



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Department of Natural Resources

JOEL FERRY
Executive Director

Public Lands Policy Coordinating Office

REDGE B. JOHNSON
Director

October 25, 2023

Submitted via electronically: rule-comments@sec.gov

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

Subject: **Amended Comments: 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**
SEC No. SR-NYSE-2023-09

Dear Secretary Countryman:

On October 4, 2023, the U.S. Securities and Exchange Commission (“SEC”) published in the Federal Register a public notice entitled “*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*”¹ (hereinafter the “Proposed Rule” or “Proposed Change”). According to the EA:

“The [New York Stock] Exchange proposes to amend the NYSE Listed Company Manual (“Manual”) to adopt a new listing standard for the listing of Natural Asset Companies.”²

While this stated purpose, on its face, seems harmless enough, the State of Utah (“State”), through its Public Lands Policy Coordinating Office (“PLPCO”), has reviewed the Federal Register notice, containing the Proposed Rule, and the State has several concerns regarding this Proposed Rule and its stated purpose. Overall, the State encourages the responsible and appropriate development/use of natural resources to promote economic development for the

¹ 88 FR 68811.

² 88 FR 68811.

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benefit of its citizenry³ and to support the State's energy plan.⁴ Further, the State of Utah has adopted an "any-of-the-above energy approach⁵. Meaning, overall, the State supports all forms of responsible energy production and related development, as "Utah is an 'any-of-the-above' energy state" meaning "there is room for all types of energy production and distribution" both conventional and renewable. To date, this any-of-the-above energy policy has served Utahns well, and the State supports all reasonable forms of energy development and generation available within its borders.

In support of the State's position above, responsible and non-burdensome regulation is necessary to ensure the continued success of the State's natural resources industries/activities - particularly those that rely on federal land managed by the U.S. Department of the Interior's Bureau of Land Management ("BLM") and the U.S. Department of Agriculture's Forest Service ("USFS"). Because Utah is a "public land state" the continued success of economic and recreational activities such as grazing, logging, and OHV use are critical to the State's success. Many of the small/family businesses and other business entities rely on these resources for a living, and this Proposed Rule has the potential to negatively affect the users of Utah's working landscapes. Accordingly, the State provides the following comments and recommendations on the NYSE's Proposed Rule for the SEC's consideration at this time.

I. INTRODUCTION

While not specifically requested in the SEC's Federal Register Notice, this comment letter begins with a brief description of the commenter's mission and areas of expertise. Here, the commenter, PLPCO, is a State agency whose broad mission is "to coordinate, promote, and implement Utah's public land priorities."⁶ In addition to "develop[ing] and coordinat[ing] the State's public lands policy initiatives"⁷ PLPCO is also involved in many different facets of public land management policy, including overseeing the State's Resource Development Coordinating Committee ("RDCC") which is "responsible for commenting on development and conservation proposals on Utah's public lands"⁸ as well as assisting in resource management planning at the

³ See Resource Development Act, Utah Code § 63M-5-102(1)(a), available at: <https://le.utah.gov/xcode/Title63M/Chapter5/63M-5-S102.html>.

⁴ See Utah State Resource Management Plan, pp. 70–71, available at: <https://rmp.utah.gov/state-of-utah-resource-management-plan/> (2018).

⁵ <https://energy.utah.gov/plan/>

⁶ PLPCO, *About the Public Lands Office*, Utah's Public Lands Policy Coordinating Office, available at: <https://publiclands.utah.gov/about/> (2021).

⁷ *Id.*

⁸ *Id.*

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State and County levels.⁹

Because of PLPCO’s broad mission and expertise, the agency is involved in various issues and projects that involve (among other things) agriculture, grazing, forestry, and energy development both on BLM and USFS managed lands. For example, while Utah’s Division of Forestry, Fire and State Lands (“FFSL”) is the lead agency in Utah’s Shared Stewardship Agreement with the U.S. Forest Service (“USFS”), PLPCO remains an active participant in proactive forest management in the State through Shared Stewardship.¹⁰

Typically, PLPCO’s mission would not lend itself to commenting on a Proposed Rule involving financial markets or securities, as is largely the case here. However, because the Proposed Rule is attempting to create standards and guidelines for companies that are involved in natural resources and natural asset ownership, PLPCO is inclined to lend a voice to this issue.

With these overarching concerns and suggestions expressed, the State now turns to specific comments regarding the NYSE’s Proposed Rule.

II. THE PROPOSED RULE

As noted prior, the stated intent of the Proposed Rule is “...to adopt a new subsection of Section 102 of the NYSE Manual (to be designated Section 102.09) to permit the listing of common equity securities of Natural Asset Companies (or “NACs”).¹¹ The Proposed Rule further states:

*“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...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”* (emphasis added).¹²

Here, the State whole-heartedly agrees with this statement in terms of ensuring the continuity of these essential ecosystem services and recognizing the value they provide. However, as well meaning as this statement may be, the rest of the Proposed Rule contains

⁹ PLPCO, *Resource Management Plans*, Utah’s Public Lands Policy Coordinating Office, available at: <https://publiclands.utah.gov/current-projects/resource-management-plans/> (2021).

¹⁰ PLPCO, *Forest Service and State of Utah Invest in Shared Stewardship*, Utah’s Public Lands Policy Coordinating Office, available at: <https://publiclands.utah.gov/uncategorized/forest-service-and-state-of-utah-invest-in-shared-stewardship/> (2019).

¹¹ 88 FR 68811.

¹² 88 FR 68811 – 68812.

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various latent defects that threaten the viability of Utah’s working landscapes.

A. IEG and Natural Asset Companies

The Proposed Rule defines a “Natural Asset Company” or “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 seeks to replenish the natural resources being used.”¹³

Important to note here is that the “NAC” is a completely new type of public company being created out of whole cloth by the NYSE, as conceptualized by a private company founded in 2017 called Intrinsic Exchange Group Inc. (“IEG”).¹⁴

The first concern the State would raise at this point is the fact that a private company, IEG, created the concept of a NAC. IEG then created what is called the “Ecological Performance Reporting Framework” (or simply the “Reporting Framework”) which NACs are required to utilize to remain in compliance with various reporting requirements imposed by the Proposed Rule. Once they created a new type of company, and a reporting framework to accompany it, IEG then entered into exclusive licensing agreements with the NYSE that ensured it maintained a monopoly on the monetization of NACs. To further cement itself into the process, IEG then entered into revenue sharing agreements with the NYSE, which as stated in the Proposed Rule, “IEG will be entitled to a share of the revenues generated by the Exchange from the listing and trading of NACs on the NYSE.”¹⁵ In short, the State is concerned that a private company created a brand new type of public company, created an associated reporting framework, and then entered into agreements with the NYSE monopolizing its framework and ensuring revenue sharing for all NAC-associated activities on the NYSE. This type of excessive interference by the IEG into the NYSE’s trading activities is concerning to the State and the State would encourage the SEC to be cautious in allowing this type of behavior.

¹³ 88 FR 68811.

¹⁴ 88 FR 68812; *see also* IEG, *Be Invested*, Intrinsic Exchange Group, *available at*: <https://www.intrinsicexchange.com/> (2023).

¹⁵ 88 FR 68813.

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B. Ecological Performance Rights

Moving on, if a potential NAC meets the definition conceptualized above, then the new NACs are then expected, under the Proposed Rule, to hold what are being referred to as “ecological performance rights” which are defined as “the value of natural assets and production of ecosystem services”.¹⁶ The NACs are expected to:

“...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.”¹⁷

The second concern the State would raise at this point is about the holding of ecological performance rights (or “EPRs”). The Proposed Rule states that the NAC would acquire EPRs by obtaining a license concerning such rights from a government entity or a private landowner. This is extremely concerning to the State in light of the BLM’s recently proposed “Public Lands Rule” or “Conservation and Landscape Health Rule.”¹⁸ Under the BLM’s “Conservation Rule,” the BLM would be allowed to redefine multiple use of BLM land to include “conservation” as a use (unilaterally bypassing Congress to amend a statute in the process). To further “conservation” as a use, the BLM would then issue “conservation leases” to businesses, individuals, and arguably government bodies, who would hold the leases to further the conservation purposes.

The legality of both adding conservation as a use and the issuance of conservation leases is on shaky ground, at best. However, suffice it to say, that the BLM’s Conservation Rule would arguably open the door for businesses to purchase a conservation lease (oddly enough which is for 10 years, the same as the licensing requirements imposed by the SEC’s Proposed Rule¹⁹) and thereby become eligible for NAC listing as they now hold ecological performance rights.

The State is adamantly opposed to the implementation of the BLM’s conservation rule, and its conservation leasing provisions as these provisions open the door to eliminating critical access to federal land for multiple uses such as grazing, logging, mining, recreation, energy production, etc. The State is especially concerned with the Conservation Rule’s potential to permanently take out of production federal lands necessary for the success and viability of Utah’s livestock grazing families, necessary energy production, and other multiple uses of the land. The extent of the State’s opposition to the Conservation Rule (and the justification behind said opposition) can be found in the State’s comprehensive comment letter submitted to the BLM,

¹⁶ 88 FR 68812.

¹⁷ 88 FR 68814.

¹⁸ 88 FR 19583.

¹⁹ 88 FR 68815.

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which can be found at the link below.

<https://www.regulations.gov/search/comment?filter=RIN%201004%E2%80%93AE%E2%80%9392>.

As such, the State hereby urges the SEC to amend the NYSE's Proposed Rule in a manner that would prohibit companies seeking to qualify as NACs from using the purchase of BLM Conservation Leases to qualify as ecological performance rights. Allowing NACs to purchase BLM Conservation Leases as ecological performance rights simply allows companies to make money off of the well-meaning public (via an Initial Public Offering or the subsequent trading of stocks) to then purchase these leases from the BLM, all for taking that land completely out of use and allowing it to remain untouched and fallow. This allows the BLM to make money for doing nothing and allows the NAC to make money for doing nothing, all at the expense of the American people who are being misled into believing they're making a difference, even though a growing body of scientific research points to the fact that removing all use of the land (particularly grazing animals) results in greater desertification in western, arid landscapes.²⁰

In short, if the SEC's finalized Rule allows NACs to purchase BLM Conservation Leases as "ecological performance rights" then the State will adamantly and emphatically oppose the implementation of the NYSE's Proposed Rule.

C. Unsustainable Activities

The Proposed Rule imposes various reporting requirements on potential NACs, as well

²⁰ See generally Alan Savory, *Holistic Management: A Commonsense Revolution to Restore our Environment*, Third Edition, Island Press, Library of Congress Control Number 2016941253 (2016); see also Peter Byck, *Roots So Deep Trailer*, available at: www.rootssodeep.org (2023) ("Roots So Deep (you can see the devil down there)" is a 4-part documentary series all about inventive farmers and maverick scientists building a path to solving climate change with hooves, heart and soil. The research seeks to answer the questions of Can an underutilized way to graze cattle, that mimics the way bison once roamed the land, help get farmers out of debt, restore our depleted soils, rebuild wildlife habitat and draw down huge amounts of carbon? Cattle have been seen as eco-villains for a long time. What if they can help save us from catastrophic climate change? The research is spearheaded by Professor Peter Byck, professor of practice at Arizona State University, in both the School of Sustainability and the Walter Cronkite School of Journalism, who is currently helping to lead a \$10 million research project comparing Adaptive Multi-Paddock (AMP) grazing with conventional grazing; collaborating with 20 scientists and 10 farm families, focused on soil health & soil carbon storage, microbial/bug/bird biodiversity, water cycling and much more. The research also includes a new, 4-part docuseries called "Roots So Deep (you can see the devil down there)," directed by Byck, which is all about the inventive farmers and maverick scientists building a path to solving climate change with hooves, heart and soil); see also Peter Byck, et. al, *Improvements in soil properties under adaptive multipaddock grazing relative to conventional grazing*, *Agronomy Journal*, available at: https://carboncowboys.org/images/published_research/pdfs/Agronomy_Journal_2022-Mosier-Improvements_in_soil_properties_under_adaptive_multipaddock_grazing.pdf (2022); see also Bill Weir, *Hamburgers and steaks are a big climate problem. Could new grazing practices be the answer?*, CNN, available at: <https://www.cnn.com/2023/07/03/us/climate-crisis-cattle-amp-grazing/index.html> (2023).

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as ongoing restrictions on what types of activities may be engaged in by the NAC. For example, the Proposed Rule states:

“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” (emphasis added).²¹

If an NAC willfully or unwillingly is to venture into one of these “unsustainable activities”, then according to the Proposed Rule, “*the NAC will be subject to delisting from the NYSE.*”²²

Thus, the third concern the State would raise at this point is regarding the latent ambiguity found in the definition of these “unsustainable activities”.

Here, the SEC has thrown out four broad categories of extractive industries, which simply creates more “grey areas.” For example, under BLM regulations, geothermal resources are classified as “fluid minerals” – the same as oil and gas. So, under the SEC’s Proposed Rule, “fossil fuel development” would arguably inadvertently envelope geothermal resources on federal land due to BLM’s regulatory definitions. Further, no explanation is provided for what makes mining and logging “unsustainable.” Mining, logging, and forestry practices have come a long way in the last 100-plus years, and simply classifying logging and all mining as “unsustainable” is opposed by the State.

Further, the phrase “perpetuating industrial agriculture” leaves much to be desired as well. What exactly is meant by the term “industrial agriculture”? Here, the SEC should recognize and encourage the continued use of livestock grazing for carbon sequestration. Generally speaking, agricultural production, especially livestock grazing, is often falsely viewed negatively when discussing climate change. Instead of attacking it, the SEC should safeguard the agriculture industry and ensure that marketing and awareness are dedicated to the positive impacts of agriculture. The agricultural industry is constantly attacked, and without future generations learning about, and engaging in this industry, the health of the land, food, and many other products are at risk. Many people have a biased and inaccurate opinion of livestock grazing as a result of mere ignorance and lack of understanding of how livestock grazing contributes to the

²¹ 88 FR 68814.

²² *Id.*

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overall welfare by providing sufficient food. In addition to produced food and various products from livestock, grazing animals can be an important factor in maintaining balanced and diverse ecosystems.

Agriculture (particularly the livestock sector and grazing on federal public lands) plays a key economic role in the State. In short, livestock grazing is a key piece of the overall economy of the State. For example, in Utah, agricultural employment constitutes one percent of all jobs in the State (compared to 1.3 percent nationwide) and produces over \$2,085,535,000 in cash receipts per year.²³ Of the total agricultural cash receipts, the sale of cattle and calves accounts for \$377,979,000.²⁴ These dollar amounts underscore the importance that agriculture, and particularly livestock grazing, plays in the Utah economy. More specifically, public land grazing plays a large role in ensuring the vitality of Utah's livestock grazing industry.

According to the Utah State Resource Management Plan, the responsible use of public land for livestock grazing is an integral part of Utah's agricultural economy.²⁵ With urbanization continually swallowing available agricultural land within the state, livestock grazing on federally administered lands becomes even more important to agriculture in the State. Of the 45 million acres of grazing lands within the State of Utah, 73 percent is federally owned, 9 percent is state-owned, and 18 percent is privately owned. In short, the federal government plays an oversized role in ensuring the continued success of livestock grazing in Utah. However, the State is concerned given the fact that in Utah, "grazing has declined on BLM lands by more than 66 percent and on Forest Service lands about 50 percent"²⁶ over the past century. Because "most livestock grazing in Utah occurs on federal lands,"²⁷ it's important that these lands remain available for grazers.

In addition to the large economic role it plays, livestock grazing has a high potential to contribute to carbon sequestration through properly grazed landscapes. Grazing systems are used to control the time, timing, and intensity of grazing which results in the health of the rangeland and stores carbon. Grazed landscapes result in higher amounts of carbon being stored in the soil than ungrazed landscapes. Livestock grazing contributes to removing large amounts of carbon each year by grazed landscapes being able to use photosynthesis to store carbon in the soil and

²³ Headwaters Economics. 2019. Economic Profile System: Agriculture, *available at*: <https://headwaterseconomics.org/apps/economic-profile-system/49000> (last accessed September 23, 2021).

²⁴ 2017 Census of Agriculture. 2017. State Profile: Utah, *available at*: https://www.nass.usda.gov/Publications/AgCensus/2017/Online_Resources/County_Profiles/Utah/cp99049.pdf (last accessed September 23, 2021).

²⁵ Utah SRMP at 22-24.

²⁶ *Id.*

²⁷ *Id.* at 23.

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green plants. The removal of noxious and invasive weeds also contributes to landscapes being able to store more carbon. Livestock grazing is an effective management tool used to remove noxious and invasive weeds. Utilizing livestock grazing as a management tool is also significantly less expensive than other management options.

Ultimately, using livestock grazing as a tool for carbon sequestration will benefit rural economies and communities, and should be included in terms of positive ecosystem services contemplated by the SEC's Proposed Rule. Further, instead of targeting all "industrial agriculture" as an unsustainable activity, the SEC should return to the drawing board to avoid unintended consequences – such as inadvertently targeting sustainable grazing.

Remaining on the agriculture portion of the definition of "unsustainable activities" the SEC uses the term "perpetuating industrial agriculture." Here, the State is concerned as to the ambiguity surrounding the word "perpetuating." The Merriam-Webster dictionary defines "perpetuate" as "to make perpetual or cause to last indefinitely."²⁸ So when the SEC uses the term "perpetuating industrial agriculture" the term "perpetuating" potentially has far-reaching consequences. For example, is the fertilizer or seed dealer who sells products to farmers "perpetuating" what the SEC is loosely referring to as "industrial agriculture" because he helped agriculture to last indefinitely by selling the necessary seeds and fertilizer? How about the rancher who raises cattle on federal land, and intends to hand that ranch down to his children - is that perpetuating industrial agriculture? By loosely referring to "industrial agriculture" in its rule, the SEC is opening Pandora's box into areas beyond its expertise, and by further compounding the term with "perpetuating" agriculture, the SEC is creating a litany of unintended consequences it knows nothing about.

As such, the State would encourage the SEC to reexamine what it considers "unsustainable activities" because the SEC's mission and expertise relate to the regulation of securities – not agriculture, mining, logging, or energy development. By simply throwing out four broad areas in the Proposed Rule as "unsustainable activities" (namely traditional fossil fuel development, mining, unsustainable logging, or perpetuating industrial agriculture) the SEC is venturing into "arbitrary and capricious" territory.

D. ESG

The Proposed Rule asserts that "ending the overconsumption of and underinvestment in nature requires bringing natural assets into the financial mainstream."²⁹ This assertion is

²⁸ Merriam-Webster, *Perpetuate*, Merriam-Webster Dictionary, available at: <https://www.merriam-webster.com/dictionary/perpetuate> (2023).

²⁹ 88 FR 68812.

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reinforced by the Proposed Rule's paragraph stating:

“...investors increasingly express a desire for investment vehicles that will permit them to express a sustainability thesis. Improvements in corporate disclosures, introduction of climate and nature-focused indices, and the **development of ESG funds screening** for preferred or prohibited factors have all expanded the accessibility of sustainable investing.”³⁰

Here, the fourth concern the State would raise at this point is concerning this assertion that concepts such as ESG are being willingly desired by the majority of the public. ESG (or Environmental, Social, and corporate Governance) is a recent phenomenon. The State of Utah has repeatedly taken a stance against the implementation of widespread ESG scores. For example, in 2022, “Utah Treasurer Marlo M. Oaks and Utah Attorney General Sean Reyes, Utah’s entire Congressional delegation, all Constitutional officers, and Utah’s legislative leaders” all issued a letter opposing ESG.³¹ Specifically, Treasurer Oaks issued a statement regarding the letter, wherein he asserted:

“ESG is about controlling and forcing behaviors. It attempts to do through capital markets what activists and their government allies have been unable to do through democratic processes. It is a political score that, intentionally or not, can result in market participants using economic force to drive a political agenda.”³²

The State agrees with the above quote. Here, the entirety of the NYSE’s Proposed Rule seems to simply be a continuation of ESG principles and is more about “*controlling and forcing behaviors*”³³ than it is about pursuing its actual role of trading securities. It bears repeating, but the entirety of the NYSE’s Proposed Rule seems intent on “*do[ing] through capital markets what activists and their government allies have been unable to do through democratic processes.*”³⁴ Here, the SEC’s Proposed Rule, “*intentionally or not, can result in market participants using economic force to drive a political agenda.*”³⁵

If indeed the Proposed Rule is simply furthering a radical environmentalist agenda, then in light of Utah’s frank position on ESG scores and ESG-related proposals, the State opposes the

³⁰ 88 FR 68812.

³¹ Marlo M. Oaks, *Utah Treasurer Marlo Oaks Statement: Congressional Delegation, State Officials Send Letter Blasting S&P Global for Publishing ESG Credit Indicators*, Utah State Treasurers Office, available at: <https://treasurer.utah.gov/featured-news/utah-treasurer-marlo-oaks-statement-congressional-delegation-state-officials-send-letter-blasting-sp-global-for-publishing-esg-credit-indicators/> (2022).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

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implementation of the NYSE's Proposed Rule.

E. Statutory Basis

The Proposed Rule states that “the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act”³⁶ meaning the Securities Exchange Act of 1934,³⁷ which among other things requires that a proposed rule “protect investors and the public interest.” The Proposed Rule justifies its position that “the proposed listing standard for NACs is consistent with the protection of investors and the public interest...”³⁸ by stating (in part) that “there is significant and growing interest in investing in asset classes that are consistent to protect and improve the environment. The Exchange believes that the listing of NACs will provide investors with an investment vehicle that meets this demand. The Exchange also believes that the development of NACs will provide a source of funding to maintain and restore natural assets.”³⁹ While this statement may be true, here, the issue arises from the fact that the SEC's three-part mission is to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”⁴⁰

Perhaps it's true that by allowing for NAC listings the SEC will provide a environmentally friendly investment vehicle. Perhaps it's true that by allowing for NAC listings the SEC will provide a source of funding to maintain and restore natural assets. Perhaps that's true. But what IS true, is that the mission of the SEC is not to provide funding for maintaining and restoring natural assets. As was extensively analyzed before this letter, the SEC lacks expertise and knowledge in critical areas related to the current Proposed Rule. Here, as stated, the SEC's mission and expertise relate to the regulation of securities – not agriculture, mining, logging, or energy development. By attempting to regulate areas outside its expertise (like traditional fossil fuel development, mining, unsustainable logging, or perpetuating industrial agriculture) the SEC is venturing into “arbitrary and capricious” territory – all in an effort to justify why the current rule is “protecting investors and in the public interest.”

Again, the Proposed Rule states that “the Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act”⁴¹ meaning the Securities Exchange Act of

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ 15 U.S.C. 78s(b)(1).

³⁸ 88 FR 68817.

³⁹ 88 FR 68818.

⁴⁰ SEC, *The Role of the SEC*, U.S. Securities and Exchange Commission, available at:

<https://www.investor.gov/introduction-investing/investing-basics/role-sec#:~:text=The%20U.%20S.%20Securities%20and%20Exchange,Facilitate%20capital%20formation> (2023).

⁴¹ 15 U.S.C. 78f(b)(5).

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1934,⁴² which among other things requires that a proposed rule “protect investors and the public interest.” This assertion is tenuous at best.

The SEC’s Proposed Rule seems to allow the SEC to create land use decisions outside of its statutory authority granted by Congress in the Securities Exchange Act. In the immediate wake of the Supreme Court’s decision in *West Virginia v. EPA*, 142 S. Ct. 2587 (2022), the SEC’s obligation to identify clear, express statutory authority is heightened.⁴³ Here, the Securities Exchange Act is the statute granting rulemaking authority, and by attempting to venture into areas outside its expertise and mission, the SEC is arguably failing to meet its obligation to identify clear, express statutory authority to create a new type of public company, and then regulate environmental areas outside that authority. As such, the State would encourage the SEC to reexamine these portions of the Proposed Rule to ensure that it hasn’t exceeded its rulemaking authority.

III. EXTENSION REQUEST

As has been highlighted thus far, the Proposed Rule has sweeping effects that have the potential to negatively affect Utah’s citizenry and the State itself. As such, due to the complexity of the Proposed Rule, the State officially requests a 90-day extension to the public comment period to allow for a more in-depth review of the Proposed Rule. Such an extension would afford the State time for more substantive comments and allow the SEC time to reexamine some of the issues raised herein.

IV. CONCLUSION

In summation, the citizens of the State of Utah, as well as the United States as a whole, will continue to benefit as the SEC fulfills its three-part mission to “protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”⁴⁴ As an overarching goal, “the State of Utah supports the wise use, conservation, and protection of public lands and their resources, including well-planned management prescriptions.”⁴⁵ Thus, “it is the State’s position that public lands be managed for multiple uses, sustained yields, prevention of waste of natural resources, and to protect the health, safety, and welfare of the public. It is important to the State

⁴² 15 U.S.C. 78s(b)(1).

⁴³ Tina Van Bockern, *Here We Go Again: BLM Issues Another Methane Rule*, Holland & Hart, available at: <https://www.hollandhart.com/here-we-go-again-blm-issues-another-methane-rule> (2022); citing *Wyoming v. U.S. DOI*, 493 F. Supp. 3d 1046 (D. Wyo. 2020).

⁴⁴ SEC, *The Role of the SEC*, U.S. Securities and Exchange Commission, available at: <https://www.investor.gov/introduction-investing/investing-basics/role-sec#:~:text=The%20U.%20S.%20Securities%20and%20Exchange,Facilitate%20capital%20formation> (2023).

⁴⁵ Utah SRMP at 8.

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

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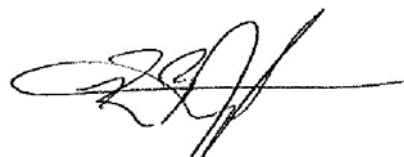
economy that public lands be properly managed for fish, wildlife, livestock production, timber harvest, recreation, energy production, mineral extraction, water resources, and the preservation of natural, scenic, scientific, and historical values.”⁴⁶

Instead of sticking to its mission of regulating securities, it appears that the SEC is allowing the NYSE, and itself, to venture outside its rulemaking authority arbitrarily and capriciously into areas of ESG, which as stated earlier “is about controlling and forcing behaviors. It attempts to do through capital markets what activists and their government allies have been unable to do through democratic processes. It is a political score that, intentional or not, can result in market participants using economic force to drive a political agenda.”⁴⁷

This quote could not better summarize the State of Utah’s position on the Proposed Rule and the State encourages the SEC to reconsider its proposed course of action in light of the State’s comments.

In short, I thank you for your consideration of the State’s comments. The State looks forward to working with the SEC and the NYSE as this project moves forward. Please contact the Utah Public Lands Policy Coordinating Office if you have questions, or if we can assist in any way, at the number or address below.

Sincerely,



Redge B. Johnson
Director

⁴⁶ *Id.*

⁴⁷ Marlo M. Oaks, *Utah Treasurer Marlo Oaks Statement: Congressional Delegation, State Officials Send Letter Blasting S&P Global for Publishing ESG Credit Indicators*, Utah State Treasurers Office, available at: <https://treasurer.utah.gov/featured-news/utah-treasurer-marlo-oaks-statement-congressional-delegation-state-officials-send-letter-blasting-sp-global-for-publishing-esg-credit-indicators/> (2022).