

COUNTY OF ELK

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December 22, 2023

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F. Street, NE
Washington, DC 20549

Re: SR-NYSE-2023-09 - Notice of Filing of Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies

Secretary Countryman,

This letter is to express our strong opposition to the NYSE Proposed Rule Change and to explain why we find this proposal so concerning.

The County of Elk has enjoyed an amicable working relationship for many years with the Allegheny National Forest, who are major landowners in our County.

Elk County includes many privately owned properties within the boundaries of and immediately adjacent to the ANF. We have an intimate understanding of how the ANF lands are managed affects virtually every aspect of life in our county along with the other areas in and around the ANF. Similarly, ANF managers understand those same impacts, and the ANF's obligation, under law, is to take those many impacts into account.

We strongly oppose the rule that would allow the publicly traded class of Natural Asset Companies (NAC's). NAC's will not be sensitive to, or even be aware of, the unique qualities of the local communities in and around the ANF or the outsized impacts the NAC's policies will have on those communities. By definition, NACs will operate with generic ideas of "sustainable" use on lands they do not own, don't understand the needs of, and likely will never even use/visit. For example, while forest fires are a problem on many national forests, this is not the case on the ANF. Ironically, the greatest threat identified by ANF management is the lack of young forest—meaning that MORE harvesting of older trees is necessary in order to yield a healthier forest and ecosystem.

Turning over land management control to NACs and their investors, leaving local stakeholders, landowners, and land managers out of the decision-making process, is not only impractical, but violates standing law and policy. Only Congress¹ and state legislatures can assign management authority for their public lands. Despite recent efforts to write this into their Rules utilizing conservation easements, we question the ability of managing agencies to

¹ U.S. Const. art. IV, § 3, cl. 2.

transfer land management authority² to third parties without Congress' approval³. In fact, several pieces of legislation to allow state governments to control/manage federal lands within their boundaries have failed to pass in Congress.⁴ In addition, the Congressional Research Service (CRS) has stated "Federal agencies cannot delegate management of federal land to states or other outside entities unless there is express statutory authority to do so."⁵ Their report on the subject also states, "Under various statutes,⁶ federal agencies are required to cooperate, consult, or coordinate with states (and other entities/individuals) in ways that stop short of full delegation." The use of conservation easements to enroll public lands in NACs, when viewed alongside the Intrinsic Exchange Group's (IEG) massive scope of "values captured in a natural asset company"⁷, would be inappropriate.

In recent years, conservation easements held by both government agencies and conservation organizations have been heavily promoted to private property owners, who are often financially desperate and uninformed on the intricacies of these agreements. Those conservation easements could also be enrolled in a NAC, placing additional properties outside the orbit of local understanding. This is perfectly satisfactory to the select group of powerful individuals, organizations, and/or foreign interests who seek to gain control of our nation's land and resources, but wholly unsatisfactory to the counties, rural school districts and municipalities which host public lands and already struggle due to their dwindling local tax bases and reliance upon national forest timber revenues.

Investment in NACs via the NYSE would be available primarily to wealthy individuals/corporations and, potentially, foreign entities while being inaccessible to most American citizens lacking the money to invest in the stock market. It will benefit only government and large private landowners who wish to profit from enrolling their property in this scheme, and the NACs and their investors, of course. NACs would be a successful means of circumventing the legislative process and rights of American citizens, forcing the use of our land and resources as a NAC decides is "sustainable". You have only to look at the Intrinsic Exchange Group's (IEG) description of a hypothetical "hybrid project" to understand the level of control a NAC would have over not only the resource (*i.e., a bay*⁸), but influence over everything connected and in proximity to it, including communities and private enterprises and property. This would give them the power to control what type of development occurs and where, not local stakeholders. The health of our public forest lands, the economic

² Congressional Research Service, R44267, State Management of Federal Lands: Frequently Asked Questions (12/16/2016) – Do Federal Agencies Have Authority to Delegate Management of Federal Land: <https://crsreports.congress.gov/product/pdf/R/R44267/5>, pg. 7, "Courts have found that an agency delegates its authority when it shifts to another party "almost the entire determination of whether a specific statutory requirement ... has been satisfied", footnote 23: U.S. Telecom Ass'n v. FCC, 359 F.3d 554, 565-66 (D.C. Cir. 2004), footnote 19, at 567.

³ U.S. Telecom Ass'n v. FCC, 359 F.3d 554, 565-66 (D.C. Cir. 2004) ("[S]ubdelegations to outside parties are assumed to be improper absent an affirmative showing of congressional authorization.... When an agency delegates authority to its subordinate, responsibility—and thus accountability—clearly remain with the federal agency. But when an agency delegates power to outside parties, lines of accountability may blur, undermining an important democratic check on government decision-making. Also, delegation to outside entities increases the risk that these parties will not share the agency's "national vision and perspective...").

⁴ Congressional Research Service, R44267, pg. 7: "In the past several years, roughly 20 states have taken actions to obtain or foster more state and local control over lands and resources.", see footnote 39.

⁵ Ibid, footnote 22: See, for example, Forest Serv. Emps. For Envtl. Ethics v. United States Forest Serv., 689 F. Supp. 2d 891, 903-05 (W.D. Ky. 2010) (finding that certain conservation agreements delegated too much authority to a private organization, with too little oversight by FS).

⁶ Examples include FLPMA, codified at 43 U.S.C. §§1701-1771, and the Multiple-Use Sustained-Yield Act of 1960, codified at 16 U.S.C. §§528-531.

⁷ See About NACS: <https://www.intrinsicexchange.com/nacs>

⁸ Intrinsic Exchange Group example of a "hybrid area project": <https://www.intrinsicexchange.com/hybrid-areas>

stability of communities, and the rights of private property owners within and adjacent to those lands would all be severely and negatively affected by NACs.

Our public lands are each required (under the [National Forest Management Act of 1976](#)⁹, the [2012 Planning Rule](#)¹⁰, and the principles of the [Multiple Use Sustained-Yield Act of 1960](#)¹¹) to develop and periodically update a science-based Land and Resource Management Plan (LRMP) through a local collaborative process¹² with the public given multiple, ample opportunities to review and comment on these plans as they are being developed. The public also has opportunities to review and comment on projects proposed on our public lands, and the land managers consider that input. This is a system that works and benefits the managing agency, the public land, users/visitors, and the host communities.

Allowing NACs and their investors to have outside control in how our public lands are used/managed would also undermine this collaborative process that balances the management and use of our public lands with local needs and issues, ensuring both a healthy ecosystem and healthy communities. The unique components of local ecosystems – not only the environmental portion but also the human portion (including educating students, maintaining roads, sustaining jobs and businesses, and the like) – will be ignored by NACs and unduly burden the nearby communities and landowners.

For example, invasive plants, pests, animals, and diseases are severely impacting our forests, waterways, and farmlands at an alarming rate and are an example of the conditions and issues NACs could compound. The ANF estimates that 20% of the Forest is currently impacted by at least 75 documented invasive plant species. This is increasing faster than infestations can be treated, and more are arriving nearly every year. Specifically, Glossy Buckthorn has taken over approximately 50,000 acres of the ANF and adjacent state and private lands. If any of these lands were enrolled in a NAC, which decided removal of this invasive species does not fit with their idea of a “sustainable” use of the land, all these lands would soon be completely taken over by this aggressive invasive species. It would crowd out native trees, shrubs, plants, and animals, irreversibly impact the entire ecosystem, and destroy the host and adjacent communities that depend on ANF timber sale revenues, recreation, and tourism generation. While a NAC may or may not deny treatment of invasive plants, animals, pests and diseases, there is no guarantee that they would not, which is a risk we cannot take.

Likewise, if our public forests are not actively and sustainably managed for timber production (as required by the Multiple Use Sustained Yield Act of 1960⁷), it negatively affects forest health and local economies, and creates shortages in the timber products that our country and the world need. The same is true of oil and gas production. On the ANF, most of the sub-surface rights are privately owned and would also be threatened by NACs, along with surface minerals, grazing, water use, food production, firewood permits, hunting and fishing, recreation...any use that NACs could control. The natural resources produced on public lands are critical to the survival of our communities and provide many family sustaining jobs.

Communities that host public lands are denied tax revenues those lands could generate if they were privately owned. In our region, the ANF occupies 21% to 43.6% of each of the four counties it occupies. In some western states, this percentage is even higher. When forest management

⁹ National Forest Management Act of 1976: <https://alleghenyforestalliance.org/wp-content/uploads/2019/06/NFMA1976.pdf>

¹⁰ 2012 Planning Rule: <http://www.fs.usda.gov/planningrule>

¹¹ Multiple Use Sustained-Yield Act of 1960: <https://alleghenyforestalliance.org/wp-content/uploads/2019/06/musya60.pdf>

¹² Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11, tit. IV, sec. 4001, 4003(b)(2), 4003(b)(6), 4003(d)(2)(C), 123 Stat. 991, 1141–45 (2009) (codified at 16 U.S.C. §§ 7301, 7303).

produces timber sales (on appropriate portions of the forest and within the limitations of the forest's LRMP), 25% of those proceeds are distributed to the host communities in lieu of taxes. Because of the number of acres occupied by the ANF, if our schools and municipalities lost these revenues, they would have to drastically increase the tax burden on private property owners just to stay afloat and push our residents further into poverty. NACs would almost certainly halt timber production and therefore eliminate this revenue stream for our schools and communities, which is already a small fraction of the tax revenues that could be realized on those acres.

For decades, environmentalists/conservationists have accused land management agencies of profiting off our public lands and the resources they contain, yet this is exactly what NACs would do, as would government agencies who see enrolling our public lands in NACs as an income source "for the American taxpayer".¹³ Ironically, these same groups are okay with a NAC controlling public lands and resources for financial gain (and other potential ulterior motives). For this reason, we see the NAC as a vehicle for control by a very small, elite group and possibly foreign entities who want to control the land and resources of the U.S., and our government agencies are prepared to allow it.

In closing, we must point out that the desire to allow NACs (or anyone other than a government agency appointed by Congress) to control land use in the U.S. is unethical, illegal¹⁴, and could open our nation to the risks of foreign control and interference.

NACs would operate contrary to federal law and policy (cited previously) and, therefore, should not be allowed on the NYSE by the SEC. If you were to approve SR-NYSE-2023-09, we will be faced with a conflict with existing federal law as well as potentially aiding foreign entities in gaining control of U.S. lands and resources. We ask you to protect our nation and our citizens and deny the NYSE's proposed rule change. We would also ask that you extend the comment period to allow more American citizens the opportunity to comment that they deserve as the owners of our public lands¹⁵.

Please accept this comment letter as our very strong opposition to SR-NYSE-2023-09.

Respectfully,
Elk County Board of Commissioners


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¹³ <https://www.blm.gov/press-release/interior-department-releases-proposed-plan-guide-balanced-management-public-lands>

¹⁴ Congressional Research Service, R44267, pg. 4.

¹⁵ Supreme Court, 1911, "All the public lands of the nation are held in trust for the people of the whole country." Light v. United States, 220 U.S. 523, 537 (1911) (citing United States v. Trinidad Coal & Coking Co., 137 U.S. 160, 170 (1890)).