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January 17, 2024

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: Proposed Rulemaking on 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
Release No. 34-98665
File No. SR-NYSE-2023-09

Dear Secretary Countryman:

On behalf of the Nebraska Farm Bureau Federation (NEFB) and our more than 55,000 member families, we are writing to request clarification of and to offer comments on the public notice issued by the Securities and Exchange Commission on October 4, 2023, titled “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” (the “Proposed Rule”). NEFB has a number of questions and very serious concerns about the proposal, and we offer those to you today.

NEFB is Nebraska’s largest farm and ranch organization representing the families who grow and raise every agricultural commodity produced in Nebraska. From conventionally produced livestock and row crops to organics and hydroponics, NEFB policy is developed by the men and women dedicated to producing food, fiber, and fuel for our state, nation, and world.

The Proposed Rule defines a Natural Asset Company (“NAC”) as “a corporation whose primary purpose is to actively manage, maintain, restore (as applicable), and grow the value of natural assets and their production of ecosystem services. In addition, where doing so is consistent with the company’s primary purpose, the company will seek to conduct sustainable revenue-generating operations. 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....”

Noting that the basis for the Proposed Rule cites agriculture as “contributing to the loss of natural habitat and soil degradation,” please confirm the following relating to the Proposed Rule’s impact on independent property holders’ rights, including:

- 1) A NAC has no enhanced or elevated property rights relative to any other property owner or leaseholder; for example, the rights of an unaffiliated, non-NAC farmer or rancher who diverts water from a river system for the purpose of growing food, fiber, or fuel upstream or downstream of a NAC asset is not affected by the Proposed Rule.

- 2) Relative to a similarly situated lessee or license-holder on federal lands, the Proposed Rule affords NACs no enhanced or elevated rights to access water flowing through federal lands or to dictate or restrict water access rights upstream or downstream of those federal lands.
- 3) The Proposed Rule affords NACs no elevated rights to bind any other property holder to conform to its decision-making on what constitutes a “material adverse impact” or to mitigate a potential material adverse impact.
- 4) The Proposed Rule affords NACs no elevated or special rights, over and above those available to any other business or property holder, to impose its sustainability prerogatives.

The Proposed Rule proscribes NACs from participating in “unsustainable activities” by stating: “The NAC will be prohibited from engaging directly or indirectly in unsustainable activities. These are defined as activities that cause any material adverse impact on the condition of the natural assets under its control, and that extract resources without replenishing them (including, but not limited to, traditional fossil fuel development, mining, unsustainable logging, or perpetuating industrial agriculture). The NAC will be prohibited from using its funds to finance such unsustainable activities.” Because “perpetuating industrial agriculture” is described as an unsustainable activity, we ask that you further clarify the following:

- 1) Under the Proposed Rule, what does “industrial agriculture” mean and why is “perpetuating industrial agriculture” considered unsustainable?
- 2) Does mere participation in an “industrial agriculture” enterprise constitute “perpetuating” an unsustainable activity, or is something more required for industrial agriculture to be considered unsustainable?
- 3) Referencing the questions outlined above, the state of Nebraska has the most acres under irrigation in the United States. If a Nebraska farmer or rancher utilizes groundwater or diverts water from a river for the purposes of growing food, fiber, or fuel, the Proposed Rule appears to suggest the water resource would be deemed “extract[ed]” without being “replenish[ed]”. Would this water diversion be an example of a “material adverse impact” on the aquifer or river?

The Commission further seeks feedback on the “licensing arrangement for NACs as proposed and the sufficiency of the proposal regarding such licensing or other legal arrangements that a NAC would be permitted to enter into.” The Proposed Rule appears to authorize NACs to license a variety of management activities and rights affecting land, including mineral rights, water rights, or air rights running with the land, whether private or public, but does not provide thorough treatment of licensing of federal lands in the United States. Accordingly, we ask that you please clarify (a) if such licenses on federal lands would depend upon or otherwise be linked to the Bureau of Land Management’s proposal of April 3, 2023, to create “conservation leases” on federal lands; and (b) what other existing or proposed authorities for “licensing” activities (or absence or cessation of activity) on federal lands, if any, are contemplated under the Proposed Rule?

With respect to private lands, the proposal does not address states' governance of real property ownership and transfers within their respective boundaries. Importantly, according to the National Agricultural Law Center, "approximately twenty-four states, including Nebraska, specifically forbid or limit nonresident aliens, foreign businesses and corporations, and foreign governments from acquiring or owning an interest in agricultural land within their state." Accordingly, please clarify that the Proposed Rule would do nothing to impair state laws impacting the foreign ownership of land.

As outlined above, the Proposed Rule raises significant practical and policy issues that impact the management and control of our nation's natural resources and our farming and ranching communities. Moreover, it broadly casts as "unsustainable" the industry that feeds our nation and the world. NEFB encourages the Commission to carefully consider and respond to the questions raised here as it reviews the potential impacts of this Proposed Rule and further recommends the Commission eschew non-evidence-based assertions concerning agricultural sustainability going forward.

We appreciate the opportunity to provide these comments and would be happy to discuss these comments and our members' concerns or provide you with further information to the extent you would find it useful.

Sincerely,

A handwritten signature in cursive script that reads "Mark McHargue".

Mark McHargue
President