



Via Electronic Filing and Mail

Rule-comments@sec.gov

December 27, 2021

Ms. Venessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington DC 20549-1090

RE: File Number S7-17-21: Proposed Rule Regarding Proxy Voting Advice

Dear Ms. Countryman:

The Board of Directors and leadership of Natural Gas Services Group, Inc. (the “Company” or “NGS”) are opposed to the Securities and Exchange Commission’s (the “Commission” or “SEC”) proposed amendments (“Proposed Amendments”) to recently adopted rules regarding proxy voting advice (the “2020 Final Rules”) as set forth in the above-captioned file (Release No. 34-933595). NGS is disappointed that the Commission appears to prioritize politics over policy at the expense of improved market fairness and transparency.

Natural Gas Services Group, Inc., is a leading provider of gas compression equipment and services to the energy industry. The Company manufactures, fabricates, rents, sells and maintains natural gas compressors and combustion systems for oil and natural gas production and plant facilities. NGS is headquartered in Midland, Texas, with fabrication facilities located in Tulsa and Midland and service facilities located in major oil and natural gas producing basins across the U.S. NGS common stock is traded on the New York Stock Exchange.

The hastily introduced Proposed Amendments are in stark contrast to the process under which the 2020 Final Rules were developed, deliberated and ultimately adopted. The 2020 Final Rules were the culmination of nearly two decades of analysis, discussion and deliberation by the SEC, issuers, investors, proxy advisory firms, academics, policy makers and other interested parties. The process effectively began in 2004 when the Commission issued “no-action” letters to two proxy advisory firms, which prompted increased interest in and analysis of proxy advisory firms and their impact on market fairness and transparency. A number of Commission actions and solicitation for input from market participants followed over the next decade which would transcend the politics of divergent administrations.

While the genesis of the 2020 Final Rules can be traced back to 2010 or earlier, SEC Roundtables held in 2013 and 2018 were instrumental in forging current policies. Specifically, the November,

2018 Roundtable provided an opportunity for market participants from all viewpoints to express their views on the impact of the proxy process and the impact proxy advisory firms have on market fairness and transparency. A number of other opportunities for input and comment were available both prior to and after the 2018 Roundtable, all of which are well documented by the SEC.

A review of the record from the 2018 Roundtable and similar comment opportunities provide a clear set of concerns regarding the current role of proxy advisory firms in fair and transparent markets: (1) the presence of and potential for significant conflicts of interests; (2) a generic, “one-size-fits-all” approach toward voting advice that is inherently unfair to issuers and can be deceptive to investors; (3) the lack of appropriate oversight and regulation of an industry that is effectively devoid of competition and, as a result, possess enormous power over public market conduct; (4) has undue influence on the activity and operations on issuer policy, largely without public review and scrutiny; and (5) frequent errors of fact and analysis due to a lack of appropriate diligence, a lack of requisite expertise and staff to provide complete and accurate inquiry and analysis of issuers.

Given those concerns - which have been consistently articulated over several years - the Commission began the process of developing a regulatory construct for the proxy advisory process that was focused on three key objectives: (1) Appropriate disclosure of actual and potential conflicts that could materially impact the objectivity of proxy advisory firms and their analysis; (2) the accuracy and completeness of information used to provide proxy voting advice; and (3) a method by which issuers (the targets of proxy advisory firms’ analysis) could review the analysis of proxy advisory firms in real-time and provide appropriate critique of such analysis (which may differ from the proxy advisory firms’ positions) and a timely and efficient method by which such critique would be provided to the clients of proxy advisory firms.

The comprehensive and methodical notice-and-comment period undertaken by the Commission resulted in significant amendments to the initial proposed regulations which resulted in a “lighter regulatory touch” in the 2020 Final Rules than what was initially proposed (for a detailed review of that process see *U.S. Chamber of Commerce Center for Capital Markets Competitiveness, Comments of Tom Quadman to File Number S7-17-21, December 23, 2021, <https://www.sec.gov/comments/s7-17-21/s71721-20110258-264516.pdf>*). In short, this process was comprehensive, inclusive and equitable to all parties.

As a result, the 2020 Final Rules made several key changes to federal proxy rules related to proxy advisory firms which result in more fair and transparent public markets:

- (1) Require proxy advisory firms to disclose conflicts of interest;
- (2) Require proxy advisory firms to adopt and disclose policies and procedures to ensure that issuers subject to proxy advisory firms’ voting advice are provided copies of such advice prior to or coincident with the release of such advice to the proxy advisory firms’ clients; and
- (3) Require proxy advisory firms to provide its clients with a mechanism to become aware when an issuer provides a written statement regarding the proxy advisory firms’ analysis in a timely manner prior to the issuers’ annual or special meeting.

The 2020 Final Rules also amended the note to Rule 14a-9 which prohibits false or misleading statements during the solicitation of proxies to include specific examples of material misstatements or omissions related to proxy voting advice.

While the 2020 Final Rules were published and effective in late 2020, the compliance date was set for December 1, 2021 (effectively in time for the 2022 proxy and annual meeting cycle), allowing proxy advisory firms ample time to prepare for the changes. *In anticipation of the effective date and relying on established principles of administrative law, NGS (as well as other public companies) has been preparing for the 2020 Final Rules.*

The efforts of the Commission and a diverse (and, in many cases, divergent) group of stakeholders should be applauded for rising above the political fray to forge a new regulatory framework in the 2020 Final Rules that address the shortcomings of proxy advisory practices while avoiding unnecessary, burdensome regulations. The compromises that were shaped through the notice-and-comment period resulted in sound public policy and demonstrate the importance of an open and deliberate rulemaking process, a cornerstone of administrative jurisprudence.

Nonetheless, in a naked attempt to subvert prudent public policy, the new Chairman of the Commission is unilaterally attempting to nullify the 2020 Final Rules because it is inconsistent with the new administration's political notions. It is unfortunate and ironic that an administration that stands in support of market fairness and transparency has chosen to ignore those principles in this clearly partisan action.

The Proposed Amendments eviscerate key provisions of the 2020 Final Rules that significantly advance the cause of fair and transparent public markets. Under the Proposed Amendments, the requirements that proxy advisory firms provide their analysis to issuers (the subject of their advice) as well as provide a mechanism for the proxy advisory firms to notify clients when an issuer has provided a written response to such analysis are removed. In addition, the Proposed Amendments remove the note to Rule 14a-9 which provides examples of situations in which the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the federal proxy rules. *The elimination of these protections is unjustified and creates significant damage to the goal of fair and transparent public markets.*

We appreciate the Commission not eliminating the requirement that proxy advisory firms disclose conflicts of interest, another important hallmark of the 2020 Final Rules. However, such progress is hollow without assurances that issuers and investors are protected from materially false, inaccurate and incomplete data as a result of unchecked critiques from proxy advisory firms.

As an issuer and a target of proxy advisory firm analysis, NGS has uniquely experienced the detrimental impact of unchecked and inaccurate analysis by proxy advisory firms.

In the past decade, NGS has repeatedly been the subject of factually incorrect or otherwise misleading proxy advice by proxy advisory firms, requiring NGS to spend both money and the time and effort of its leadership team to refute the misinformation disseminated to shareholders by the proxy advisory firms. Specifically, NGS has been required to issue supplemental proxy statements

in response to inaccurate and misleading information and analysis contained in proxy advisory firm reports during seven of the last eight proxy seasons, dating back to 2014.

Most recently, in 2021 Institutional Shareholder Services (“ISS”) urged NGS shareholders to vote against the reelection of a particular director, supposedly on the basis of his lack of responsiveness to alleged concerns regarding an earlier say-on-pay proposal. But the director in question was not on the compensation committee at the time of the action to which ISS objected—and therefore bore no responsibility for the conduct for which ISS criticized him—demonstrating that its advice was false and materially incomplete. NGS was forced to file a supplemental proxy statement rebutting those claims, on a very short timeframe with proxy voting ongoing.

More generally, proxy advisory firms have frequently issued proxy advice regarding NGS that relies on misleading, one-size-fits-all analysis that fails to appreciate the unique nature of NGS’s business and the industry in which it operates. Specifically, ISS has consistently urged NGS’s shareholders to vote against management proposals based on comparisons to ISS-selected “peer groups” that have little to nothing in common with NGS apart from their (often marginal) participation in the overall energy industry. These recommendations pay no regard to the particular segment of the energy industry in which NGS operates or the relative market capitalization of NGS and its supposed peer firms—even though more comparable peers were easily identifiable (some of which are identified in NGS’s publicly disclosed peer group). As a result, NGS has had to devote meaningful resources to analyzing and rebutting these misleading conclusions using its own peer group analysis—again, on artificially constrained timeframes—during each of the 2015, 2016, 2017, 2019, and 2020 proxy seasons. (In 2021, NGS was forced by the tight timetable to triage which misleading proxy advisory firm statements to respond to, and chose the director re-election issue discussed herein).

While we do not believe that NGS should be immune from critique and criticism from stakeholders - including proxy advisory firms - such critique and criticism should occur on a level playing field with some assurance that the facts and analysis are accurate and complete. The 2020 Final Rules were designed, in part, to increase the accuracy of proxy voting advice by exposing the shareholder-recipients of potentially misleading advice to rebuttal from affected issuers. Under the principle that sunlight is the best disinfectant, this potential for swift and effective rebuttal would incentivize proxy advisory firms to avoid outright errors and misleading analysis such as those to which NGS has been subject to in the recent past, knowing that it would not stand unchallenged. Thus, the 2020 Final Rules should be expected to decrease the incidence of such misleading information being promulgated to shareholders.

As important, even if misleading proxy advice is disseminated, the provision of the 2020 Final Rules requiring proxy advisory firms to provide a means through which shareholders can become aware of a registrant’s response to proxy advice will enable NGS to communicate its rebuttal analysis to shareholders much more efficiently and in a timely manner, reducing the amount of time, effort and resources NGS will commit rebutting misleading proxy advisory firm analysis.

The Proposed Amendments – as well as the SEC’s decision not to enforce the 2020 Final Rules (a decision to which NGS is a party to litigation against the Commission, see *National Association of Manufacturers, et. al. v. United States Securities and Exchange Commission, et. al.*, No. 7:21-cv-183-DC-RCG, (W.D. TX, Oct.13, 2021)) – is counter to the goal of fair and transparent public

markets. Eliminating the requirement that proxy advisory firms be required to provide their analysis to issuers and provide notice to clients when an issuer provides a response to such analysis does nothing but suppress the full, fair and complete dissemination of information to shareholders on which fully transparent markets rely.

NGS is not alone in its concern over accuracy and fairness of proxy advisory firms' analysis. A recent report from the American Council of Capital Formation indicates that SEC filings in 2021 show **at least 50 instances** in which proxy advisory firms provided advice based on inaccurate or disputed information (See *Why Proxy Advisors are Still a Problem*, ACCF, December, 2021, https://accf.ftlbcfn.net/wp-content/uploads/2021/12/ACCF_proxy_advisor_rule_report_2021-FINAL.pdf). While it is clear that removing the two key provisions of the 2020 Final Rules serves the interests of proxy advisory firms, it does so at the expense of investors who rely on complete, accurate information in casting critical proxy votes. More important, the nullification of key components of the 2020 Final Rules fails to stand in support of a fair and transparent public marketplace.

Finally, and as important as our substantive objections noted herein, the process used to accelerate these proposed changes is likely illegal, ill-advised and manifestly unfair. It places partisan, special interest politics ahead of reasoned, deliberate policy making and ignores and demeans the years of effort of a diverse group of market participants – including dedicated members of the Commission staff - that have worked tirelessly to craft regulations that balance the goals of fairness and transparency with the need to minimize the cost of regulatory oversight.

It is both shameful and a canard for the Commission to posit that any of the provisions of the 2020 Final Rules will create conditions that will impose unreasonable compliance costs or impair the independence of proxy voting advice. Any costs associated with sending a copy of a report to an issuer by electronic mail or notifying clients that an issuer has issued a written response to a proxy analysis firms' report is both *de minimis* and far overshadowed by the improvement in accuracy and fairness in the proxy advisory process.

Moreover, it is erroneous to suggest that the simple act of providing a copy of a report to the subject of such report and making the subject's response available to clients will impair the independence and objectivity of the proxy advisory firm. That said, such requirements should result in a higher level of accountability and accuracy among proxy advisory firms that are currently unchecked and, as a result, are prone to producing inaccurate, incorrect and incomplete analysis.

We urge the Commission to reconsider its decision to offer these ill-advised, politically inspired Proposed Amendments and allow the 2020 Final Rules to take effect as provided. The Commission should then objectively assess the need for additional regulations or changes to the Proxy Advisory Rules once it has experience with the practical impact of the 2020 Final Rules in achieving the *a priori* goal of creating a fairer and more transparent public marketplace.

Thank you for your consideration.

Respectfully,

NATURAL GAS SERVICES GROUP, INC.



Stephen C. Taylor
Chairman, President &
Chief Executive Officer



John W. Chisholm
Lead Independent Director

cc: The Honorable Gary Gensler, Chairman
The Honorable Hester M. Pierce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison H. Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner