Walmart
Save money. Live better.

Legal
Corporate

Geoffrey W. Edwards
Senior Associate General Counsel

702 SW 8th Street
Bentonville, AR 72716-0215
Phone 479.204.6483
Fax 479.277.5991
Geoffrey.Edwards@walmartlegal.com

January 30, 2015

VIA E-MAIL *to shareholderproposals@sec.gov*

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Wal-Mart Stores, Inc.*
Shareholder Proposal of Cynthia Murray
Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Wal-Mart Stores, Inc. (the "Company") intends to omit from its proxy statement and form of proxy for its 2015 Annual Shareholders' Meeting (collectively, the "2015 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from Cynthia Murray (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2015 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to this Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

> RESOLVED, that shareholders of Wal-Mart Stores, Inc. ("Walmart") urge the Board of Directors to set a goal of eliminating gender-based pay inequity at Walmart in the United States and report annually to shareholders on actions taken and progress made toward that goal. "Gender-based pay inequity" is a statistically significant difference in hourly wage rates paid to men and women within a pay grade (non-exempt employees) or in total annual compensation paid to men and women within a pay range (exempt employees), controlling for job tenure, geographic location, and performance. The report should include data for each grade/range regarding the proportion of male and female employees, the average annual hours worked by male and female employees, and the average hourly wage rate or annual compensation paid to male and female employees in the US in the most recently completed fiscal year.

A copy of the Proposal, the supporting statement and related correspondence from the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may properly be excluded from the 2015 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's litigation strategy.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Deals With Matters Relating To The Company's Ordinary Business Operations.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business" operations. According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" refers to matters that are not necessarily "ordinary" in the common meaning of the word, but instead the term "is rooted in the corporate law concept of providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting," and identified two central considerations that underlie this policy. The first was that "[c]ertain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration related to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a

group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The Staff consistently has concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that implicate and seek to oversee a company's ordinary business operations, including when the subject matter of the proposal is the same as or similar to that which is at the heart of litigation in which a company is then involved. *See, e.g., Johnson & Johnson* (avail. Feb. 14, 2012) (concurring with the exclusion, as relating to litigation strategy, of a proposal where the company was litigating several thousand cases involving claims that individuals had been injured by the company's drug LEVAQUIN®, and the proposal requested that the company report on any new initiatives instituted by management to address the "health and social welfare concerns of people harmed by adverse effects from Levaquin"); *Reynolds American Inc.* (avail. Mar. 7, 2007) (concurring with the exclusion, as relating to litigation strategy, of a proposal requesting that the company provide information on the health hazards of secondhand smoke, including legal options available to minors to ensure their environments are smoke free, where the company was currently litigating six separate cases alleging injury as a result of exposure to secondhand smoke and a principal issue concerned the health hazards of secondhand smoke); *AT&T Inc.* (avail. Feb. 9, 2007) (concurring with the exclusion, as relating to ordinary business operations (*i.e.*, litigation strategy), of a proposal requesting that the company issue a report containing specified information regarding the alleged disclosure of customer records to governmental agencies, while the company was a defendant in multiple pending lawsuits alleging unlawful acts by the company in relation to such disclosures); *Reynolds American Inc.* (avail. Feb. 10, 2006) (concurring with the exclusion, as relating to litigation strategy, of a proposal requesting that the company notify African-Americans of the unique health hazards to them associated with smoking menthol cigarettes, where the company noted that undertaking such a campaign would be inconsistent with positions it was taking in denying such health hazards as defendant in a lawsuit alleging that the use of menthol cigarettes by the African-American community poses unique health risks to this community).

The Company believes that the Proposal may be excluded from the 2015 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal involves the same subject matter as, and implicates the Company's litigation strategy in, pending lawsuits involving the Company and therefore relates to the Company's ordinary business operations. Specifically, the Company believes that disclosure of the information requested by the Proposal would adversely affect the Company's litigation strategy in a number of pending lawsuits and claims alleging gender-based discrimination in pay. The most prominent of these is *Dukes v. Wal-Mart Stores, Inc.*, in which the Company is a defendant and which was commenced as a class-action lawsuit in June 2001 in the United States District Court for the Northern District of California. In that case, the plaintiffs assert that the Company engaged in a pattern and practice of discriminating against women in pay, promotions, training, and job assignments, and seek, among other things, injunctive relief, front pay, back pay, punitive damages, and attorneys' fees. After the Supreme Court reversed a nationwide class certification order in *Dukes*, the *Dukes* plaintiffs and former class members filed a number of putative regional class actions styled, in addition to *Dukes*, as *Odle v. Wal-Mart Stores, Inc.*, *Phipps v. Wal-Mart Stores, Inc.*, *Love v. Wal-Mart Stores, Inc.*, and *Ladik v.*

Wal-Mart Stores, Inc. Additional cases asserting claims on behalf of individuals have been filed in Florida, Illinois, and Minnesota. Moreover, more than two thousand women who allege that they are former *Dukes* class members have filed charges with the U.S. Equal Employment Opportunity Commission making similar allegations against the Company.

To date, the Company has prevailed in five of the individual cases (in *Ladik*) because the court concluded that the plaintiffs had failed to prove their claims of gender-based pay and promotion discrimination. In addition, the class action allegations in all of the post-*Dukes* cases have been dismissed or denied at the trial court level, although one of those determinations (in *Phipps*) is currently on appeal. Moreover, to date, there has been no adverse judgment against the Company in any of these matters. The Company is determined to continue defending its interests in this long-running litigation.

Every company's management has a responsibility to defend the company's interests against unwarranted litigation. A shareholder proposal that interferes with this obligation is inappropriate, particularly when the company is involved in pending litigation on the very issues that form the basis for the proposal. For that reason, the Staff consistently has viewed shareholder proposals that implicate a company's conduct of litigation or its litigation strategy as properly excludable under the "ordinary course of business" exception contained in Rule 14a-8(i)(7). *See, e.g., Chevron Corp.* (avail. Mar. 19, 2013) (excluding a proposal as relating to the company's ordinary business operations (*i.e.*, litigation strategy) where the proposal requested that the company review its "legal initiatives against investors" because "[p]roposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable under rule 14a-8(i)(7)"); *CMS Energy Corp.* (avail. Feb. 23, 2004 (concurring with the exclusion of a shareholder proposal requiring the company to void any agreements with two former members of management and initiate action to recover all amounts paid to them, where the Staff noted that the proposal related to the "conduct of litigation"); *NetCurrents, Inc.* (avail. May 8, 2001) (excluding a proposal as relating to the company's ordinary business operations (*i.e.*, litigation strategy) where the proposal required the company to file suit against certain of its officers for financial improprieties); *Benihana National Corp.* (avail. Sept. 13, 1991) (permitting exclusion under Rule 14a-8(c)(7) of a proposal requesting the company to publish a report prepared by a board committee analyzing claims asserted in a pending lawsuit).

In addition, the Staff consistently has concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals when the subject matter of the proposal is the same as or similar to current litigation in which the company is then involved and when the implementation of the proposal would amount to an admission by the company. *See, e.g., Johnson & Johnson* (avail. Feb. 14, 2012) (concurring in the exclusion of a proposal where implementation would have required the company to report on any new initiatives instituted by management to address the health and social welfare concerns of people harmed by LEVAQUIN®, thereby taking a position contrary to the company's litigation strategy); *R.J. Reynolds Tobacco Holdings, Inc.* (avail. Feb. 6, 2004) (concurring in the exclusion of a proposal that directed the company to stop using the terms "light," "ultralight," "mild" and similar words in marketing cigarettes until shareholders could be assured through independent research that light and ultralight brands actually reduce the

risk of smoking-related diseases. At the time the proposal was submitted, the company was a defendant in multiple lawsuits in which the plaintiffs were alleging that the terms "light" and "ultralight" were deceptive. The company argued that implementing the proposal while the lawsuits were pending "would be a de facto admission by the Company that 'light' and 'ultralight' cigarettes do not pose reduced health risks as compared to regular cigarettes"). *See also Exxon Mobil Corp.* (avail. Mar. 21, 2000) (concurring with the exclusion of a proposal requesting immediate payment of settlements associated with Exxon Valdez oil spill as relating to litigation strategy and related decisions).

One of the principal legal issues in the gender-discrimination lawsuits and claims currently pending against the Company, which also forms the basis for the Proposal, is whether, as stated in the Proposal, there is "a statistically significant difference in hourly wage rates paid to men and women within a pay grade ... or in total annual compensation paid to men and women within a pay range ... [to Company] employees in the US." Therefore, the subject matter of the Proposal is identical to the principal legal issue in many of the lawsuits and claims pending against the Company. In addition, the Proposal's first request is that the Company's "Board of Directors [] set a goal of eliminating gender-based pay inequity at Walmart in the United States;" therefore, the Proposal assumes that gender-based pay inequity exists at the Company, which is an issue in the pending litigation. Thus, similar to the *Johnson & Johnson* and *R.J. Reynolds Tobacco* proposals, the Proposal relates to actions the Company may take in response to an issue that is the subject of pending litigation. The Proposal's requirement that the Company disclose any "goal" set to "eliminate[e] gender-based pay inequity" at the Company presupposes such inequity exists and therefore, just as in *Johnson & Johnson* and *R.J. Reynolds Tobacco*, would require the Company to take action that could be viewed as an admission by the Company in the pending litigation.

Moreover, the Proposal, if implemented, would require the Company to publish an annual report describing the Company's actions and progress made with respect to the "goal of eliminating gender-based pay inequity at Walmart." As discussed above, the existence of any gender-based pay inequity pattern or practice is the very legal issue that the Company is currently litigating. Thus, by requesting the Company to furnish information in a public report with respect to actions and progress made with respect to "eliminating gender-based pay inequity," the Proposal interferes with the Company's defense of pending litigation. Specifically, by taking the position that gender-based pay inequity exists at the Company, the Proposal would obligate the Company to take a public position, outside the context of pending litigation and the discovery process, with respect to the existence of gender-based pay inequity at the Company. It would also potentially compel the Company to disclose any internal investigations regarding the same, the results of which may be inconsistent with the Company's litigation defense or may prematurely disclose the Company's litigation strategy to its opposing parties in pending litigation.

As a final matter, we note that the mere fact that a proposal touches upon a significant policy issue is not alone sufficient to avoid the application of Rule 14a-8(i)(7) when a proposal implicates ordinary business matters. Although the Commission has stated that "proposals

relating to such [ordinary business] matters but focusing on sufficiently significant social policy issues (*e.g.*, significant discrimination matters) generally would not be considered to be excludable," the Staff has expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7). 1998 Release. As an example, although smoking is considered a significant policy issue, the Staff has concurred, as noted above, with the exclusion of proposals that touched upon this issue where the subject matter of the proposal (*e.g.*, the health effects of smoking) was the same as or similar to that which was at the heart of litigation in which the company was then involved. *See, e.g., Philip Morris Cos. Inc.* (avail. Feb. 4, 1997) (noting that although the Staff "has taken the position that proposals directed at the manufacture and distribution of tobacco-related products by companies involved in making such products raise issues of significance that do not constitute matters of ordinary business," the company could exclude a proposal that "primarily addresses the litigation strategy of the Company, which is viewed as inherently the ordinary business of management to direct"). Similarly, even if the Proposal is viewed as touching on the significant policy issue of discrimination, the subject matter of the Proposal (*e.g.*, the "goal … and progress made toward that goal" of "eliminating gender-based pay inequity") encompasses the subject matter of litigation in which the Company is currently involved. Thus, because the Proposal pertains to the Company's litigation strategy, which is an ordinary business matter, we believe the Proposal is excludable under Rule 14a-8(i)(7).

In summary, the Proposal requests that the Company take action that would facilitate the goals of the plaintiffs in pending litigation against the Company at the same time that the Company is actively challenging those plaintiffs' allegations. In this regard, the Proposal seeks to substitute the judgment of shareholders for that of the Company on decisions involving litigation strategy by requiring the Company to take action that is contrary to its legal defense in pending litigation. Thus, implementation of the Proposal would intrude upon Company management's exercise of its day-to-day business judgment with respect to pending litigation in the ordinary course of its business operations. Accordingly, we believe that the Proposal may be properly excluded from the Company's 2015 Proxy Materials under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2015 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to Geoffrey.Edwards@walmartlegal.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (479) 204-6483 or Elizabeth A. Ising of Gibson, Dunn & Crutcher LLP at (202) 955-8287.

Sincerely,

Geoffrey Edwards
Senior Associate General Counsel
Wal-Mart Stores, Inc.

Enclosures

cc: Cynthia Murray
Beth Young

EXHIBIT A

Cynthia Murray

FISMA & OMB Memorandum M-07-16

December 18, 2014

Via Overnight Mail

Gordon Y. Allison
Vice President and General Counsel
Corporate Division
Wal-Mart Stores, Inc.
702 Southwest 8th Street
Bentonville, Arkansas 72716- 0215

Dear Mr. Allison:

Pursuant to the 2014 proxy statement of Wal-Mart Stores, Inc. (the "Company") and Rule 14a-8 under the Securities Exchange Act of 1934, I hereby submit the attached proposal (the "Proposal") for inclusion in the Company's proxy statement to be circulated to shareholders in conjunction with the next annual meeting of shareholders.

I am the beneficial owner of 69.7662 shares of voting common stock (the "Shares") of the Company, and have held the Shares for over one year. In addition, I intend to hold the required number of Shares through the date on which the Annual Meeting is held. I represent that I intend to appear in person or by proxy at the Annual Meeting to present the Proposal.

Copies of correspondence or a request for a "no action" letter should be forwarded to me at the address above and to my email ***FISMA & OMB Memorandum M-07-16*** Please copy Beth Young at ***FISMA & OMB Memorandum M-07-16*** on all correspondence. Thank you.

Respectfully,

Cynthia Murray
Wal-Mart Associate

Enclosure

RESOLVED, that shareholders of Wal-Mart Stores, Inc. ("Walmart") urge the Board of Directors to set a goal of eliminating gender-based pay inequity at Walmart in the United States and report annually to shareholders on actions taken and progress made toward that goal. "Gender-based pay inequity" is a statistically significant difference in hourly wage rates paid to men and women within a pay grade (non-exempt employees) or in total annual compensation paid to men and women within a pay range (exempt employees), controlling for job tenure, geographic location, and performance. The report should include data for each grade/range regarding the proportion of male and female employees, the average annual hours worked by male and female employees, and the average hourly wage rate or annual compensation paid to male and female employees in the US in the most recently completed fiscal year.

SUPPORTING STATEMENT

Gender pay inequity has attracted significant attention from media and legislators in recent years. Despite some progress, pay equity for women has not been achieved. In 2013, women working full-time earned only 78 cents for every dollar earned by men. (https://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf) A January 2014 study by the Institute for Women's Policy Research estimated that paying women the same as men with similar education and hours of work would cut the poverty rate for working women by more than half. (http://www.iwpr.org/publications/pubs/how-equal-pay-for-working-women-would-reduce-poverty-and-grow-the-american-economy)

The Paycheck Fairness Act, which deals with gender pay equity, has been introduced in Congress three times since 2009. President Obama created the National Equal Pay Task Force in 2010, and in 2014, he issued two executive orders addressing gender-based pay equity concerns. (http://m.whitehouse.gov/blog/2014/04/08/taking-action-honor-national-equal-pay-day) On the state level, the Women's Economic Security Act enacted in Minnesota in 2014 included provisions to close the gender pay gap. (http://www.mnwesa.org/the-legislation/2014-legislation/)

Roughly half of employees in the retail sector are women; pay inequity in that sector is worse than in the economy as a whole. In 2011, full-time female retail sales workers were paid 68 cents for every dollar paid to their male counterparts. (http://www.bls.gov/opub/reports/cps/highlights-of-womens-earnings-in-2013.pdf)

We believe that gender pay equity helps attract and retain talented employees. As consultant Mercer states, "overwhelming evidence [exists] that engaged female talent is a key driver of competitive advantage." (http://www.mercer.com/services/talent/forecast/gender-diversity.html) A perception

of unfairness or bias can undermine trust in leadership, leading to lower morale and motivation. Walmart has acknowledged that the "vast majority" of its customers are women. (http://www.nytimes.com/2011/09/14/business/wal-mart-to-announce-women-friendly-plans.html?_r=0) Walmart has faced charges of widespread gaps in pay between men and women doing similar jobs. (Id.) Thus, we are concerned about possible reputational damage.

We acknowledge Walmart's efforts to increase the share of women-owned businesses in its supply chain and, through its Diversity and Inclusion Report, to provide data on the proportion of men and women in the large job categories used for reporting to the Equal Employment Opportunity Commission. However, that report does not disclose compensation for men and women, nor does it provide data that correspond to Walmart's own organizational structure.

We urge shareholders to vote for this proposal.

Page 12 redacted for the following reason:
- - - - - - - - - - - - - - - - - - - -
FISMA & OMB Memorandum M-07-16