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January 3, 2024

Secretary
Securities and Exchange Commission
100 F St., NE
Washington, D.C. 20549-1090

Submitted via email to rule-comments@sec.gov

Re: Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies

Dear Madam Secretary,

The American Exploration & Mining Association (AEMA) submits these comments on the Securities and Exchange Commission (SEC) proposed rule change to amend the New York Stock Exchange (NYSE) Listed Company Manual to adopt listing standards for Natural Asset Companies (NACs), defined as a corporation whose primary purpose is to actively manage, maintain, restore, and grow the value of natural assets and their production of ecosystem services.

We are strongly opposed to the proposed rule change, as it could severely limit access to mineral resources essential for our Nation's economic and national security. The NAC concept could be used to acquire lands or rights in lands and place them off-limits to mining and other productive uses. The proposal also opens the door to foreign investment by our adversaries to restrict access to critical domestic resources, thereby exacerbating our dangerous reliance on foreign minerals and weakening U.S. competitiveness.

AEMA also endorses and incorporates by reference as though fully set forth herein the comments of the Women's Mining Coalition submitted on January 2, 2024.

We also reference the November 2, 2023 letter¹ to the SEC from three United States Senators outlining several concerns with the proposal. In that letter, the senators write, in part:

We are concerned that corporate involvement in the stewardship and control of our federal lands would create unintended consequences. The proposed rule could lead to a preservationist-only approach to federal land management instead of an

¹ https://www.risch.senate.gov/public/_cache/files/2/6/26ede68e-ff87-4f69-b00d-789beab76417/FD5F7F980A061BC97348F90EDE03593D.letter-to-sec-natural-asset-companies-final.pdf?source=email

“all-of-the-above” working lands approach as intended by the creation of our federal land programs.

We are also alarmed by the SEC’s allowance under the proposed rule of foreign investment in these uniquely U.S. assets. At a time in which we are actively working to deter our adversaries, we should not be open our federal lands up to investment from the same adversaries.

AEMA shares the serious concerns outlined in the Senate letter, as well the December 15, 2023 letter² led by Congresswoman Hageman and signed by thirty-one other Members of Congress.

Interest of Commenters

AEMA is a 129-year-old, 1,800-member national trade association representing the minerals industry with members residing in 46 U.S. states, 7 Canadian provinces or territories and ten other countries. AEMA is the recognized national voice for exploration, the junior mining sector, and maintaining access to public lands, and represents the entire mining life cycle, from exploration to reclamation and closure. More than 80 percent of our members are small businesses or work for small businesses.

Our members have extensive first-hand experience with exploring for mineral deposits, finding and developing mineral deposits, permitting exploration and mining projects, operating mines, reclaiming mine sites, and ensuring that exploration and mining projects comply with all applicable federal and state environmental laws and regulations.

AEMA also is concerned that NACs could serve as an implementing tool for the Bureau of Land Management (BLM) proposed Conservation and Landscape Health Rule³, which introduces the concept of “conservation leases” that would *de facto* withdraw public lands from mineral entry. AEMA submitted extensive comments on the BLM’s proposed rule detailing the illegality of that proposal (see attached AEMA comment letter as Exhibit A).

The U.S. Needs a Reliable Domestic Mineral Supply Chain

Recent global events have exposed the United States’ supply chain vulnerabilities, highlighting the importance of an abundant and affordable supply of domestic minerals for America’s future. Global mineral demand is skyrocketing. As noted in a report from the International Energy Agency, keeping global temperature rise to below 2 degrees Celsius above pre-industrial levels will quadruple the demand by 2040 for the minerals needed to build wind turbines, solar panels, and electric vehicles. A faster energy transition — reaching net zero globally by 2050 as the Biden administration has called for— would require critical mineral inputs to increase sixfold by 2040.

² <https://hageman.house.gov/media/press-releases/hageman-leads-letter-calling-out-dangers-natural-asset-corporations>

³ <https://www.federalregister.gov/documents/2023/04/03/2023-06310/conservation-and-landscape-health>

Solar panels require silver, tin, copper, and lead; wind turbines use rare earths, copper, aluminum, boron, and zinc; electric vehicles are built with copper, aluminum, iron, molybdenum; and rechargeable storage batteries use lithium, vanadium, nickel, cobalt, and manganese. Approximately 40 percent of the gold now produced is used in electronics and computer chips that are needed for clean energy technologies to meet carbon emission reduction objectives to address climate change.

President Biden has promised to convert the entire U.S. government fleet – about 640,000 vehicles by 2030 – to EVs. That plan alone could require a 12-fold increase in U.S. lithium production to manufacture the lithium-ion batteries that power EVs, according to Benchmark Minerals Intelligence, as well as increases in output of domestic copper, nickel, and cobalt - and that's just for the U.S. government vehicle fleet. The magnitude of the minerals needed for a 100 percent EV market is even more staggering, and simply cannot be ignored.

The International Energy Agency (IEA) published a report at the end of July 2022 titled “Global Supply Chains of EV Batteries,” and noted that demand for EV batteries will increase from 340 GWh today to about 3500 GWh by the year 2030. To meet that demand, 50 new lithium mines, 60 more nickel mines and 17 more cobalt mines would need to come into production.⁴

Congress has taken note of this surge in demand, and through the Infrastructure Investment and Jobs Act of 2021 and the Inflation Reduction Act, has decided that it is inappropriate, unwise and dangerous to rely on hostile, untrustworthy or unstable countries to supply our country's minerals. Notably, the Inflation Reduction Act contains provisions requiring automakers to source significant portions of their EV batteries and components from domestic supply chains, or from countries with which the United States has free trade agreements. Congress has sent a clear message – Now is the time to get serious about building a reliable mineral supply chain. The U.S. mining industry stands ready to help build that supply chain right here in America.

Unfortunately, a lack of access to economically viable mineral deposits and a lengthy, inefficient federal permitting system has resulted in the United States being increasingly dependent on foreign sources of strategic and critical minerals. It's time that we, as a Nation, recognize this vulnerability and the vital importance of minerals to our national security, our economy, and our everyday lives.

We have heard a lot over the years about the importance of energy independence, but it is equally as important, if not more so, that we are minerals independent. Made in America must include “mined in America” and sourcing minerals from U.S. mines that use state-of-the-art environmental protection measures, put a premium on worker health and safety, and have financial assurances that guarantee reclamation when mining is complete.

Recycling will play an important role in meeting increasing metal demand, but it will not be enough. The IEA's report estimates that by 2040, recycling metals from spent batteries could only supply about ten percent of the minerals that will be needed.

⁴ <https://iea.blob.core.windows.net/assets/4eb8c252-76b1-4710-8f5e-867e751c8dda/GlobalSupplyChainsofEVBatteries.pdf>

The United States and our economy simply need more mines. According to the USGS' Mineral Commodity Summaries 2023, our country's import dependence for key mineral commodities has doubled over the past two decades, with the United States now 100 percent import-reliant for 12 of its critical minerals and more than 50 percent import-reliant for an additional 31 critical mineral commodities.⁵ This foreign reliance continues despite the existence of significant mineral deposits of many of these commodities within our borders. Moreover, U.S. mineral import reliance continues to increase as mineral demand from essential industries, such as energy and transportation, soars. Notably, the World Bank sees mineral demand for advanced energy technologies jumping by nearly 500 percent by the year 2050.⁶ Copper demand alone may rise as much as 350 percent by 2050, according to one estimate.⁷

Rare earth elements are important for EVs, and equally important for wind turbines and permanent neodymium-iron-boron ("NdFeB") magnets that are used in wind turbines and EV motors. Many rare earth elements are found in the U.S. However, currently rare earth mining, processing, and manufacture is dominated by China. China has 38% of the global rare earth reserves, 60% of rare earth mining, 85% of rare earth processing, and 90% of the manufacturing of rare earth permanent magnets. In the last month, China has restricted export of gallium, germanium, graphite, and rare earth processing technology.

In the United States, most hardrock mining takes place on federal land, after a lengthy and rigorous permitting process that involves local, state and federal regulatory agencies and many diverse stakeholders. Even after the mine begins operation, it must adhere to a myriad of environmental laws and regulations, and financial assurance instruments ensure that cleanup and restoration will take place when mining activities cease. However, mineral deposits are unique and rare. Unlike other economic development or infrastructure projects that have some flexibility in choosing where they are sited and can move accordingly - mineral deposits are where they are.

Almost every year, the federal lands available for mineral entry shrinks. According to the GAO, the federal government manages about 650 million acres, or 29 percent, of the 2.27 billion acres of land in the United States.⁸ Former Department of Interior Solicitor, John Leshy (now a professor at the University of California Hastings College of Law), estimated in 2021 that of the approximate 650 million acres of public lands, roughly 400 million acres are set aside for conservation and preservation purposes and are functionally off-limits to mining.⁹ He also calculated that during the period from 1980 to 2020, the acres of conservation and preservation lands grew from 250 million acres to 400 million acres.¹⁰ Federal lands have been withdrawn from mineral entry to protect a variety of "special places," from national monuments and

⁵ U.S. Geological Survey, 2023, Mineral commodity summaries 2023: U.S. Geological Survey, <https://doi.org/10.3133/mcs2023> at 6, 20.

⁶ <https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf>

⁷ <https://www.sciencedirect.com/science/article/abs/pii/S0959378016300802>

⁸ GAO Letter report to Senator Tom Udall entitled "Hardrock Mining: Availability of Selected Data Related to Mining on Federal Lands," May 16, 2019, available at: <https://www.gao.gov/assets/gao-19-435r.pdf>

⁹ John D. Leshy, *America's Public Lands – A Look Back and Ahead*, 67th Annual Rocky Mountain Mineral Law Institute, July 19, 2021.

¹⁰ *Id.*

wilderness areas to military bases. For example, the National Conservation Lands System already includes 35 million acres of pristine, culturally diverse and scientifically important sites that have been withdrawn from mineral entry, including: 122 national monuments, 28 of which are managed by BLM; 23 national conservation areas; 30 National Scenic and Historic Trails; 200 designated Wild and Scenic Rivers; 260 congressionally designated Wilderness areas; and 491 wilderness study areas.¹¹

Shrinking the available land base where mineral exploration and mining are allowed reduces the number of future mineral discoveries that can become mines. This ultimately increases the Nation's reliance on foreign minerals and thwarts the country's goals to increase domestic production and become more mineral independent. A 1999 report by the National Research Council of the National Academy of Sciences notes that "Only a very small portion of the earth's continental crust (less than 0.01%) contains economically viable mineral deposits."¹² The Academy further noted that, on average, 1,000 mineral targets must be examined before discovering the deposit capable of becoming a mine. Every time we declare land off-limits to mining, we shrink the playing field and stack the odds higher against discovery.

The challenge of finding and developing mineral resources in the United States, or anywhere in the world, is very difficult because mineral deposits are geologically rare and hard to discover. Exploration and mining projects must undergo multiple lengthy stages of development. First, there is the initial identification of deposits that hold potentially developable mineral reserves. To this point, the United States has only explored and mapped the mineral potential on approximately 12 percent of the country's lands. The USGS estimates that it would take more than 10 years just to find and map all domestic resources, using modern technologies, with at least another 7-10 years to get those resources to market. Consequently, mining companies often do most of this work themselves and cover all the investments needed to advance a potential mineral deposit towards an operating mine.

It is also important to recognize that many federal lands across the western United States already have been closed to exploration and mining. Further restrictions would inevitably prevent mining in areas where there is insufficient information to determine whether critical and strategic minerals exist and need to be developed. There is no clear reasoning for such harmful restrictions, and they limit the flexibility for our Nation to use its critical and strategic minerals where they are located and can be found.

AEMA's members operate their respective exploration and mining activities in a responsible manner through a wide range of social and environmental conditions across the United States. Their operations are subject to extensive evaluations at the project level where there is ample opportunity to ensure resource protection through federal and state permitting actions. To meet our imminent metal and mineral needs, the Congress and the administration should be focusing on how to expand areas that should be open to potential mining and exploration activities, instead of looking for ways to restrict regions from exploration.

¹¹BLM website: <https://www.blm.gov/programs/national-conservation-lands>

¹² National Academy of Sciences/National Research Council, "Hardrock Mining on Federal Lands" (1999), P. 23-24, available at <https://nap.nationalacademies.org/catalog/9682/hardrock-mining-on-federal-lands>.

After a potential deposit is identified through exploration, which often takes years of exploration-level permitting to ascertain, mining companies must determine a path to confirm the nature and scale of any developable resources. They must identify the amount of additional exploration necessary to properly define the mineral deposit, gain approvals to conduct further studies, and then explore and report on the exploration results. Defining the deposit generally requires multiple years of drilling to establish the extent and quality of any valuable mineralization. This process can take up to several decades for large and complex orebodies. Exploration drilling and associated activities require significant investment, especially since they are often undertaken in geographically remote and challenging areas where access and infrastructure are limited. It is worth noting that only about 1 in every 1,000 prospective mineral deposits has the potential to become a producing mine. It's also noteworthy that a single deposit is rarely confined to one tenure type—that is, it may consist of federal tenure, private tenure or even State lands where any successful operation could, for example, provide a revenue stream to the school kids of that State.

In the event a mineable resource is defined, the work continues for mining companies to determine whether there is an economical and feasible mine development scenario. This generally involves preparation of a Feasibility Study, sometimes preceded by a Pre-Feasibility Study, and requires several additional years to produce information sufficient to support a mine investment decision. Multiple years of baseline data collection and analysis are often undertaken to provide information for the feasibility work as well as for future permitting. While mining companies may start their pre-permitting work early, including at the exploration stage through Feasibility Study preparation, they often do not submit formal applications until a developable project is identified through the Feasibility Study.

Thus, while it is easy to focus on a single part of the mineral development process, it is important to recognize all of the crucial stages involved with development of an operating mine. When projects require 15-20 years, or more, to take a potential mineral resource to the point of mine construction, any government action that could lengthen this process, create disincentives, or restrict access to critical resources should be carefully weighed in terms of its ramifications.

The SEC's Proposed Rule Would Violate FLPMA and other Federal Land Management Laws

AEMA shares the concerns expressed by the three U.S. Senators regarding the proposal that would allow federal lands, including national parks and other publicly owned lands, to be included in private investment portfolios. Management of federal lands is already governed by a complex system of laws, led by the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1701 et seq.) as amended, ("FLPMA").¹³ FLPMA § 102(a) requires that federal lands be managed "on the basis of multiple use and sustained yield" and "in a manner which

¹³ For example, the Forest Service Organic Administration Act, 16 U.S.C. §§ 473-475, et. seq. and the National Forest Management Act of 1976, Pub. L. No. 94-588, 90 Stat. 2949 provide the foundation for management of U.S. forest reserves. The Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136, governs creation and management of U.S. wilderness areas, by way of another example.

recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970.”

Congress has also already spoken to the scope of preservation, stating:

it is the policy of the United States that— the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use.

FLPMA Section 102(a)(8). The SEC’s proposed *de facto* withdrawal of public land from the Congressional multiple use mandate violates the United States Constitution, the General Mining Act of 1872, and FLPMA which provide for mineral withdrawals only by Congress or through a detailed and lengthy process, not through creation or operation of NACs under the proposed rule. *See* 43 U.S.C. § 1701(a)(4) (FLPMA declares as the policy of the United States that “Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action”); 43 U.S.C. S. § 1714(c), (j) (emphasis added); *Nat’l Mining Ass’n v. Zinke*, 877 F.3d 845, 853-54 (9th Cir. 2017) (FLPMA “reserves to Congress the power to take certain land management actions, such as making or revoking permanent withdrawals of large tracts from mineral extraction, 43 U.S.C. § 1714(c), (j). . . The Property Clause of the U.S. Constitution vests in Congress the ‘power to dispose of and make all needful rules and regulations respecting . . . property belonging to the United States,’ including federally owned public lands.

Additionally, FLPMA requires “that the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute.” FLPMA Section 102(a)(9). The system for establishing fair market value is well established and it is unclear whether and, if so how, the proposed United Nations System of Environmental and Economic Accounting—Ecosystem Accounting Framework (SEEA EA) would provide a comparable valuation system or process.

The SEC’s proposed rule trivializes the extensive, complex body of laws and regulations that currently govern management of our Nation’s public lands—for the benefit of U.S. citizens—not undisclosed NAC private investors. Further, the proposed rule ignores the management regulations and guidelines, and the roles and responsibilities of the existing network of federal employees that pride themselves in effective management of U.S. public lands. Employees of the Department of Interior and the Department of Agriculture, including the U.S. Bureau of Land Management, the Forest Service, and the Park Service, among others, are already charged with management of public lands. The SEC cannot create NACs on public lands without Congressional action to amend FLPMA and the laws governing National Forest System lands to authorize the SEC to create public land NACs. Unless and until Congress says otherwise, BLM and the U.S. Forest Service must manage the public lands for multiple use and sustained yield. The SEC’s proposed rule

would upend the entire body of federal land management systems—in violation of existing federal land management laws.

Conclusion

AEMA members take great pride in producing the metals and other important minerals America needs for national and economic security, as well as the materials people use in their everyday lives. We are proud of our members' contributions across the communities and regions where they operate, many of which are rural areas facing significant economic and social development challenges.

Demand for minerals in our advanced society is increasing every day. Minerals are critical to developing the innovative technologies that will propel our economy, enable America to compete globally and improve our quality of life. They are the building blocks for the manufacturing, construction, and automotive industries, and are essential to growth in fields such as advanced energy and healthcare. Current efforts to transition to a “green energy” economy are not possible without a robust domestic mining industry to provide the required minerals and metals.

Our mineral import reliance must be addressed. Americans and the environment lose when we offshore our mineral requirements. It makes no sense to create mining jobs elsewhere and import minerals from countries, often adversaries like China and Russia, with inferior environmental protection and worker health and safety standards. President Biden's decarbonization aspirations demand that we minimize the carbon footprint of our minerals by getting them from domestic mines rather than creating the substantial carbon emissions to ship minerals from around the globe.

It is therefore imperative that lands with important mineral deposits remain accessible to responsible mineral exploration and development.

AEMA strongly urges the SEC to disapprove Natural Asset Companies for listing on the NYSE.

Sincerely,



Mark Compton
Executive Director

CC:
Governor Gianforte
Governor Gordon
Governor Little
Governor Lombardo
U.S. Senator Crapo
U.S. Senator Ricketts
U.S. Senator Risch
U.S. Representative Hageman

U.S. Representative Newhouse
U.S. Representative Boebert
U.S. Representative Gosar
U.S. Representative Ellzey
U.S. Representative Miller
U.S. Representative Gallagher
U.S. Representative Duncan
U.S. Representative Baird
U.S. Representative Donalds
U.S. Representative Owens
U.S. Representative Bentz
U.S. Representative Brecheen
U.S. Representative Tiffany
U.S. Representative Sessions
U.S. Representative Crane
U.S. Representative Rosendale
U.S. Representative Simpson
U.S. Representative Thompson
U.S. Representative Pfluger
U.S. Representative Moolenaar
U.S. Representative Curtis
U.S. Representative Norman
U.S. Representative Posey
U.S. Representative Stauber
U.S. Representative Self
U.S. Representative McMorris Rodgers
U.S. Representative Weber
U.S. Representative Moore
U.S. Representative Carey
U.S. Representative Fulcher
U.S. Representative Carter