natural resources.<sup>18</sup> States also hold considerable land assets.

To the extent NACs would be permitted to purchase or lease federal lands that are otherwise locked out of productive use, and furthermore allowed to monetize some of these assets' benefit streams by introducing them into the market economy, NACs could indeed yield some significant gains for society. However, it is not obvious why a new class of corporation is needed to achieve this end. Furthermore, because NACs would be subjected to the unscientific accounting found in the EPRs, NACs could easily prove to be a cure far worse than the disease.

Any revenue generated through privatization efforts should be valued based on standard GAAP accounting methods, avoiding the need for the experimental EPR methodology. If necessary, other reporting could supplement the GAAP reporting. For example, aggregated measures of output like GDP tend to better account for the "social," or total, impacts of environmental investments than do the private values reflected in standard business accounting statements. Assessing the net contributions of natural assets to GDP would account for most market failures not covered in a firm's financial statements, and

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<sup>17</sup> Legal Information Institute of Cornell Law School, "Public Benefit Corporation," accessed January 17, 2024, [https://www.law.cornell.edu/wex/public\\_benefit\\_corporation](https://www.law.cornell.edu/wex/public_benefit_corporation).

<sup>18</sup> James Broughel, "Comments on Proposed Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis," at 9.

would do so in a manner far better than the EPR methodology promises to do.<sup>19</sup> To the extent, that supplementary accounting is needed or desired, a measure like GDP is well-suited for this purpose.

### **Conclusion.**

I urge the SEC to decline approval of the NAC company class and associated EPR reporting requirements. The EPR methodology lacks a sound basis in economics or accounting. Instead it relies on experimental and controversial techniques like the UN SEEA framework. Requiring these disclosures risks undermining confidence in financial reporting and will introduce systemic biases into the asset valuation process.

Moreover, the conflicts of interest stemming from NYSE's part ownership of IEG, the sole provider of required EPR methodology, threatens the integrity of financial markets. Not only does IEG (and by extension NYSE) stand to profit from the NYSE's proposal to list NACs, casting doubt on the NYSE's ability to responsibly govern the market for NACs, but allowing NACs onto a prominent exchange introduces retail investors to unnecessary risks. It follows that the IEG and NYSE will likely profit at investor expense. This directly conflicts with the SEC's mission to protect retail investors.

NACs remain an unproven concept without evidence of actual investor demand. The SEC must fulfill its mission of protecting investors by shielding them from a risky and unprecedented social experiment. I urge reliance on proven financial reporting methods, coupled with widely-accepted economy-wide measures of aggregate social value like GDP if need be. The EPR methodology should be rejected in its entirety.

Sincerely,

James Broughel, PhD  
Senior Fellow, Competitive Enterprise Institute

**Attachment:** James Broughel, "Comments on Proposed Guidance for Assessing Changes in Environmental and Ecosystem Services in Benefit-Cost Analysis."

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<sup>19</sup> James Broughel, "In Praise of GDP," *Literary Economist Newsletter*, August 28, 2023, <https://literaryeconomist.substack.com/p/in-praise-of-gdp>.