SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98665; File No. SR-NYSE-2023-09)

September 29, 2023

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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on September 27, 2023, New York Stock Exchange LLC (the "Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Listed Company Manual ("Manual") to adopt a new listing standard for the listing of Natural Asset Companies. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a new subsection of Section 102 of the Manual (to be designated Section 102.09) to permit the listing of common equity securities of Natural Asset Companies (or "NACs").

For purposes of proposed Section 102.09, a NAC is 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. The NAC may also engage in other activities that support community well-being, provided such activities are sustainable.

Introduction to NACs

The value of nature to life on earth is readily apparent. Healthy ecosystems produce clean air and water, foster biodiversity, regulate the climate, and provide the food on which our existence depends. For purposes of this proposal, the term "ecosystem" refers to specific entities (structures, functions, and components of the natural world) that produce ecosystem services. These and other benefits derived from ecosystems are called ecosystem services, and in aggregate, economists estimate their value at more than US$100 trillion dollars per year.[3]

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3 Costanza et al (2014). Changes in the global value of ecosystem services, *Global Environmental Change*, 26, 152-158. Available at:

Examples of ecosystem services include clean air, water supply, flood protection, productive soils for agriculture, climate stability, habitat for wildlife, among others.

Despite a recognition that nature is immensely valuable, that value generally has not been included in the financial system. Public policy initiatives, like regulatory carbon markets, have made progress toward reflecting the true cost of industrial activities, but most environmental values remain uncaptured by financial reporting. Because financial markets do not include the positive and negative externalities related to nature's consumption and production, ecosystem services are being degraded at alarming rates. Species extinction is proceeding at a pace never experienced in human history.[4] Fresh water resources are being consumed and polluted. Agriculture is contributing to the loss of natural habitat and soil degradation. These are significant threats to life on earth and the economy.

Recognizing the urgency and opportunity presented by these conditions, investors increasingly express a desire for investment vehicles that will permit them to express a sustainability thesis.[5] Improvements in corporate disclosures,[6] introduction of climate and

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https://doi.org/10.1016/j.gloenvcha.2014.04.002

4 IPBES (2019). *Global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*. E. S. Brondizio, J. Settele, S. Díaz, and H. T. Ngo (editors). Available at: https://doi.org/10.5281/zenodo.3831673

5 Global Sustainable Investment Alliance (2020). *Global Sustainable Investment Review, 2020.* Available at: http://www.gsi-alliance.org/wp-content/uploads/2021/08/GSIR-20201.pdf

6 The Commission has stated that a number of its disclosure rules may require disclosure related to climate change. Commission Guidance Regarding Disclosure Related to Climate Change, Release No. 33-9106 (Feb. 2, 2010) 75 FR 6290 (Feb. 8, 2010). Also, the Commission's Division of Corporation Finance recently reminded registrants that it selectively reviews filings to monitor and enhance compliance with applicable disclosure requirements. Available at: https://www.sec.gov/corpfin/sample-letter-climate-change-disclosures

nature-focused indices, and the development of ESG funds screening for preferred or prohibited factors have all expanded the accessibility of sustainable investing. Despite these advances, however, investors still express an unmet need for efficient, pure-play exposure to nature and climate.

Although there is significant demand to deploy financial capital toward sustainability, stewards of natural landscapes have often had little choice other than extractive development to fund their budgets or garner a return on investment. Capital flows directed to biodiversity conservation, renewable energy, regenerative agriculture, and other direct investments needed to facilitate a transition to a sustainable economy are insufficient due in part to the inability to transparently present the economic case to access these investment dollars based on traditional measures for financial performance. The financing gap for biodiversity is estimated between US$598 and US$824 billion per year[7] and for climate change is estimated at over US$5 trillion per year,[8] and likely an order of magnitude larger for the transition to a more sustainable, resilient, and equitable economy.[9]

Ending the overconsumption of and underinvestment in nature requires bringing natural

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7 Deutz, A., Heal, G. M., Niu, R., Swanson, E., Townshend, T., Zhu, L., Delmar, A., Meghji, A., Sethi, S. A., and Tobinde la Puente, J. 2020. *Financing Nature: Closing the global biodiversity financing gap.* The Paulson Institute, The Nature Conservancy, and the Cornell Atkinson Center for Sustainability. Available at: https://www.nature.org/en-us/what-we-do/our-insights/reports/financing-nature-biodiversity-report/

8 Boehm, S., K. Lebling, K. Levin, H. Fekete, J. Jaeger, R. Waite, A. Nilsson, J. Thwaites, R. Wilson, A. Geiges, C. Schumer, M. Dennis, K. Ross, S. Castellanos, R. Shrestha, N. Singh, M. Weisse, L. Lazer, L. Jeffery, L. Freehafer, E. Gray, L. Zhou, M. Gidden, and M. Gavin. 2021. State of Climate Action 2021: Systems Transformation Required to Limit Global Warming to 1.5°C. Washington, DC: World Resources Institute: https://doi.org/10.46830/wrirpt.21.00048.

9 Force for Good (2021). *Capital as a Force for Good, 2021 Report*. Available at: https://www.forcegood.org/frontend/img/2021_report/pdf/Funding_the_SDGs_and_a_Sustainable_Future.pdf#toolbar=0 Chapter 2.

assets into the financial mainstream. To that end, the Exchange proposes to adopt listing standards to introduce a new type of public company called a NAC, a new concept pioneered by Intrinsic Exchange Group Inc. ("IEG"). Founded in 2017, IEG is a private company structured as a corporation organized under the laws of the State of Delaware that advises public sector and private landowners on the creation of NAC structures and strategies.

NACs will be corporations that hold the rights to the ecological performance (i.e., the value of natural assets and production of ecosystem services) produced by natural or working areas, such as national reserves or large-scale farmlands, and have the authority to manage the areas for conservation, restoration, or sustainable management. These rights can be licensed like other rights, including "run with the land" rights (such as mineral rights, water rights, or air rights), and NACs are expected to license these rights from sovereign nations or private landowners.

Under the proposed amendments to the Manual, capital raised through an NYSE-listed NAC's initial public offering or follow-on offerings must be used to implement the conservation, restoration, or sustainable management plans articulated in its prospectus, fund its ongoing operations, or otherwise fulfill its purpose to maximize ecological performance (i.e., the value of natural assets and the production of ecosystem services). While a core purpose of a NAC is to maximize ecological performance, under the proposed rules, a NAC would also be required to seek to conduct sustainable revenue-generating operations (e.g., eco-tourism in a natural landscape or production of regenerative food crops in a working landscape) provided that such operations are consistent with the NAC's charter and do not cause any material adverse impact on the condition of the natural assets under the NAC's control and seek to replenish the natural resources being used. Therefore, all NACs are prohibited from directly or indirectly conducting unsustainable activities, such as mining, that lead to the degradation of the ecosystems it is trying to protect. In conducting its revenue-generating operations, a NAC could monetize ecosystem services that have markets (e.g., through the sale of carbon credits). All revenues and expenses would be reported in the financial statements of the NAC prepared under generally accepted accounting principles ("GAAP") and filed with the SEC as part of the NAC's required annual report on Form 10-K, 20-F or 40-F, as applicable. In order to align the interests of local communities with the objectives of maximizing the value of natural assets and the production of ecosystem services, a NAC would also be able to use its funds for activities that support local community well-being (e.g., education, health), provided that such activities are sustainable.

Because of the distinct purpose of a NAC (to protect and grow the natural assets under its management), the Exchange proposes to require NACs to publish on a periodic basis information on the ecological performance of the natural assets licensed to a NAC. This information will be presented in an Ecological Performance Report (an "EPR").

The EPR provides statistical information on the biophysical measures (e.g., tons of carbon, acre feet of water produced), condition, and economic value of each of the ecosystem services produced by the natural assets managed by the NAC. This will allow investors to gauge the effectiveness of management. The information will be consistently produced and periodically reported, following best practices from accepted valuation methodologies, as outlined in the Reporting Framework (as defined below).

The EPR produced by a NAC must follow IEG's Ecological Performance Reporting Framework (the "Reporting Framework"). The Framework, in turn, is based on the natural capital accounting standards established in the United Nations System of Environmental-

Economic Accounting – Ecosystem Accounting Framework ("SEEA EA").[10] The EPR will measure, value, and report on the ecosystem services and natural assets managed by a NAC. Under the proposed amendments to the Manual, NACs will conduct a Technical Ecological Performance Study ("Technical EP Study") annually, following the Reporting Framework. This Technical EP Study will generate the information used to prepare and publish the EPR. The EPR and Technical EP Study must be examined and attested to by a public accounting firm that is registered with the Public Company Accounting Oversight Board ("PCAOB") and is independent from the NAC and NAC licensor, if applicable, under the independence standard set forth in Rule 2-01 of Regulation S-X ("Independent Reviewer").

In addition to the GAAP financial statements required under SEC disclosure rules and the proposed EPR that would be derived from a Technical EP Study, NYSE proposes to require NACs to provide a number of unique website disclosures designed to provide transparency on the NAC's social and environmental objectives. These include requiring NACs to adopt and publish an Environmental and Social Policy, a Biodiversity Policy, a Human Rights Policy, consistent with the United Nations Guiding Principles on Business and Human Rights,[11] and an Equitable Benefit Sharing Policy.

Finally, the NAC will be required under applicable SEC rules to disclose all material information about its license with a natural asset owner (including any material amendments to the license over time) in the registration statement filed in connection with its IPO and in its

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10 United Nations et al (2021). *System of Environmental-Economic Accounting--Ecosystem Accounting*. *White cover publication, pre-edited text subject to official editing*. Available at: https://seea.un.org/ecosystem-accounting

11 United Nations (2011). *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework*. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

subsequent periodic SEC filings.

Relationship Between the NYSE and IEG

The Exchange and IEG have entered into an agreement pursuant to which IEG has granted the Exchange an exclusive license in the United States to use the Reporting Framework in connection with the listing of NACs on the Exchange (although the Reporting Framework will remain proprietary to IEG). Under the terms of the agreement, the Exchange has acquired a small minority interest in IEG and one seat on IEG's board of directors. IEG has agreed to seek to identify and develop NACs for listing on the Exchange, in addition to marketing the listing and trading of NACs on the Exchange and providing training with respect to the NAC structure and the Reporting Framework to NYSE personnel and currently listed and potential listed NACs. IEG will be entitled to a share of the revenues generated by the Exchange from the listing and trading of NACs on the NYSE.

While IEG will seek to promote the listing of NACs on the NYSE, the determination of the suitability for listing of any applicant NACs will solely be made by the staff of NYSE Regulation and IEG will have no role in the listing qualification process. In evaluating a NAC for listing, the staff of NYSE Regulation intends to follow the same procedure it utilizes in qualifying operating companies. NYSE Regulation staff will review disclosures contained in a NAC's registration statement and its audited financial statements to ensure that the NAC satisfies applicable quantitative, qualitative and corporate governance listing standards. On a continued listing basis, NYSE Regulation staff will review a NAC's periodic reports filed with the Commission as well as public disclosure to ensure that a NAC continues to meet applicable listing standards.

Definitions of Key Terms Used in this Proposal, in the context of a NAC

Unless otherwise stated, this document utilizes the definitions of the United Nations' System of Environmental-Economic Accounting — Ecosystem Accounting ("SEEA EA").[12] In addition, there are terms unique to Natural Asset Companies, defined below:

Community Well-being – Refers to the combination of social, economic, environmental, cultural, and political conditions of individuals and their communities as essential for them to flourish and fulfil their potential.[13]

Ecological Performance – The value of natural assets and the production of ecosystem services.

Ecological Performance Report - A report with statistical information on the ecological performance of a NAC, including sections with data on (i) Natural Production, (ii) Natural Assets, and (iii) Underlying Asset Condition. The EPR is unique to NACs and will be provided in addition to traditional financial statements.

- **Natural Production Section** – A section of the EPR that provides information on the annual flows of ecosystem services managed by a NAC.
- **Natural Assets Section** – A section of the EPR that provides information on the net present value of natural assets producing ecosystem services managed by a NAC.

12 United Nations et al (2021). *System of Environmental-Economic Accounting—Ecosystem Accounting (SEEA EA). White cover publication, pre-edited text subject to official editing.* Available at: https://seea.un.org/ecosystem-accounting

13 Wiseman, J., Brasher, K (2008) *Community wellbeing in an unwell world: trends, challenges, and possibilities*. Journal of Public Health Policy, 29: 353-366.

- **Underlying Asset Condition Section** – A section of the EPR that provides biophysical information on the extent and condition of the ecosystems being managed by the NAC.

Ecological Performance Rights –The rights to the value of natural assets and the production or ecosystem services in a designated area, including the authority to manage the area. These rights are granted to a NAC, from a natural asset owner, as provided through a license agreement.

Ecosystem Service Valuation - The assignation of an economic value to an ecosystem service using one of many valuation methodologies accepted today.

IEG Ecological Performance Reporting Framework – IEG has developed a specific framework for NACs to derive and report on ecosystem service values and on the quality of the natural assets being managed. In addition, the Reporting Framework defines the components and structure of the EPR to ensure the values are reported transparently and consistently.

Independent Reviewer – A public accounting firm registered with the PCAOB independent of a NAC and, where applicable, a NAC's licensor.

Local Communities – refers to groups of people—including indigenous peoples and other local groups —who have direct ties to and derive livelihood or cultural values from the area to which the NAC holds the license.

Natural Assets – A statistical representation of ecosystems for accounting purposes that defines them as productive units of ecosystem services. The term "Natural Assets" is equivalent to SEEA EA's term "ecosystem assets." Natural assets can be monetized directly or indirectly. Like traditional assets, they have economic value and are expected to provide future streams of benefits. In the singular form, the term refers to an ecosystem type (e.g., a delineated forest).

Natural Asset Companies (NACs) – Corporations that hold the rights to the ecological performance of a defined area and have the authority to manage the areas for conservation, restoration, or sustainable management.

Sustainable Activities – From an ecological perspective, activities that do not cause any material adverse impact on the condition of ecosystems, and that seek to replenish the natural resources being used.

Unsustainable Activities – From an ecological perspective, activities that cause material adverse impact on the condition of ecosystems, and extract resources without replenishing them.

<u>The IEG Reporting Framework</u>

IEG has developed a Reporting Framework for NACs to measure and value natural assets and define how the EPR should be structured to ensure transparency, robustness, and consistency in the reporting of values and other statistical information disclosed.

The Reporting Framework to be used by NACs is based on the standards developed in SEEA EA. SEEA EA provides the most comprehensive guidance on natural capital accounting and is of particular relevance to the valuation of NACs due to its spatial approach and its focus on measuring and reporting on the ecosystem services produced by ecosystems.

IEG adopted SEEA EA as the accounting standard for the measurement and valuation of natural assets and ecosystem services, with some minor adaptations to ensure that the natural asset valuations of NACs provide comprehensive, understandable, consistent, robust, and transparent information to investors and other users of the companies EPR. The Reporting Framework includes specifications on how to apply SEEA EA to report on the annual performance of NACs. In particular, the Reporting Framework sets up NACs to report the Total Economic Value ("TEV") of natural assets, which is in line with the recommendations of the

British Standard for natural capital accounting (BS 8632) for financial organizations and the ISO Standard 14008.

Given that NACs are designed to manage and grow the value of natural assets and the production of ecosystem services – a NAC's activities are not well captured solely by traditional financial reporting standards like GAAP/IFRS, as most ecosystem services are not monetized today. To account for and capture the value of the non-monetized ecosystem services, NACs will be required to conduct an annual Technical EP Study, adhering to IEG's Reporting Framework, in order to prepare their EPR. The Reporting Framework defines:

- the steps to characterize, measure and value the ecosystem service and natural asset values in a Technical EP Study, and
- the components and structure of the EPR including guidance to compile its sections, to ensure transparency, robustness, and consistency in the reporting of information about the natural assets.

The Reporting Framework (which provides instructions for the preparation of the EPR) will be publicly accessible on nyse.com.[14]

The Exchange, in consultation with IEG, will have sole authority to determine whether and how to propose amendments to the Reporting Framework from time to time. Any proposed change to the Reporting Framework will have the effect of a change to an Exchange rule and will therefore be filed by the Exchange with the Commission pursuant to Section 19(b) of the Act. Additionally, the Exchange will maintain on nyse.com a publicly-accessible copy of of the Reporting Framework.

Proposed Listing Rules

14 The text of the Framework is included [sic] in Exhibit 3 to this filing.

Required Corporate Documents:

1. Charter

Each NAC must file its charter as an exhibit to its registration statement. As a condition to initial listing, the NYSE proposes to require a NAC's charter to state the following:

1. The purpose of the company 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 its control, and that seek to replenish the natural resources being used. The sustainability of the revenue-generating operations will be determined based on the impacts of their activities on the condition metrics, and where applicable, on any capacity-to-produce indicators reported by a NAC in its EPR. Condition metrics should not show degradation as a result of these activities and capacity-to-produce indicators should be moving to a rate where resource extraction is less than resource replenishment. The NAC may also engage in other activities that support community well-being, provided such activities are sustainable.
2. NAC funds (including any proceeds from the sale of the company's securities at any time) must be used primarily to meet the NAC's operational needs to fulfill its purpose. In addition, funds may be used to support community well-being, provided such activities are sustainable.
3. 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.

If any of the foregoing provisions of the NAC's charter are eliminated or materially amended in a manner that is inconsistent with their required form at any time, the NAC will be subject to delisting from the NYSE.

2. License Agreements

NACs will acquire the ecological performance rights of a designated area by entering into an agreement with the natural asset owner (e.g., a governmental entity or private landowner) to obtain a license with respect to such rights.[15] The Exchange proposes that all material terms of the applicable license agreement be publicly disclosed in the NAC's periodic filings consistent with SEC rules. At minimum, the NAC will be required to disclose the following information about any license agreement:

a. Term: At the time of initial listing, the term of any license agreement must be a minimum of ten years from the date of closing of the NAC's initial public offering (the Exchange expects that most license agreements will have terms significantly longer than ten years and, in some cases, may be perpetual);

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15 The Exchange notes that it will be important for NACs in their offering materials and subsequent public disclosure documents to be clear in distinguishing the rights to the land ownership and geographic area from the rights to the ecological performance and to clearly specify, where appropriate, the limits of the NAC's rights as an owner or licensee.

b. Scope: The specific natural assets and ecosystem services covered by the license agreement;

c. License Payments: The amount and terms of any ongoing payments due from the licensee to the licensor;

d. Modification Provisions: The circumstances under which a license agreement may be modified and the procedures for effecting any such modification;

e. Termination Provisions: The circumstances under which a license agreement may be terminated, including the rights and obligations of all parties to the license agreement, and the procedures for effecting any such termination.

The proposed rule would specify that any NAC whose license is terminated or materially breached by either party would be subject to delisting.

3. <u>NAC Policies</u>

Proposed Section 102.09 of the Manual provides that a NAC seeking to list on the NYSE must adopt the following written polices (collectively, the "NAC Policies") and post them on its website by the earlier of the date that the NAC's initial public offering closes or five business days following the NAC's initial listing date:

1. An Environmental and Social Policy that articulates the objectives and principles that will guide the NAC to achieve sound environmental and social performance. Such policy must include requirements to conduct a process of environmental and social

assessment, and establish, as soon as practicable after listing, an Environmental and Social Management System ("ESMS").[16] The ESMS should be designed to:

i) Identify and assess environmental and social risks and impacts,

ii) Identify measures to avoid, minimize and mitigate the negative risks and impacts, and

iii) Promote improved environmental and social performance.

2. A Biodiversity Policy that articulates a commitment to achieving no net loss, and where possible a net positive impact on biodiversity. The Biodiversity Policy should be based on the mitigation hierarchy, a planning and management approach for addressing impacts to biodiversity and ecosystem services through avoidance, minimization, restoration, and offsetting.

3. A Human Rights Policy that articulates a commitment to human rights, consistent with the United Nations Guiding Principles on Business and Human Rights,[17] including a commitment to recognize and respect people's rights in accordance with customary, national, and international human rights laws, in particular those of indigenous peoples.

4. An Equitable Benefit Sharing Policy that articulates the NAC's commitment for sharing benefits with local communities. A NAC must include in its license

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[16] The ESMS should be consistent with generally accepted international standards, such as the "IFC Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts."

[17] United Nations (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.* Available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.

agreement with the licensor a provision requiring the licensor to comply with the applicable terms of the Equitable Benefit Sharing Policy.

The Equitable Benefit Sharing Policy must require an equitable benefit sharing arrangement for the distribution of shares of the NAC's common stock to local communities (i.e., those who have direct ties to and derive livelihood or cultural values from the applicable area). The NAC's common stock distribution must be completed no later than the time of closing of the NAC's IPO and must meet the following requirements at a minimum:

- If the NAC has entered into a license agreement with respect to public lands, shares representing at least 50% of the shares of the NAC's outstanding shares as of the closing of the IPO must be distributed to local communities.
- If the NAC has entered into a license agreement with respect to private lands, shares representing at least 5% of the shares of the NAC outstanding as of the closing of the IPO must be distributed to local communities.

The foregoing distributions of shares of common stock may be placed in a trust or equivalent structure, for the benefit of the intended beneficiaries. Any trust (or equivalent) holding shares of the NAC for this purpose must be under the majority control of trustees that are fully independent of both the NAC and, where applicable, the licensor, and/or be representative of the intended beneficiaries.

The Equitable Benefit Sharing Policy must provide that the NAC will (a) deposit its cash and other financial assets in accounts with a bank custodian regulated by the U.S. Office of the Comptroller of the Currency (an "Authorized Bank"); and (b) include in its license agreement a provision requiring the licensor to place any shares of the NAC it owns in the custody of an Authorized Bank and deposit the proceeds from any NAC share sales by the licensor and any distributions received from the NAC in accounts with an Authorized Bank, pending the distribution of such assets in a manner consistent with the NAC's Equitable Benefit Sharing Policy.

The NAC must review the adequacy of the Equitable Benefit Sharing Policy at least annually and publish on its website a detailed description of its activities in accordance with such policy (the "Annual EBS Report") no later than 90 days after the end of each fiscal year.

The Annual EBS Report must be examined by an Independent Reviewer (the "EBS Independent Reviewer") and be accompanied by an examination level report (i.e., reasonable assurance) regarding the NAC and, if applicable, the licensor, in accordance with the Equitable Benefits Sharing Policy during the applicable fiscal period, including a review of the accounts maintained by the NAC and the licensor at Authorized Banks, in accordance with the PCAOB or AICPA's attestation standards.

The NAC's accordance with the requirements of its Equitable Benefits Sharing Policy must be reviewed periodically either by (i) a committee consisting solely of directors who meet the independence requirements of Section 303A of the Manual or (ii) the NAC's independent directors acting as a group. Such committee or the independent directors, as the case may be, must meet for this purpose at least annually and such meeting must include an executive session in which management does not participate and a discussion with the EBS Independent Reviewer at which management must not be present.

4. Ecological Performance Report

Proposed Section 102.09 will provide that, prior to its initial listing, the NAC must make publicly available an EPR that has been prepared consistent with the Reporting Framework. The Reporting Framework (including instructions for the preparation of the EPR and templates for the EPR) will be posted on nyse.com and is attached hereto [sic] as Exhibit 3. NACs will conduct a Technical EP Study annually, following the Reporting Framework, which will generate the information used to prepare and publish the EPR. Both the Technical EP Study and EPR must be examined by an Independent Reviewer annually. The EPR must be accompanied by an examination level report (i.e., reasonable assurance) prepared by such Independent Reviewer in accordance with the PCAOB or AICPA's attestation standards.

Quantitative and Corporate Governance Listing Rules:

To qualify for listing as a NAC, an applicant issuer would be required to meet the quantitative listing requirements applicable to the listing of common equities of operating companies as set forth in Sections 102.01(A), (B), and (C) of the Manual. Proposed Section 102.09(G) would provide that listed NACs would be subject to all of the continued listing requirements that are applicable to operating companies listed under Sections 102 and 103 of the Manual.

<u>Audit Committee</u>

As described above, a listed NAC would be subject to all of the corporate governance requirements set forth in Section 303A.00, including the requirement of Section 303A.06 that a company must have an independent audit committee and the provisions of Section 303A.07 setting forth additional requirements for the audit committee. The Exchange proposes to amend Section 303A.07 to establish additional responsibilities specific to the audit committee of a NAC. As proposed, Section 303A.07 would require that (in addition to the requirements of Section 303A.07(b)), the NAC's audit committee charter must address the following:

1. That the audit committee's purpose includes assisting board oversight of (1) the integrity of the NAC's EPR, (2) the qualifications and independence of the Independent Reviewer and (3) the performance of the Independent Reviewer.

2. The audit committee of the NAC must:

   i) at least annually, obtain and review a report by the Independent Reviewer describing: the Independent Reviewer's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the Independent Reviewer, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the Independent Reviewer, and any steps taken to deal with any such issues; and (to assess the Independent Reviewer's independence) all relationships between the Independent Reviewer and the NAC. After reviewing the foregoing report and the Independent Reviewer's work throughout the year, the audit committee will be in a position to evaluate the Independent Reviewer's qualifications, performance, and independence. This evaluation should include the review and evaluation of the lead partner of the Independent Reviewer. In making its evaluation, the audit committee should take into account the opinions of management and the NAC's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead partner responsible for the EPR Review, the audit committee should further consider whether, in order to assure continuing independence of the Independent Reviewer, there should be regular rotation of the firm undertaking the EPR Review itself. The audit committee should present its conclusions with respect to the Independent Reviewer to the full board and meet to review and discuss the NAC's annual

EPR. Meetings may be telephonic if permitted under applicable corporate law; polling of audit committee members, however, is not permitted in lieu of meetings.

ii) meet separately, periodically, with management and the Independent Reviewer to discuss the EPR and the conduct of the EPR Review. To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management and the Independent Reviewer. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

iii) review with the Independent Reviewer any problems in the conduct of their review or difficulties and management's response. The audit committee must regularly review with the Independent Reviewer any difficulties the Independent Reviewer encountered in the course of its review, including any restrictions on the scope of the Independent Reviewer's activities or on access to requested information, and any significant disagreements with management.

iv) set clear hiring policies for employees or former employees of the Independent Reviewer. Employees or former employees of the Independent Reviewer may be valuable additions to the NAC’s management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for personnel of the Independent Reviewer consciously or subconsciously seeking a job with the NAC they review.

v) report regularly to the board of directors with respect to the preparation of the EPR and the performance of the Independent Reviewer. The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the EPR or the performance and independence of the Independent Reviewer.

Material News

A NAC will be required to immediately disclose, pursuant to the Exchange's immediate release policy set forth in Sections 202.05 and 202.06 of the Manual, any event (e.g., a forest fire) that is anticipated to have a material adverse effect with respect to any of the criteria included in the EPR. As soon thereafter as possible, the NAC must disclose in a Form 8-K or Form 6-K, as applicable, its estimates of the changes to the previously presented EPR of such event.

Periodic Publication of EPR and Occurrence of a Late EPR Delinquency

Each year after initial listing, a NAC must publish on its public web site an EPR that has been prepared consistent with the Reporting Framework. The Technical EP Study and EPR must be examined by the Independent Reviewer. The EPR must be accompanied by an examination level report prepared by such Independent Reviewer in accordance with the PCAOB or AICPA's attestation standards. The EPR must cover the same fiscal periods as the audited financial statements included in the NAC's annual report on Form 10-K, Form 20-F, or Form 40-F, as applicable. The NAC should utilize its best efforts to publish its annual EPR no later than the filing of its annual report on Form 10-K, Form 20-F, or Form 40-F, as applicable. In the event that the annual EPR is not completed by the filing due date of the NAC's annual report on Form 10-K, Form 20-F, or Form 40-F, as applicable, such annual EPR is required to be published no later than 180 days after the end of the fiscal year to which such annual EPR relates (the "NAC EPR Due Date" and the failure of a listed NAC to timely publish its annual EPR, a "NAC Late EPR Delinquency"). In the event that the company is unable to file its Form 10-K, Form 20-F, or Form 40-F, as applicable, by the NAC EPR Due Date, the company should not delay the publication of its EPR, but rather should publish its EPR on or before that date.

Upon the occurrence of a NAC Late EPR Delinquency, the Exchange will promptly send written notification (the "NAC Late EPR Delinquency Notification") to an affected NAC of the procedures set forth below. Within five days of the date of the NAC Late EPR Delinquency Notification, the company will be required to (a) contact the Exchange to discuss the status of the delinquent annual EPR (the "Delinquent NAC EPR") and (b) issue a press release disclosing the occurrence of the NAC Late EPR Delinquency, the reason for the NAC Late EPR Delinquency, and, if known, the anticipated date such NAC Late EPR Delinquency will be cured via the publication of the Delinquent NAC EPR. If the company has not issued the required press release within five days of the date of the NAC Late EPR Delinquency Notification, the Exchange will issue a press release stating that the company has incurred a NAC Late EPR Delinquency and providing a description thereof.

<u>NAC Non-Reliance Event</u>

In the event that a NAC concludes that its previously issued EPR should no longer be relied upon because of an error in such EPR (a "NAC Non-Reliance Event," and the disclosure of such NAC Non-Reliance Event, a "NAC Non-Reliance Disclosure"), it will be required to comply with the NAC Late EPR Delinquency Notification procedures set forth above. If the

NAC does not publish an amended EPR within 60 days of the issuance of the NAC Non-Reliance Disclosure (an “Extended NAC Non-Reliance Disclosure Event” and, together with a NAC Late EPR Delinquency, a “NAC Reporting Delinquency”) for purposes of the cure periods described below a NAC Reporting Delinquency will be deemed to have occurred on the date of original issuance of the NAC Non-Reliance Disclosure. If the Exchange believes that a NAC is unlikely to publish the amended EPR within 60 days after a NAC Non-Reliance Disclosure or that the errors giving rise to such NAC Non-Reliance Disclosure are particularly severe in nature, the Exchange may, in its sole discretion, determine earlier than 60 days that the applicable NAC has incurred a NAC Publication Delinquency as a result of such NAC Non-Reliance Disclosure.

Cure Periods for NAC Publication Delinquencies

During the six-month period from the date of the NAC Publication Delinquency (the “Initial NAC EPR Cure Period”), the Exchange will monitor the company and the status of the Delinquent NAC EPR, including through contact with the company, until the NAC Publication Delinquency is cured. If the company fails to cure the NAC Publication Delinquency within the Initial NAC EPR Cure Period, the Exchange may, in the Exchange’s sole discretion, allow the company’s securities to be traded for up to an additional six-month period (the “Additional NAC EPR Cure Period”) depending on the company’s specific circumstances. If the Exchange determines that an Additional NAC EPR Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Listed Company Manual. A NAC will not be eligible to follow the procedures outlined in Sections 802.02 and 802.03 with respect to these criteria.

In determining whether an Additional NAC EPR Cure Period after the expiration of the

Initial NAC EPR Cure Period is appropriate, the Exchange will consider the likelihood that the Delinquent NAC EPR can be published during the Additional NAC EPR Cure Period. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the Delinquent NAC EPR to the market through press releases and will also take the frequency and detail of such information into account in determining whether an Additional NAC EPR Cure Period is appropriate. If the Exchange determines that an Additional NAC EPR Cure Period is appropriate, and the company fails to publish the Delinquent NAC EPR by the end of such Additional NAC EPR Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Section 804.00. In no event will the Exchange continue to trade a NAC's securities if that company has failed to cure its NAC EPR Delinquency on the date that is twelve months after the applicable NAC EPR Due Date.

Filing Delinquencies and NAC EPR Delinquencies are Treated Separately

For purposes of Section 802.01E, NACs will also be subject to the provisions with respect to delinquencies in filing periodic reports as set forth in that rule (a "Filing Delinquency"). A Filing Delinquency is a separate event of noncompliance from a NAC Publication Delinquency. Consequently, a NAC can be deemed to have cured a Filing Delinquency while remaining noncompliant due to an ongoing NAC Publication Delinquency or vice versa.

Components and Form of the Statements

The EPR published by NYSE-listed NACs will consists of three components: 1) Natural Production Section, 2) Natural Assets Section and 3) Underlying Asset Condition Section.

The process for conducting a Technical EP Study and the requirements for preparing an EPR are contained in the Reporting Framework which is attached hereto [sic] as Exhibit 3.

NACs must conduct a Technical EP Study and prepare and publish an EPR that complies with the Reporting Framework, in each case on an annual basis.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed listing standard for NACs is consistent with the protection of investors and the public interest because, among other things, it includes rigorous quantitative financial requirements and corporate governance requirements. Specifically, the proposed listing standard requires NACs to meet the same quantitative initial and continued listing standards as are applied to operating companies listed on the NYSE. In addition, NACs would be subject, without exception, to all of the other rules applicable to NYSE listed operating companies.

The proposed rule change is designed to perfect the mechanism of a free and open market in that it will facilitate the listing and trading of an additional type of security and will therefore enhance competition among market participants, to the benefit of investors and the marketplace. There is significant and growing interest in investing in asset classes that are consistent with the objective of protecting and improving the environment. The Exchange believes that the listing of NACs will provide investors with an investment vehicle that meets this demand. The

[18] 15 U.S.C. 78f(b)(5).

Exchange also believes that the development of NACs will provide a source of funding to maintain and restore natural assets.

The charter provisions each NAC would be required to adopt under the proposed rule are also consistent with the protection of investors and the public interest because they are designed to ensure that the NAC conducts its operations in a manner consistent with the ecological and socially equitable goals that would motivate investors when investing in the NAC. Specifically, these proposed charter requirements would include the following provisions:

- The purpose of the company 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 its control, and that seek to replenish the natural resources being used. The sustainability of the revenue-generating operations will be determined based on the impacts of their activities on the condition metrics, and where applicable, on any capacity-to-produce indicators reported by a NAC in its EPR. Condition metrics should not show degradation as a result of these activities and capacity-to-produce indicators should be moving to a rate where resource extraction is less than resource replenishment. The NAC may also engage in other activities that support community well-being, provided such activities are sustainable.
- NAC funds (including any proceeds from the sale of the company's securities at any time) must be used primarily to meet the NAC's operational needs to fulfill its

purpose. In addition, funds may be used to support community well-being, provided such activities are sustainable.

- 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.

If any of the foregoing provisions of the NAC's charter are eliminated or materially amended in a manner that is inconsistent with their required form at any time, the NAC will be subject to delisting from the NYSE.

Similarly, the various policies that the NAC would be required to adopt and publicize (including an Environmental and Social Policy, a Biodiversity Policy, a Human Rights Policy, and an Equitable Benefits Sharing Policy) would protect investors by establishing clear standards that the NAC must abide by in seeking to address its stated ecological and social goals.

In addition, the Exchange believes that the examination conducted by the Independent Reviewer with respect to the initial and periodic EPR published by each NAC are consistent with investor protection and the public interest because they are designed to ensure that such EPR is prepared in a manner that is consistent with the requirements of the Reporting Framework. Further, this thorough independent expert examination of each NAC's EPR will protect investors by providing significant assurance as to the reliability of that EPR. The proposal would also amend Section 802.01E of the Manual to create non-compliance and delisting procedures for NACs that fail to timely publish their EPR. The proposed requirements for the audit committee of the NAC to oversee the preparation of the EPR and the performance of the Independent Reviewer are consistent with the protection of investors as they will help assure the accuracy and completeness of the EPR and the quality of the Independent Reviewer's review.

Similarly, as is the case with all listed companies, NACs would be required to immediately disclose pursuant to the Exchange's immediate release policy set forth in Sections 202.05 and 202.06 of the Manual any material event, including any event that is anticipated to have a material adverse effect with respect to any of the criteria included in the EPR (e.g., a forest fire). It is therefore in the interests of investors to have a rigorous rule to address delinquencies with respect to disclosures and to require immediate disclosure of material events.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. A listing under the proposed rule would be available in a non-discriminatory way to any company satisfying its requirements, as well as all other applicable NYSE listing requirements. In addition, the Exchange faces competition for listings but the proposed rule change does not impose any burden on the competition with other exchanges; any competing exchange could similarly adopt rules to allow the listing of NACs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (https://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2023-09 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2023-09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (https://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2023-09 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

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19 17 CFR 200.30-3(a)(12).