COMPETITIVE ENTERPRISE INSTITUTE

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January 18, 2024

TO: Securities and Exchange Commission

FROM: Stone Allen Washington; Research Fellow at the Competitive Enterprise Institute

RE: No. SR-NYSE-2023-09

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

I appreciate the opportunity to provide comments on whether to approve or disapprove the rule change proposed by the New York Stock Exchange ("NYSE" or "Exchange") to amend the NYSE Listed Company Manual to accommodate new listing standards for "Natural Asset Companies" (NACs).[1] If the Securities and Exchange Commission (SEC) adopts the NYSE's proposed amendment, it will enable one of its subordinate self-regulatory organizations (SROs) to radically overhaul its entire public listing process for stock investing. The SEC must not permit the NYSE to introduce chaos into the public markets with this substantive policy change masquerading as a listing update. I urge you to disapprove the NYSE's proposal for the following reasons outlined below.

Insufficient time for response

The Commission originally provided an inappropriate and unreasonable amount of time (21 days) for public response on the proposed rule change. This current opportunity to submit comments on the order[2] does provide more time to comment on the proposed rule change. However, the sheer magnitude of what this proposal seeks to achieve by introducing a new form of corporation into the public markets warrants a much longer time period for outside response. NACs present a highly complicated and unprecedented concept before investors. The public needs far more time to analyze this major rule change than what has been allowed.

NACs are fictional and undermine the SEC's core responsibilities

The concept of NACs is antithetical to the SEC's core obligations to prevent fraud in the public markets, maintain fairness and efficiency in the markets, and to facilitate capital formation. NACs frustrate each

[1] Federal Register :: 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", US Securities and Exchange Commission, Notice of Proposed Rulemaking, 88 FR 68811, October 4, 2023, https://www.federalregister.gov/documents/2023/12/28/2023-28611/self-regulatory-organizations-new-york-stock-exchange-llc-order-instituting-proceedings-to-determine#footnote-24-p89795

[2] Ibid.

of these responsibilities by introducing an unorthodox system for subjectively valuating nonfinancial assets. This rule proposes a bizarre and untested new type of investment product that will be lost on most investors accustomed to standard securities. NACs impair market efficiency since investors cannot reasonably discern the value of a natural asset when the investment vehicle in question must adhere to the rule's prohibition against commercial activities. As a consequence, NACs undermine the SEC's efforts to facilitate capital formation, since invested capital can only be expended toward the "conservation, restoration, or sustainable management"[3] of the lands. NACs are incapable of generating capital returns for the benefit of their shareholders. Rather, these entities will only redistribute existing capital toward sustainability. This keeps capital away from economically stimulating commercial uses for land management, such as through mining, lumbering, and fracking.

The NYSE's proposed rule does not meet the SEC's standards for approval. The subjective purpose of the NAC rule change—to end a perceived overconsumption and underinvestment in nature—does not comport with the federal statutory requirements for permitting a rule change[4]. Specifically, the NAC proposal does not align with an existing public interest, nor does it align with the NYSE's basic administration, as it seeks to introduce an entirely new environmental-based concept to investors. This spans beyond the self-regulatory scope of the NYSE's operations. The proposed NAC rule threatens the NYSE's registration status as a national securities exchange because the Exchange seeks to regulate "matters not related to the purposes of this chapter or the administration of the exchange"[5]. The SEC is obligated to disapprove the rule on these grounds alone.[6]

The most apparent issue with the NAC proposal is that it fails to acknowledge a critical purpose for the proposal. While the NYSE is seeking "to permit the listing of common equity securities of Natural Asset Companies"[7] as the proposal suggests, it also seeks to create a new corporate enterprise out of thin air. Both goals are unrealistic. Since NACs do not exist in any shape or manner, there are no common equity securities for NACs to possess. For the NYSE to suggest otherwise is highly misleading[8], as it wrongfully gives the impression that NACs operate in t in the existing marketplace. The SEC is obligated to uphold its securities laws (Rule 10b-5) to prevent the NYSE from misleading investors about the nature of its proposed amendment. The SEC approving the NYSE's rule would validate a new corporate venture that poses a substantial risk for securities fraud.

NACs are incompatible with public listing standards

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[3] Ibid. See pg. 5.

[4] See 15 U.S. Code § 78s section 3A – "Registration, responsibilities, and oversight of self-regulatory organizations", https://www.law.cornell.edu/uscode/text/15/78s

[5] See 15 U.S. Code § 78f section b5 – "National securities exchanges", https://www.law.cornell.edu/uscode/text/15/78f#:~:text=The%20rules%20of%20the%20exchange%20are%20designed%20to%20prevent%20fraudulent,to%2C%20and%20facilitating%20transactions%20in

[6] Ibid. See Section 2B.

[7] Ibid. See the NAC rule's proposed "purpose" as outlined on pg.2.

[8] See SEC Rule 10b-5, which establishes that it is illegal to: "(a) *employ any device, scheme, or artifice to defraud,*
(b) *To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or*
(c) *To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security."*

There does not appear to be any explicit authority (whether directly or indirectly) for the NYSE to create a new form of corporation. The Exchange itself acknowledges that NACs are merely “a new concept”, unintroduced into the mainstream investor community[9]. This proposal is intended to leverage the SEC’s quasi-legislative power to breathe life into an unincorporated idea. It ignores how only Congress possesses the power to create and introduce new corporate enterprises. Congress can pass a statue of incorporation or regulate domestic corporations so long as it pursues some specific legal purpose aligned with the Constitution[10]. Perhaps the earliest example was in 1791, when Congress passed a bill that incorporated the First National Bank of the United States. The Bank originally began as a private stock corporation that was later transitioned into a government-chartered enterprise. The Supreme Court determined that Congress possessed the sole authority to charter a federal bank in accordance with the Constitution[11].

The NYSE seeks to amend its Manual to accommodate the listing of NACs. When a corporation seeks to be listed, the NYSE must first assess a host of factors that qualify a corporation for public entry. Given that NACs do not exist, it is impossible for them to meet even the most basic requirements. Amending the Manual to accommodate non-existent and fictional firms is inappropriate, since it is akin to “putting the cart before the horse.”

The first sentence in the introduction of the Manual states, “A listing on the New York Stock Exchange is internationally recognized as signifying that a publicly owned corporation has achieved maturity and front-rank status in its industry.”[12] In this instance, the NYSE is seeking to list a type of company that has not only failed to achieve maturity, but has not even been born yet.

NACs do not begin to meet the NYSE’s minimum standards for listing new public companies. When looking to the minimum numerical standards for listing common equities, the NYSE requires that every company seeking to go public must possess upfront at least 400 shareholders, each holding at least 100 shares of trading units within the company.[13] Alternatively, the company must possess between 500-2,200 stockholders managing an average trading volume of 500,000 shares. The proposed rule wrongfully assumes that NACs already own common stock equities, and thus, seeks to expand the NYSE Manual “to permit the listing of common equity securities of Natural Asset Companies.”[14] But, given that NACs do not already exist as private companies, they do not possess any common equity securities. Nor do they possess any stockholders.

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[9] Ibid. See Section II, Part A, pp. 4-5 of the proposed NAC rule.

[10] Victor Morwetz, “The Power of Congress to Enact Incorporation Laws and to Regulate Corporations”, Harvard Law Review, June 1913, https://www.jstor.org/stable/1326363

[11] See *McCullough v. Maryland (1819)*, where the Supreme Court unanimously ruled that Congress possessed the authority to charter a second national bank. In a federal context, this unique authority is reserved only to Congress, not to a quasi-governmental SRO. This stands as one of the Court’s most significant cases of congressional power.

[12] Regulation: NYSE Listed Company Manual, 101.00, Introduction (srorules.com)

[13] “Listed Company Manual 102.01A”, NYSE, https://nyseguide.srorules.com/listed-company-manual/09013e2c8503fc99

[14] Ibid. See pg. 2.

The proposed rule does not even provide a roadmap for how NACs would ever acquire such securities absent any private market presence, official ownership, or corporate legitimacy. Thus, the NYSE should not be allowed to bypass its Manual's established listing requirements by imposing a nonconforming NAC amendment that doesn't pass muster. The rule presumes that NACs can be introduced to the public markets as an initial public offering (IPO). However, the Manual requires companies to possess an aggregate value of at least $40 million at the time of floating their IPO before investors.[15] The NYSE failed to provide any official valuation for natural assets or what the scope will be to capture available public/private lands as natural assets. In absence of any official market value for natural assets, the SEC should prohibit the NYSE from overriding its own Manual to accommodate the formation of NACs. As the overseer and officiator of NYSE listing standards, the SEC should disapprove the proposed NAC rule, given that this fictional entity cannot meet the most basic existing requirements within the Manual.

NACs bypass state incorporation laws

In a similar vein, the proposed NAC amendment would upend existing state incorporation laws. Public corporations traditionally begin as private corporations, with an established track-record in the private markets. The NYSE seeks to erode this process by introducing a radical new form of publicly-traded company that has never before been incorporated by the states. Typically, state incorporation laws facilitate a specific process by which private shareholders must file a certificate of incorporation[16] for consideration by a state government. If approved by the state, the corporation must undergo validation as a chartered entity that is recognized under state incorporation law.[17] For the proposed rule, there is no discussion or clarity on this state level process and the NYSE appears to be fast-tracking a new public market entry for a type of firm whose state-level creation is not even clarified. NACs thus could come into direct conflict[18] with state incorporation doctrine[19] regarding the proper formation of new businesses. The NYSE seems to remove state review from the equation by laying out the requirements for what a NAC's corporate charter must encompass[20].

The Small Business Administration (SBA) provides helpful guidance on the incorporation process[21]. According to SBA, every emergent domestic corporation must possess its own set of corporate bylaws to outline executive responsibilities, officer positions, and internal governance structure. Additionally, every new business must possess its own articles of incorporation which provides a comprehensive outline of the business structure as recognized by every state that the firm is incorporated in. Presently,

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[15] Ibid. See 102.01B of the NYSE's Listed Company Manual.
[16] Julie Ross Godar, "What 'incorporated' means", Carta, March 28, 2023, https://carta.com/blog/what-incorporated-means/.
[17] See "Choosing a State of Incorporation", USA Corporate Services Inc., https://www.usa-corporate.com/start-us-company-non-resident/where-to-incorporate/states/?cn-reloaded=1
[18] Center for Environmental Accountability, "Briefing – NYSE Listing Standards for Natural Asset Companies [undisclosed]", Boyden Gray PLLC
[19] Ibid. Godar, "What 'incorporated' means". Refer to the following quote, "If you're ready to form your legal entity—whether as a corporation or an LLC—you have to choose a state to set it up in. You can set up within the U.S. state where you will do business or pick another state (like Delaware), as long as you properly qualify to do business with every state you're actively operating in."
[20] Ibid. See the section on "required corporate documents", pp. 13-14, for the proposed NAC rule.
[21] See "Register your Business", Small Business Administration, https://www.sba.gov/business-guide/launch-your-business/register-your-business

NACs do not possess any established corporate bylaws nor articles of incorporation, and thus do not meet the entry-level qualifications for new corporations to become registered legal entities. States opposed to the unlawful formation of NACs within their boundaries may go so far as to designate them as "foreign" or "alien corporations", with the caveat that NACs are not officially incorporated anywhere else.

NYSE fails to justify the creation of NACs in lieu of public benefit corporations

Overall, the NYSE lacks any justifiable reason for creating NACs. Benefit corporations already exist for some of the same reasons given as justification for the creation of NACs. Benefit corporations are formed with the intent to address prevailing environmental issues as part of the general pursuit to make a profit. By comparison, NACs would exist solely to tackle perceived environmental issues[22], while channeling all proceeds toward environmental sustainability efforts. Other than the general regulatory compliance costs of becoming a public company due to laws such as Sarbanes-Oxley, there are no market barriers to entry for private benefit corporations seeking to go public. There are already many public benefit corporations listed on the NYSE.[23] The NYSE does not even acknowledge the existence of benefit corporations in its proposed rule change, perhaps as a means to hide the inherent redundancy of NACs.

Also problematic is the process by which NACs would become publicly traded companies. In order to become a benefit corporation, owners of a company need only receive a nongovernmental certification from a third party, such as B-Lab[24] (a nonprofit organization). Once certified, only then do they need to be recognized by a state government before conducting business. This stands in stark contrast with NACs, which cannot be formed unless there is direct intervention by the federal government (SEC). Unlike benefit corporations, NACs become self-certified by liberty of the IEG imagining them into existence, the NYSE listing them onto its exchange, and the SEC validating the entire process. This entire effort seeks to use the imprimatur of the NYSE and SEC as a way to generate investor confidence in an artificial government-created market. The IEG's NAC proposal would remain nonexistent without the NYSE's unwarranted intervention and the SEC's approval.

NYSE—IEG conflict of interest

There does not appear to be any realistic means for introducing fictitious NACs to the investor community without the SEC approving an unsanctioned public-private partnership. The proposed rule exposes us to this problematic partnership between the NYSE and the Intrinsic Exchange Group (IEG), the private advisory company responsible for envisioning NACs[25]. The NYSE is both a public company and a self-regulatory exchange that would share partial ownership of produced NACs with IEG. This

[22] Ibid. See "Proposed Rule Change for Natural Asset Companies", pg. 4. NACs would be formed as a means of "ending the overconsumption of and underinvestment in nature".
[23] "Public B Corps", https://bcorps.info/
[24] "About B-Lab", B Lab, https://www.bcorporation.net/en-us/movement/about-b-lab/
[25] "Natural Asset Companies (NACs)", NYSE, https://www.nyse.com/introducing-natural-asset-companies

raises a substantial conflict of interest,[26] The proposed IEG partnership would erase the NYSE's neutrality as an SRO by undermining its delegated responsibility as a dispassionate enforcer of federal securities laws and listing standards. As a result, the NYSE will be unable to faithfully enforce the listing standards of a public company that it helped create. The SEC should not permit the NYSE to partner with a private corporation like IEG by blessing a favorable regulatory framework for NACs to occupy. Doing so insulates NACs from proper accountability, while denying fairness to every other NYSE-listed company that does not receive any favorable regulatory treatment.

NACs introduce market fraud through misrepresentation

There appears to be no reasonable means for NACs to generate profit. Given that the primary purpose of a NAC is to "actively manage, maintain, restore (as applicable), and grow the value of natural assets and their production of ecosystem services,"[27] owners will not be incentivized to generate capital returns on these activities. Any potential capital generated from the corporation goes directly to the preservation or restoration[28] of the natural assets being managed, rather than to the company's shareholders. This undermines the primary purpose for why publicly traded corporations exist in the first place: to generate capital returns for shareholder benefit.[29] The proposed NAC rule fails to establish any viable means for natural assets to accrue financial value over time for investor profit. As a result, the very concept of NACs seems to be antithetical to our traditional understanding of shareholder capitalism in America. This is further compounded by the self-evident reality that every publicly listed company (even benefit corporations) on the NYSE seeks to generate some form of financial return on its investments.

Given that public and private lands are nonfinancial assets, it would not be reasonable to trade them like stock in the financial markets[30]. Nonfinancial assets possessing tangible qualities, like land, are defined as those that cannot be traded in the stock market. The public and private lands that NACs would occupy represent "non-produced nonfinancial assets," since they encompass natural resources that came into

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[26] See comment by Ernst and Young on the Natural Asset Companies rule, October 25, 2023, https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309-338619-863622.pdf. See the following concern raised in the comment, "The proposed rule change would require a natural asset company (NAC) listed on the NYSE to apply the new Ecological Performance Reporting Framework (the reporting framework) of the Intrinsic Exchange Group (IEG). However, the IEG appears to be significantly involved in both the development of NACs — through its advisory and promotion work — and the maintenance of the reporting framework. Therefore, there may be a risk, in appearance or fact, of a conflict of interest associated with such activities."

[27] Ibid. See pg. 2.

[28] Ibid. See the following definition of "sustainable operations" from the NAC rule, "Sustainable operations are those activities that do not cause any material adverse impact on the condition of the natural assets under a NAC's control and that seek to replenish the natural resources being used." This expressly prohibits every profitable commercial activity that do not achieve sustainability.

[29] Milton Friedman, "A Friedman doctrine-- The Social Responsibility of Business Is to Increase Its Profits", New York Times, September 13, 1970, https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html

[30] "Non-Financial Asset", Corporate Finance Institute, https://corporatefinanceinstitute.com/resources/accounting/non-financial-asset/. See the following in regard to why NACs cannot be traded on a stock exchange, "A non-financial asset refers to an asset that is not traded on the financial markets, and its value is derived from its physical characteristics rather than from contractual claims. Examples of non-financial assets include tangible assets, such as land, buildings, motor vehicles, and equipment, as well as intangible assets, such as patents, goodwill, and intellectual property. "

production absent human means.[31] The idea that the NYSE (and SEC) should take initiative by creating a means to help money flow into a non-tradeable asset class is prima evidence that the private markets have not chosen to invest in this idea. This rule would misrepresent what natural assets truly are by treating them as something with a contractual claim, rather than properly assessing them by their physical net worth. As a concept, NACs do not even comport with the SEC's own recognition of corporate issued equities.[32] One cannot artificially price the process of sustaining public goods like clean air, untouched forests, or ungrazed pastures.

NACs distort established standards of accounting

Another issue with the proposed rule lies with its problematic accounting framework. Just as NACs are unknown to the broader public and untested in the private markets, so too is the radical social-based accounting system introduced by this rule.[33] This structure falls prey to a subjective valuation of land, seeking to attach financial worth to nonfinancial, subjective qualities – for example, "sustainability" -- of property such as a National Park, a national wildlife reservation, or wilderness area. These are sacred, designated properties that are protected by the federal government and were never intended to be bargained for on an open market before private investors.

The proposed NAC rule endeavors to overturn official accounting standards recognized under Generally Accepted Accounting Principles (GAAP) by introducing a subjective new form of valuation that has no basis in U.S. law.[34] This new accounting method, based on the UN System of Environmental Economic Accounting framework (SEEA), seeks to use public goods like clean air, fresh water, and mineral enriched soil as purchasable social benefits that can be quantified as tradeable assets. This inversion of social benefits to capitalistic funds enables a nonfinancial asset class like NACs to undergo a financial audit, according to the NYSE's proposal. Such skewed reasoning results in deceptive accounting, pure and simple. As a result, the SEEA may impair the ability for other SROs like the Public Company Accounting Board, to properly conduct routine audits on all publicly listed corporations. There will be no standardized or uniform means for auditing public corporations when a class of these—NACs—abide by an entirely different, foreign set of accounting standards that were never codified into U.S. law.

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[31] Ibid. See section on "non-produced assets". "Examples of non-financial non-produced assets include natural resources (minerals, water resources, virgin forests, etc.) leases and licenses."

[32] See the Securities and Exchange Commission's "financial instruments" document, 2012. Specifically, the following portion on corporate equities, "equity securities and options are generally valued based on quoted prices from the exchange or market where traded and categorized as Level 1 in the fair value hierarchy. To the extent quoted prices are not available, prices are generally derived using bid/ask spreads, and these securities are generally categorized in Level 2 of the fair value hierarchy." Nonexistent NACs lack both quoted prices or an established means for bidding them on an exchange, absent any pre-existing investor interest.

[33] See public comment by the Financial Fairness Alliance on the Natural Asset Company rule. See in particular the following passage on pp. 3-4, "A business that claims to be for-profit when it is clearly a social welfare non-profit company is a deception to the investing public. Creating new accounting standards to try to create the illusion of economic value where none exists under GAAP or IFRS at least has the benefit of making this fact apparent."

[34] Ibid. See Financial Fairness Alliance public comment.

NACs misallocate public capital at investor expense in the name of ESG

With the above in mind, a clearer picture emerges of the realities of NACs. If approved, they would be deceptive asset vehicles to redistribute public capital away from economically stimulative commercial activities and toward a strict "sustainability" that would make society poorer. The NYSE proposes a new form of accounting that would slip NACs under the radar of proper scrutiny, while simultaneously validating a new corporate investment class; both being incompatible with existing laws of accounting and state incorporation. The NYSE is advancing an environmental, social, governance (ESG) agenda by attempting a widespread capture of public capital. This capital would subsequently be trapped into natural assets with no realistic means to enhance shareholder value or even the value of the properties being invested in.

The NYSE is pursuing this during a time that domestic and global demand for ESG funds has either declined or experienced major outflows of capital.[35] NACs appear to be a retaliatory effort to negate this widespread retreat from ESG by forcing investors into a trapped bargain. Commercially profitable grazing, farming, and lumbering is exchanged for strict environmental sustainability of lands that have no business of being up for sale.[36] The NYSE hopes that the rule will inspire an investment shift toward sustainability[37] capable of offsetting the rising dissatisfaction that retail investors and institutions have toward ESG funds.

Issues with trading public lands

Additionally, the proposed rule fails to outline how federal departments like the Department of Interior, the U.S Bureau of Land Management (BLM), the National Park Service, and the U.S. Forest Service will coordinate with the SEC on what lands will be offered as part of tradeable stocks. There is no roadmap outlined for the SEC to claim authority over these lands for use as an investment vehicle on the NYSE. Inter-agency conflict will inevitably result if the NAC rule is approved, as it undermines several existing laws that govern public land management.[38]

Based on the proposal, land trusts will likely enter into conservation leases with BLM under its proposed rule on "Conservation and Landscape Health."[39] NACs may then license the leases as "ecological rights" under its rule change. However, neither the NYSE nor the SEC have the authority or expertise to deal

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[35] See Morningstar's report, "Europe's ESG Funds Suffer More Outflows", Reuters, October 25, 2023, https://www.reuters.com/sustainability/sustainable-finance-reporting/europes-esg-funds-suffer-more-outflows-morningstar-2023-10-25/. See also, Stone Washington, "Shareholder Support for ESG Proposals is Falling", Competitive Enterprise Institute, September 19, 2023, https://cei.org/blog/shareholder-support-for-esg-proposals-is-falling/

[36] See the following statement by Marlo Oaks, Treasurer of Utah, regarding Natural Asset Companies, Utah State Treasurers Office, https://treasurer.utah.gov/natural-asset-companies/

[37] Ibid. See Marlo Oaks' WSJ piece on Natural Asset Companies, specifically the following passage, "but it seems clear the goal is to sell NACs to endowments, sovereign wealth funds, pension funds and other investors demanding greater direct and immediate ESG presence in their portfolio."

[38] See comment by Emily Hendrickson and Debra W. Struhsacker, Women's Mining Coalition, January 2, 2024, https://www.sec.gov/comments/sr-nyse-2023-09/srnyse202309-338619-863622.pdf

[39] Bureau of Land Management, "Conservation and Landscape Health", proposed rule 88 FR 19583, April 3, 2023, https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health

with public land issues, as is being proposed. The NYSE may not proscribe a subjective value to public property, and list them on an open exchange as if they were always meant to be tradeable funds. There is no actual financial value[40] for these public lands outside of the symbolic meaning they represent to the federal government.

The NYSE claims that capital can be generated through NAC land preservation. These include "eco-tourism in a natural landscape or production of regenerative food crops in a working landscape."[41] However, there are a number of problems that arise from the rule's revenue generation requirement. For eco-tourism, the NYSE fails to acknowledge that the process to attract tourism may likely require commercial renovation of the preserved lands. The chartered excavation, construction, and modification to the natural assets in order to accommodate these eco-tourist attractions threatens to upend the rule's requirement for owners of NACs to facilitate "sustainable activities." Commercial tourism may prove to be invasive to the natural asset's formerly untouched eco-system, thus undermining the very purpose for creating such companies in the first place.

Perhaps the most problematic proposal for revenue generation in NACs stems from the sale of carbon credits or offsets. The proposed rule change would introduce carbon markets[42] as a potential regulatory vehicle for revenue generation in a national stock exchange. Carbon credit markets are floated as an unproven means for profit generation, channeling capital toward climate change reduction projects. This aligns with the above stated aim of the NYSE to inspire a market shift toward sustainability by using SEC delegated power to create an artificial market for NACs that advance carbon credit trading. Carbon trading would not be a viable[43] consideration for NAC revenue generation absent a direct government intervention to induce market participation in this unpopular scheme. The proposed NAC rule represents a brazen attempt at doing this. The NYSE relies upon hyperinflated political interest[44] in the carbon trading markets as a backdrop for promoting this insufficient means to generate money from its NAC rule.

Conclusion

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[40] Marlo Oaks, "Companies That Can't Make Money", Wall Street Journal, November 15, 2023, https://www.wsj.com/articles/biden-administration-invents-companies-that-cant-make-money-ad71f8f3

[41] Ibid. See "Proposed Rule Change for Natural Asset Companies", pg. 5.

[42] Danny Broberg et, al., "Government Intervention in Support of Quality Carbon Credits", Bipartisan Policy Center, April 20, 2023, https://bipartisanpolicy.org/report/carbon-credit-report/

[43] Richard Morrison, "Even the University of California system has dropped carbon offsets", Competitive Enterprise Institute, December 22, 2023, https://cei.org/blog/even-the-university-of-california-system-has-dropped-carbon-offsets/

[44] See "USDA Releases Assessment on Agriculture and Forestry in Carbon Markets", October 23, 2023, where the following passage by Agriculture Secretary Tom Vilsack reads, "The Biden-Harris Administration is working aggressively to ensure farmers, ranchers, forest landowners, and tribal communities have opportunities to be part of the solution to climate change, all while cultivating new revenue streams and fostering investment in rural communities." This is exactly what the NAC rule aims to do by using carbon credits as a means to promote sustainable investing. https://www.usda.gov/media/press-releases/2023/10/23/usda-releases-assessment-agriculture-and-forestry-carbon-markets

In closing, for all of the reasons outlined above, I strongly urge the SEC to reject the NYSE's proposed rule regarding the listing of Natural Asset Companies. NACs do not exist anywhere in the realm of stock market investing. The NYSE should not be allowed to partner with a private advisory firm (IEG) to create NACs, undermine its own Manual to accommodate the listing of these nonfinancial assets, and use the SEC to validate investments at high risk for fraud by approving NAC trading in the public markets. Yet, this is exactly what the NYSE seeks to achieve in its proposed rule change. SEC Commissioners should prioritize the agency's core obligation to ensure steady public capital formation. "Ecosystem performance" cannot be substituted for financial performance, no matter how hard the NYSE attempts to confuse the two terms.

NACs are antithetical to everything stock investing represents because no publicly listed corporation exists primarily to achieve sustainability. To introduce NACs onto the NYSE would undermine what the SEC is institutionally obligated to facilitate via its capital formation guarantee. NACs can only capture capital and redistribute its use toward environmental activities that do not provide an actual means for shareholder return. NACs are not natural and are certainly not real companies. The SEC should not be fooled into thinking otherwise by embracing a high-risk for fraud at the behest of one of its SROs, the NYSE. Never before has the agency approved the listing of an asset class onto a national exchange that requires the introduction of wholly new accounting standards. Doing so is statutorily inconsistent (see SEC rule 10b-5) and undermines the agency's congressionally delegated authority. The SEC must not allow the NYSE to introduce chaos into the public markets with this substantive policy change masquerading as a listing update. As such, the SEC is obligated to disapprove the proposed NAC rule change.

Thank you for the opportunity to comment on this matter.

Sincerely, Stone Allen Washington

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