

October 25, 2023

U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

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

Dear Office of the Secretary,

The Center for Audit Quality (CAQ) is a nonpartisan public policy organization serving as the voice of U.S. public company auditors and matters related to the audits of public companies. The CAQ promotes high-quality performance by U.S. public company auditors; convenes capital market stakeholders to advance the discussion of critical issues affecting audit quality, U.S. public company reporting, and investor trust in the capital markets; and using independent research and analyses, champions policies and standards that bolster and support the effectiveness and responsiveness of U.S. public company auditors and audits to dynamic market conditions. This letter represents the observations of the CAQ based upon feedback and discussions with certain of our member firms, but not necessarily the views of any specific firm, individual, or CAQ Governing Board member.

The CAQ appreciates the opportunity to share some high-level observations related to the Securities and Exchange Commission (SEC), [Notice of Filing of Proposed Rule Change to Amend the NYSE Listed Company Manual to Adopt Listing Standards for Natural Asset Companies](#) (Proposed Rule Change or Release). Our comments focus on the proposed requirements regarding 1) examination and attestation by independent reviewers and 2) corporate governance. Given the limited timeframe to evaluate the specifics of the reporting framework, and the fact that this will represent a new type of company with novel license arrangements, we believe additional questions could arise as entities begin to apply the Reporting Framework. We recommend the NYSE continue to monitor developments, including relating to the operability of the reporting and examination requirements, and propose changes to the Reporting Framework should the need arise. As noted in the proposal, such changes would be considered changes to the listing standards and thus would be subject to approval by the SEC.



CENTER FOR AUDIT QUALITY
555 13th Street NW, Ste 425 E
Washington, DC 20004

(202) 609-8120
www.thecaq.org



Examination and Attestation by Independent Reviewer

The Release includes the following proposed requirements for Natural Asset Companies (NACs) listed on the NYSE:

- **Annual Examination of EBS Report.** The NAC must review the adequacy of the Equitable Benefit Sharing (EBS) 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 EBS 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 Public Company Oversight Board (PCAOB) or AICPA’s attestation standards.
- **Annual Examination and Attestation of the Ecological Performance Report (EPR) and Technical Ecological Performance Study (Technical EP Study).** The examination and attestation must be performed and provided by a public accounting firm that is registered with the PCAOB and is independent from the NAC and, where applicable, a NAC’s licensor, if applicable, under the independence standard set forth in Rule 2-01 of Regulation S-X (“Independent Reviewer”). 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.

In principle, we agree that examination and attestation engagements should be performed by a public accounting firm that is registered with the PCAOB and is independent from the NAC under the independence standard set forth in Rule 2-01 of Regulation S-X. We believe the independence, ethical and quality control requirements with which public company auditors are required to comply are among the factors that contribute to the high-quality attestation engagements performed by public company auditors. We also agree that the examinations 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 provide investors with increased trust and confidence that such EPR is prepared in a manner that is consistent with the requirements of the Reporting Framework. Further, an examination performed by a public accounting firm registered with the PCAOB protects investors by enhancing the reliability and quality of the information in the EPR.



Finally, we agree that the above engagements be performed in accordance with PCAOB or AICPA attestation standards, as application of these professional standards will include additional requirements around engagement acceptance and continuance, quality control, independence, and ethical standards, all of which will work in concert with other professional standards and regulatory requirements to provide consistency over the quality of service provided by independent reviewers. Given the PCAOB interim attestation standards have not been updated since adoption by the Board, they would require updating prior to being used for these engagements but understand this project is currently on the PCAOB's agenda.

We do have a number of questions, however, regarding the proposed requirement for annual examinations, including:

- PCAOB/AICPA attestation standards contemplate a responsible party providing a written assertion about whether, based on its evaluation, the subject matter of the engagement is in accordance with the criteria applicable to the engagement. What is the specific assertion the NYSE intends the NAC to make? In the case of the EPR and the Technical Ecological Performance Study, the Release clearly states that the IEG's Ecological Performance Reporting Framework is the criteria to be applied. However, the criteria for the annual examinations of the EBS Report is not clearly defined. We expect that the Independent Reviewer would be required to provide assurance over whether the NAC (and the licensor) followed the EBS policy during the period. We recommend the final rule confirm this understanding.
- What is the scope of the examinations for the EBS Report? For example, should it extend to criteria such as the appropriateness or completeness of local communities and/or the independence of trustees?
- Although not clearly defined, we interpret the Release as including both the NAC and the licensor as responsible parties. We recommend the final rule confirm this understanding.
- The Proposed Rule Change is not clear regarding whether the examination of the Independent Reviewer occurs before or after the independent directors' review of the NAC. We assume the independent directors' review of the NAC would be completed prior to the Independent Reviewer issuing the examination report. We suggest the final rule confirm this understanding.

Notwithstanding the above confirmations/clarifications, in order for an independent public accountant to perform an examination in accordance with PCAOB or AICPA attestations standards, the NAC would need to clearly define the criteria, nature, scope, responsible parties and timing of the engagement in accordance with the NYSE listing standards. Before any listing standards are finalized, we would very much appreciate the opportunity to discuss these and other practicalities with the SEC and NYSE staff.



Corporate Governance Requirements

The Proposed Rule Change would require a listed NAC to comply with all of the corporate governance requirements set forth in Section 303A.00, including 1) the requirement of Section 303A.06 that a company must have an independent audit committee and 2) the provisions of Section 303A.07 setting forth additional requirements for the audit committee. The Proposed Rule Change would amend Section 303A.07 to establish additional responsibilities specific to the audit committee of a NAC regarding its oversight of the Independent Reviewer, such as

- Assisting Board oversight of the qualifications of the Independent Reviewer.
- Evaluating the Independent Reviewer's qualifications, performance, and independence.
- Meeting separately, periodically, with management and the Independent Reviewer to discuss the EPR and the conduct of the EPR Review.
- Reviewing with the Independent Reviewer any problems in the conduct of their review or difficulties and management's response.
- Setting clear hiring policies for employees or former employees of the Independent Reviewer.

We agree that 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. We do, however, question the following proposed guidance in the Release:

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.

This statement assumes that regular rotation of the firm undertaking the EPR review would "assure continuing independence of the Independent Reviewer." We note that numerous studies on the correlation of mandatory rotation and audit quality have actually observed an inverse correlation between auditor tenure and audit quality problems. As it relates specifically to independence, a Government Accountability Office (GAO) study concluded that "[mandatory] audit firm rotation may not



be the most efficient way to enhance auditor independence and audit quality.”¹ We recommend the proposed requirements be amended as follows:

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.

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We would be pleased to discuss our comments or answer any questions that the Staff or the SEC may have regarding the views expressed in this letter. Please address questions to Dennis McGowan (dmgowan@thecaq.org) or Annette Schumacher (aschumacher@thecaq.org).

Sincerely,

Dennis J. McGowan
Vice President, Professional Practice
Center for Audit Quality

SEC

Honorable Gary Gensler, Chair
Caroline A. Crenshaw, Commissioner
Jaime Lizárraga, Commissioner
Hester M. Peirce, Commissioner
Mark Uyeda, Commissioner
Paul Munter, Chief Accountant

¹ Required Study on the Potential Effects of Mandatory Audit Firm Rotation, GAO (2003).

CAO

Diana Stoltzfus, Deputy Chief Accountant

Erik Gerding, Director, Division of Corporation Finance

Lindsay McCord, Chief Accountant, Division of Corporation Finance

Haoxiang Zhu, Director, Division of Trading and Markets