

Company Protests ISS Policy on Draft Reports in Vote No Campaigns

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Mylan recently publicly protested what may be a little known ISS policy that impacts the provision of draft reports to S&P 500 companies.

CalSTRS, the New York City Comptroller's office, the New York State Comptroller's office and PGGM jointly launched a campaign asking the company's investors to withhold support for six of the company's board candidates up for election and the say-on-pay vote, filing [exempt solicitation materials](#) that show up under the company's Edgar documents.

As a result, [according to a letter](#) the company sent to ISS which it made public, ISS determined that the company would not be provided with a draft voting report. The company urged ISS to reconsider so that it could ensure the factual accuracy of the report given the complex issues presented in the proxy statement. It also protested ISS' characterization of the meeting as a "contest" given that the shareholder group leading the "vote no" campaign owns less than 1% of its shares, and is not soliciting proxies.

As stated in a [frequently asked questions discussion](#), ISS does not allow preliminary preview of any analysis related to any special meeting or any meeting where the agenda includes a merger or acquisition proposal, proxy fight, or any item that ISS considers to be of a controversial nature, such as a vote-no campaign.

The [company filed](#) the response letter from ISS, in which ISS emphasized that the provision of a draft to any issuer is always at its discretion. The firm's policies relating to pre-publication reviews include any item that ISS considers to be of a contentious or controversial nature, which could include a public "vote no" campaign. A full blown proxy contest or the solicitation of proxies is not required to trigger this policy.

We understand that one of the requirements that would implicate the policy is whether investors file their withhold campaign with the SEC, and that a few other companies were subject to the same provision this proxy season.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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