UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

April 13, 2018

Kristopher A. Isham
Walmart Inc.
kristopher.isham@walmartlegal.com

Re: Walmart Inc.
Incoming letter dated January 29, 2018

Dear Mr. Isham:

This letter is in response to your correspondence dated January 29, 2018 concerning the shareholder proposal (the "Proposal") submitted to Walmart Inc. (the "Company") by Margaret E. Jacobs (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated March 1, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Natasha Lamb
Arjuna Capital
natasha@arjuna-capital.com

April 13, 2018

Response of the Office of Chief Counsel
<u>Division of Corporation Finance</u>

Re: Walmart Inc.
Incoming letter dated January 29, 2018

The Proposal requests a report on the risks to the Company associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(i)(7), as relating to the Company's ordinary business operations. We note the Company's representation that the Proposal would affect the conduct of ongoing litigation relating to the subject matter of the Proposal to which the Company is a party. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Caleb French
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

March 1, 2018
Via electronic mail

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Shareholder Proposal to Wal-Mart Stores, Inc. regarding public policies on pay equity on behalf of Margaret E. Jacobs

Ladies and Gentlemen:

Arjuna Capital and Baldwin Brothers Inc. have submitted a shareholder proposal (the "Proposal") to the Company on behalf of Margaret E. Jacobs (the "Proponent") who is beneficial owner of common stock of Wal-Mart Stores, Inc. I have been asked by the Proponent to respond to the letter dated January 29, 2018 ("Company Letter") sent to the Securities and Exchange Commission by Kristopher Isham. In that letter, the Company contends that the Proposal may be excluded from the Company's 2018 proxy statement by virtue of Rule 14a-8(i)(7). A copy of this letter is being emailed concurrently to Kristopher Isham.

SUMMARY

The Proposal requests a report on the risks to the Company associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The Company Letter asserts that because the Company is a defendant in litigation relating to alleged inequities in compensation of female employees, the Proposal should be excludable pursuant to Rule 14a-8(i)(7).

The current proposal was drafted in response to the exclusion of a 2015 gender equity proposal at the Company. Unlike the 2015 proposal which set a goal of eliminating gender-based pay inequity at the Company and also required extensive data disclosures on progress,[1] the present Proposal does not seek admissions that would undermine the Company's litigation position. Instead, it seeks a big picture discussion of significant policy issues facing the Company, only seeking reporting consistent with the Company's Risk Factors reporting in the 10-K. The information requested by the Proposal can be provided to shareholders without undermining the Company's position in litigation. Since the proposal addresses a significant policy issue for the Company, and neither attempts to micromanage litigation strategy nor seeks disclosures at the

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[1] That proposal urged the board to set a goal of eliminating gender-based pay inequity at the company in the United States and report annually to shareholders on actions taken and progress made toward that goal. The report requested the company 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 U.S. in the most recently completed fiscal year.

crux of the litigation, the Proposal is not excludable under Rule 14a-8(i)(7).

THE PROPOSAL

Gender Pay Equity

Whereas: The World Economic Forum estimates the gender pay gap costs the economy 1.2 trillion dollars annually. The median income for women working full time in the United States is 80 percent of that of their male counterparts. This 10,470 dollar disparity can equal nearly half a million dollars over a career. The gap for African America and Latina women is 60 percent and 55 percent. At the current rate, women will not reach pay parity until 2059.

The gender pay gap is present across society and no industries are immune. *Fortune* reports the wage gap is 70.3 percent for retail salespersons, ranking such positions at number 8 in their top 20 jobs with the highest gender pay gaps list. *Glassdoor* finds an unexplained 5.9 percent gender pay gap in the retail industry after statistical controls. *Robeco Sam* finds a 10 percent pay gap for retail managers.

Mercer finds actively managing pay equity "is associated with higher current female representation at the professional through executive levels and a faster trajectory to improved representation." *Morgan Stanley, McKinsey*, and *Robeco Sam* research suggests more gender diverse leadership leads to superior stock price performance and return on equity. *McKinsey* states, "the business case for the advancement and promotion of women is compelling."

Yet, while women hold over half of retail industry positions, they are underrepresented in higher paying management positions and overrepresented in low paying front line jobs. At Wal-Mart, the largest private employer in the United States, 55 percent of our employees are women, but women account for 30 percent of corporate officers.

While there is a compelling business case to manage gender pay equity, addressing related public policy risk is of particular import to United States companies. The Paycheck Fairness Act pending before Senate "punishes employers for retaliating against workers who share wage information, puts the justification burden on employers as to why someone is paid less and allows workers to sue for punitive damages of wage discrimination." The Congressional Joint Economic Committee reports 40 percent of the wage gap may be attributed to discrimination. California, Massachusetts, New York, and Maryland have passed some of the strongest equal pay legislation to date.

In the United Kingdom, where Wal-Mart owns the second largest grocery chain, Asada, companies are required to analyze and report on gender pay equity by 2018.
Retail peers Amazon, Nike, Costco and The Gap have publicly addressed gender pay equity, along with many companies in the technology sector.

Resolved: Shareholders request Wal-Mart prepare a report on the risks to the company associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining

female talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.

The gender pay gap is defined as the difference between male and female median earnings expressed as a percentage of male earnings (Organization for Economic Cooperation and Development).

1. Gender-based pay equity is a significant policy issue.

Increasingly, companies are recognizing the strategic importance of pay equity. Pat Milligan, president of Mercer's North American region, was quoted in a New York Times article on gender-based pay equity as saying, "You used to run these analyses only when risk and compliance had a concern . . . Now, you are seeing companies — technology, consumer products, health care — do it to stay competitive, and they are doing it as part of an integrated strategy." Improving gender pay equity may increase the number of women in more senior management positions, which would be an asset at a retailer like Wal-Mart. Retailer Gap Inc. recently engaged an external reviewer to perform a statistical analysis to validate its own internal review of gender pay equity at the company. (Tara Siegel Bernard, "Vigilant Eye on Gender Pay Gap," The New York Times, Nov. 14, 2014; see also http://www.exponentialtalent.com/gap-inc-pay-equity-by-gender-project.html)

It is already well established that proposals addressing diversity and gender equity address significant policy issues. Although in the past, employment related issues were generally excludable, in 1998 the Commission issued the "Final Rule: Amendments to Rules on Shareholder Proposals," 17 CRF Part 240, Release No. 34-40018, which reversed the Cracker Barrel no-action letter concerning the Division's approach to employment-related shareholder proposals raising social policy issues. The Commission stated:

> Since 1992, the relative importance of certain social issues relating to employment matters has reemerged as a consistent topic of widespread public debate. In addition, as a result of the extensive policy discussions that the Cracker Barrel position engendered, and through the rulemaking notice and comment process, we have gained a better understanding of the depth of interest among shareholders in having an opportunity to express their views to company management on employment-related proposals that raise sufficiently significant social policy issues.

In the Final Rule, the Commission recognized that shareholders should have the right to express themselves on significant policy issues related to employment, whether they be matters of social policy or such significant issues as plant closings, executive compensation, or golden parachutes.

The Staff has applied this rationale to issues of gender equity, including pay equity, finding that such issues are a transcendent policy issue. For example, in *Citigroup Inc.* (February 2, 2016) the proposal directly asked the company to prepare a report demonstrating that the company does not have a gender pay gap. While the Company attempted to assert that this related to employee

relations and wages and therefore would be excludable as ordinary business,[2] following the precept established in the 1998 release, the Staff stated that it was unable to concur that Citigroup may exclude the proposal under rule 14a-8(i)(7).

Similarly, in *ExxonMobil Corporation* (March 18, 2015), the company requested permission to omit a shareholder proposal from its 2015 proxy materials, which mandated the creation of a report to shareholders including the percentage of women at the percentiles of compensation specified in the proposal, arguing that women have been working to eliminate the barriers to equal pay for decades. The requested annual report would disclose data regarding the effectiveness of ExxonMobil's ordinary business practices in achieving that goal. The company unsuccessfully asserted that because the Proposal encompassed such a broad range of non-executive company employees, the Proposal was addressing a matter related to "general employee compensation" as described in SLB 14A. Yet, the issue was not "general compensation" but rather whether discriminatory compensation appeared to exist.

Interestingly, ExxonMobil also attempted to distinguish its proposal from prior proposals based on other companies alleged discriminatory behavior. Exxon argued that the proposals ***were appropriate*** at Verizon Communications Inc. (avail. Jan. 26, 2004) and R.R. Donnelly (avail. Jan. 6, 1999) ***because*** the target companies in those proposals had been a target of litigation. Exxon noted that the proposal in Verizon, entitled "Stock Option Glass Ceiling," stated that:

> Despite [certain] honors, Verizon has been the subject of discrimination lawsuits by its employees. In 2002, Verizon settled a long-fought federal court suit and agreed to grant employment credit for retirement purposes to women employees who had taken pregnancy leave during their careers. In April 2002, a group of Verizon's Latino management employees filed charges with the Equal Employment Opportunity Commission alleging racial discrimination in compensation, advancement and termination.

Similarly, ExxonMobil highlighted that the proposal before R.R. Donnelly requested the company's board "undertake a pay equity study to ascertain whether all women and minority employees are paid equitably relative to men and non-minorities performing similar jobs with comparable skills," and the supporting statement indicated that "R.R. Donnelley settled a complaint brought by an agency of the U.S. Department of Labor addressing disparities in the pay of women and minority professionals and managers." Exxon Mobil claimed that unlike the proposals in Verizon and R.R. Donnelly, the proposal before Exxon did not allege that the

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[2] For instance, the company wrote: **"**The recruiting and retention of employees pertain to the core matters of the Company's business operations. The Company uses a variety of methods to attract and retain employees, including levels of compensation and disclosure of its policies promoting diversity in its workforce. These factors must be weighed against concerns about making sensitive information about employees publicly available to competitors. Also, the Company seeks to promote diversity not only with respect to men and women but also with respect to minority candidates. A report covering gender, to the exclusion of other diversity considerations, may not result in the recruitment of the best candidates. These are matters that are impracticable for stockholders to resolve, and the Proposal would micromanage the Company's employment practices by seeking to dictate how the Company should attract and retain women in its workforce.

company had discriminated against women or other minorities. Rather than discrimination, the Proposal focused instead on disclosure of general employee compensation. The Staff rejected this argument, finding that even though Exxon Mobil had not been a defendant in a suit alleging discrimination, the proposal was still appropriate.

2. The issue is significant for the Company

It is notable in the present instance that the Company has not attempted to claim that this is not a significant policy issue for the Company as provided under Staff Legal Bulletin 14I. We believe that this is because the Company could not sustain such a claim. For a company doing business in multiple states, the swift movement of legislation and public policy makes this germane to every company.

Recent Equal Pay Legislation:

Employer consulting firm Seyfarth Shaw published a guide to the new state pay equity laws noting that 2016 was "the year of groundbreaking change to equal pay laws, as administrative agencies and states aggressively move forward to improve pay equity and enforce equal pay laws."[3]

> In January, new laws in California and New York fundamentally altered how equal pay claims are analyzed in those states, lowering the bar for an equal pay lawsuit.
>
> In March, Nebraska's governor approved an amendment to the state's equal pay act, while a similar bill landed on the governor's desk in New Jersey but was conditionally vetoed in May.
>
> Also in May, Maryland's Governor Hogan signed Senate Bill 481 (cross-filed with House Bill 1003), another state specific pay equity law. The law will go into effect in October.
>
> In August, Massachusetts' Governor Baker signed amendments to the Massachusetts Equal Pay Act that will go into effect in July 2018.
>
> And as the equal pay trend sweeps the U.S., more pay data may soon be required from employers due to the EEOC's pending proposal to expand annual EEO-1 reports, which the EEOC claims would "assist the agency in identifying possible pay discrimination and assist employers in promoting equal pay in their workplaces."
>
> Given the significant emphasis on pay equity issues from multiple sources, employers are well advised to take a close look at their compensation policies and practices. Conducting a compensation analysis and determining any necessary remediation is not for the inexperienced. When you sit down with your legal counsel and review these new and pending laws, here's what you'll find.

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[3] www.seyfarth.com/dir_docs/publications/PayEquityBrochure.pdf

A Competition to Pass the Nation's “Most Aggressive” Pay Equity Bill

Even before the California Fair Pay Act was signed into law in October, The Los Angeles Times wrote that it “may be the nation's most aggressive attempt yet to close the salary gap between men and women.”

Three weeks after that law took effect, one bill in New York's eight-bill package known as the “Women's Equality Agenda” expanded protections for women in the workplace.

These new laws focus squarely on pay inequality between the sexes. Yet both federal and state laws already prohibit gender-based pay discrimination. On a federal level, the Equal Pay Act and Title VII of the Civil Rights Act of 1964 forbid employers from discriminating in pay and benefits based on sex. And like most states, both California and New York already have statutes addressing pay discrimination by gender.

What's new about these laws is the reach.

The new reach of the laws include four key areas:

- permissible factors to consider in hiring
- transparency of wages,
- retentions of records,
- and strengthened enforcement.

All of the new State laws and amendments limited the factors that may be considered in a pay differential. Comparisons of wages may be based on location of work, usually within the same county, though in California it can be up to several hundred miles apart. Comparison can be made based on responsibility. Massachusetts’ amendments add that the employer may not seek compensation history prior to an offer being made.

In all four States, employers may not prohibit employees from discussing their own wages, with Maryland allowing employees to inquire into, discuss and disclose the wages of other employees as well.

Massachusetts includes a provision for a positive defense for employers who completed a self-evaluation of pay practices and could demonstrate progress towards eliminating pay differentials uncovered in the evaluation. Maryland’s law focuses not just on specific jobs but on employment and career opportunities, including a requirement to provide information about promotion and advancement.

In the United Kingdom, where Wal-Mart has the ASDA subsidiary, the Equal Pay Act requires all employers of 250 plus employees to publish gender pay gap information beginning in April of this year.

Notable ***proposed*** legislation: State and Federal

Notably, in Arkansas, where the Company is headquartered, a proposed equal pay law is pending:

> Arkansas Lawmaker Proposes Equal Pay Bill
> By: STEPHANIE SHARP Jan 12, 2017[4]
>
> LITTLE ROCK, Ark. - An Arkansas lawmaker proposes to close the wage gap between men and women. The lawmaker says wage discrimination should be amended.
>
> According to the Department of Labor, women make $0.78 to every dollar a man makes. The lawmaker hopes to abolish that statistic, but some say it's not as big of a problem as it seems.
>
> State Rep Fred Love from Little Rock is proposing a bill that would make men and women get paid the same.
>
> "I believe that if a women is going to do a job and a man does the same job and they have the same qualifications then I think that a man and a women should get paid equally," said Love.
>
> It's a bill that will be discussed at the Capitol during the legislative session. He says it would prohibit employers from asking someone what they used to make.
>
> "To me, her previous pay has nothing to do with what she can do to perform, but as well, if she can do the same job that a man can do," said Love.
>
> Governor Asa Hutchinson says he hasn't had a chance to read the proposal yet, but has questions about it.
>
> "Obviously, there's always a cost impact that we have to look at in terms of state government as well as the private sector," said Governor Hutchinson.
>
> Some conservatives say the wage gap data is "misleading" and not calculated correctly. They question the value of studies because it doesn't look into career and life choices.
>
> One local woman says if there is a gap it could be because of other factors, like negotiating.
>
> "I have a feeling a lot of women tend to feel that they are not eligible for as high of pay so they have trouble negotiating also," said Katie Patrick.

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[4] http://www.arkansasmatters.com/news/local-news/arkansas-lawmaker-proposes-equal-pay-bill/639930954

> "They should have broke the glass ceiling 25 years ago," said William Donahue.
>
> Before Love's bill to pay men and women equally can become law, the battle of wage discrimination will be waged at the capitol.
>
> "The issue of fairness should ring out," said Love.
>
> Some conservatives also say they don't believe men and women should be paid differently, they say it's a different comparison.

Federal legislative fixes are also being proposed. The Pay Equity for All Act, introduced into the House in September 2016, seeks to redress the differential in wages by "prohibiting employers from seeking or requiring previous wage information or salary history." The Paycheck Fairness Act, introduced to the Senate in April 2017, proposes to "(1) establish and carry out a grant program for negotiation skills training for girls and women, (2) conduct studies to eliminate pay disparities between men and women, and (3) make available information on wage discrimination to assist the public in understanding and addressing such discrimination."[5]

3. The current Proposal does not request equivalent disclosures to the 2015 proposal previously found excludable under Rule 14a-8(i)(7)

The Company notes that in *Wal-Mart Stores, Inc.* (April 14, 2015) the proposal urged the board to set a goal of eliminating gender-based pay inequity at the Company in the United States and report annually to shareholders on actions taken and progress made toward that goal. The Staff found that there was some basis to accept to the position of the Company that the proposal "**could affect the conduct of ongoing litigation** to which the company is a party," and allowed exclusion under rule 14a-8(i)(7).

Based on the 2015 Staff decision, the Proponent has taken a different approach in the current proposal, to meet the requirements for a non-excludable proposal. Instead of asking for disclosure of Company goals and progress, the data requested by the proposal is in alignment with the type of disclosures appearing in the 10K – identifying risks associated with the new laws including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent.

For instance, to the extent the laws create transparency that allow comparison from company to company, the laws might lead to a reputational impact on the Company. It is clear that the disclosure of information regarding risks and impacts of the laws can be done in a manner that does not require disclosures that go to the crux of the litigation.

The current proposal addresses an issue of long-standing investor interest at the Company without requiring admissions that would undermine the Company's position in litigation. In the previous decision in Wal-Mart Stores. Inc. (April 14, 2015) the proposal urged the board to set a

[5] *The New U.S. Pay Equity Laws: Answering the Biggest Questions,* Seyfarth Shaw, 2016, pg 4.

goal of eliminating gender-based pay inequity at the Company in the United States and report annually to shareholders on actions taken and progress made toward that goal. The report requested the Company 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 U.S. in the most recently completed fiscal year.

In its 2015 no action request, the Company provided evidence that the disclosures sought by the proposal would constitute an admission in the regional lawsuits filed in the "regional" class actions. The individual plaintiffs alleged Company-wide gender-based pay disparities, which the Company apparently denied existed. So both agreeing to the goal of ending discrimination, or providing the data requested, were asserted to be admissions that would undermine the Company's position in litigation. According to the 2015 no action request:

> 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 Wal-Mart 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.
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> 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 Wal-Mart." 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.
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> In its 2015 supplemental response the Company added:
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> > …. 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 very subject matter of the Proposal.
>
> …. the Response ignores that, as discussed in the No-Action Request, more than two thousand women in at least 49 states who allege that they are former Dukes class members have filed charges with the U.S. Equal Employment Opportunity Commission ("EEOC") making similar allegations against the Company about the Company's nationwide pay and promotion practices. As a general matter, those charges allege a nationwide "pattern or practice" of gender-based discrimination by Wal-Mart Stores, Inc. as to pay and promotion. Thus, implementing the Proposal's request "to set a goal of eliminating gender-based pay inequity at Wal-Mart in the United States" and publish certain related data would require the Company to take a position on the very same matter at issue in these pending EEOC charges.

In contrast to the prior proposal, the current proposal does not require the Company to articulate whether or not it has a pattern or practice of gender-based discrimination. Instead, it asks the company to articulate whether there are any risks associated with the current legislation.

4. **Review of Staff decisions indicates that existence of litigation on the same subject matter does not render a proposal excludable under Rule 14a-8(i)(7).**

A proposal that attempts to ***dictate a firm's litigation strategy*** is considered by the Staff to entail micromanagement by shareholders on a subject matter that is outside of their expertise. Proposals that ask a company to settle or file litigation, or quantify liability in ongoing litigation, have also been found to be excludable in Staff decisions.[6] In these instances, the excluded proposals dealt with management of issues of a complex nature (pending litigation) about which stockholders, as a group, are not qualified to make informed business decisions. In effect, these are decisions reserved to deliberation between board and management and their counsel. So, for instance, a proposal that attempted to direct Exxon Mobil's settlement in the Valdez oil spill was excludable. *Exxon Mobil Corp.* (avail. Mar. 21, 2000) (concurring with the exclusion of a proposal requesting immediate payment of settlements associated with oil spill as relating to litigation strategy and related decisions).

The current Proposal does not fit into this group of precedents, as it does not attempt to micromanage the Company's litigation strategy. It does not ask for information on the litigation,

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[6] *Chevron Corp.* (Mar. 19, 2013) requesting company review of "legal initiatives against investors"; *CMS Energy Corp*. (Feb. 23, 2004) requiring the company to void any agreements with two former members of management and initiate action to recover all amounts paid to them; *NetCurrents, Inc.* (May 8, 2001) requesting the company to file suit against certain of its officers for financial improprieties); *Benihana National Corp.* (avail. Sept. 13, 1991) report prepared by a board committee analyzing claims asserted in a pending lawsuit). In contrast, proposals that ask for an accounting of expenditures on a company issue, including attorneys' fees related to litigation, are not excludable, because they represent a reasonable form of shareholder oversight. For example, in *General Electric* (Feb. 2, 2004), the staff rejected an ordinary business argument against a proposal calling on management to report its annual expenditures on various expenses related to the remediation, and other health and environmental impacts, of sites contaminated by PCBs. In that case, litigation related to the cleanup operations was ongoing, and the proposal explicitly requested information on GE's spending "on attorney's fees [and] expert fees.

make recommendations as to how the litigation should be defended, or ask for information on the litigation's resolution or repercussions.

As referenced in the Company Letter, the Staff has sometimes been asked by companies to allow exclusion of proposals that are not addressed to litigation strategy, but where the fulfillment of the proposal's request might involve a statement or admission by the company that could prove useful to plaintiffs in current litigation. This category of potential exclusions could easily encompass **all** shareholder proposals that address significant societal issues. Inevitably, in most instances in which companies are faced with significant social policy issues, the controversies also are raised in the courts. If the Staff were to allow exclusion of resolutions because they might lead to some kind of statement that might be useful in ongoing litigation, this would have the effect of giving companies a pass on proposals on the most critical issues facing their businesses. As importantly, it would deprive investors of access to the shareholder proposal process for attention to the most significant issues facing their companies.

Accordingly, the Staff rulings on shareholder resolutions that might involve some form of "admission" have been narrowly circumscribed to apply only where the resolutions cross the line into requiring the company to do something that is pointedly inconsistent with defense of litigation, including reporting undisclosed information that is at the heart or crux of the litigation, such as admitting to liability or fault. In contrast, where acting on a proposal on significant policy issues of legitimate concern to investors, even if the proposal may potentially make some non-core admission or information available for plaintiffs, the Staff routinely rejects exclusion.

The instances in which exclusions have been allowed involved proposals requiring a company to make an admission or concession of a *core contested fact in litigation* - for example, taking responsibility for a harm that the company has not already agreed exists.
For example, in *Johnson & Johnson* (Feb. 14, 2012), the Proposal would have required the company to address the "health and social welfare concerns of people *harmed by adverse effects from Levaquin*," one of the Company's pharmaceutical products. The company was in litigation about precisely *whether its products caused adverse effects*. As the Company noted, the report requested in the proposal would have required a report on the very matter being litigated—"adverse effects from" the company's product.

In *General Electric Co.* (Feb. 3, 2016) the proposal requested a report quantifying the company's *liabilities associated with* discharge of chemicals into the Hudson River, while the company was a defendant in multiple pending lawsuits where those liabilities were at issue. *Quantifying liabilities* spoke directly to the outcome of the litigation.

In Reynolds American Inc. (Feb. 10, 2006) Reynolds Tobacco and other tobacco manufacturers were currently defendants in a suit alleging the use of menthol cigarettes by the African American community poses unique health risks to this community. The suit includes the specific allegation that the defendant tobacco manufacturers "predominately market mentholated cigarettes to African Americans despite, … conclusions … that menthol may promote deeper inhalation and … cause, aggravate or contribute to … higher addiction rates in African Americans." The proposal asked the company to voluntarily undertake a campaign aimed at African Americans apprising them of the unique health hazards to them associated with smoking

menthol cigarettes including data showing the industry descriptors such as "light" and "ultralight" do not mean those who smoke such brands will be any less likely to incur diseases than those who smoke regular brands. The specificity of the proposal, going to the narrow liability issue of whether there were "unique health hazards" associated with African-Americans smoking menthol cigarettes, which was being contested by the company in the litigation, made these requested affirmations effectively go to the core of the litigation.

In contrast, in decisions where the Staff declined to allow exclusion, some combination of the following factors were involved:

- despite the subject matter of the proposal touching on ongoing litigation, the proposals appropriately focused on a significant social policy issue of substantial and appropriate investor interest

- the societal impacts (emissions, health effects etc.) caused by the company's actions were well known

- the crux of the litigation was retrospectively focused while the proposal was prospective in its assessments and actions, and the subject matter of the proposal did not address issues of fault.

For instance, in *The Dow Chemical Company* (February 11, 2004), the ongoing litigation was a civil suit for remediation relating to the Bhopal disaster pending in the Southern District of New York; there was also a criminal action against Dow/Union Carbide pending in India. The proposal requested that the management of Dow Chemical prepare *a report to shareholders describing new initiatives instituted by the management to address the specific health, environmental and social concerns of the survivors of the Bhopal tragedy*. Even though the company argued that "the Proposal asks the Company to effect an action that is precisely what the Company's subsidiary is arguing in the pending litigation that it has no obligation to do...," the Staff found that the issues that the proposal would have touched upon did not go to the issues of fault that were the crux of the litigation, as in the present proposal.

In contrast to the menthol cigarettes proposal described above, in *R.J. Reynolds Tobacco Holdings, Inc. (* March 7, 2002), the Staff found a proposal not excludable despite its extensive recommendations for disclosure on cigarette packages making information known regarding 'cigarette price, brand availability and average tar and nicotine yields' and asking that every package of our tobacco products include full and truthful information regarding ingredients that may be harmful to the consumer's health, the toxicity of the specific brand, and what detriment to life-expectancy the consumer may expect to incur from regular use of the product, as well as the health hazards for others, especially children, connected with environmental tobacco smoke. In this instance, even though there was ongoing litigation about harm associated with cigarettes, all of the information sought by the proposal was readily available in public records and scientific literature and did not require any admission by the company.

In *RJ Reynolds* (March 7, 2000), the resolution called for RJR Nabisco to create an independent committee to investigate retail placement of tobacco products, in an effort to prevent theft by

minors. The company argued that due to two current lawsuits (against FDA and the Commonwealth of Massachusetts on regulations on retail placement) the Proposal, if implemented, would interfere with litigation strategy by asking the company to take voluntary action in opposition to its position in the lawsuits. In effect, the Staff found that the creation of an independent committee to investigate the issue of retail placement did not interfere with the litigation.

In *Philip Morris* (Feb. 14, 2000), the resolution called for management to develop a report for shareholders describing how Philip Morris (PM) intended to address "sicknesses" caused by the company's products and correct the defects in the products that cause these sicknesses. The company argued that the Proposal dealt with matters prominently at issue in numerous lawsuits. Because statements on PM's website essentially admitted that cigarettes cause "sickness," a Proposal asking how the company intended to address such sickness was unlikely to interfere with any litigation strategy, particularly on the issue of fault.

In *American International Group, Inc.* (March 14, 2005), the proposal urged that a committee of independent directors oversee a recently appointed transaction review committee that would be examining AIG's sales practices and report to shareholders its findings and recommendations. The Company asserted that it may omit the proposal under the ordinary business exclusion because "it relates to the subject matter of litigation in which the Company has been named as a defendant." In support, AIG argued that a comprehensive, company-wide report is excludable when the "subject matter of the proposal is the same or similar to that which is at the heart of litigation in which a registrant is then involved." This approach to the "litigation strategy" argument of exclusion was rejected in that case and in many others where the proposals clearly addressed legitimate concerns and interests of investors rather than being directed at the litigation.

Below, we will demonstrate that the current Proposal meets these criteria under which Staff decisions have not allowed exclusions even where potential "admissions" might occur as a result of a proposal's request.

5. **<u>The Proposal meets the criteria for non-exclusion under the Staff precedents.</u>**

The Company Letter acknowledges that the current proposal differs from the 2015 proposal but attempts to assert that the differences do not affect excludability. The Company Letter claims that the change in the Proposal does not alter the risks to the Company's litigation position associated with the Proposal:

> both seek information that would require the Company to take action that could be deemed an admission by the Company and therefore would interfere with the pending litigation.

The Company notes for instance that in the California litigation and other regional class actions, named plaintiffs asserted 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.

In order to assert that the current Proposal would interfere with the Company's position in litigation, the Company Letter distorts the focus and requirements of the Proposal:

> One of the principal issues in the gender discrimination lawsuits and claims currently pending against the Company is the various plaintiffs' allegation that the Company has discriminated against women with respect to pay. The Proposal similarly turns on whether there is a "gender pay gap" at the Company, which the Proposal defines as "the difference between male and female median earnings, expressed as a percentage of male earnings." Specifically, the Proposal requests a report related to the impact of certain matters (emerging public policies on the gender pay gap) on the Company, *where the specifics of that report will turn on whether there is a so-called "gender pay gap" at the Company.* For example, reporting on the "risks to the [C]ompany associated with emerging public policies on the gender pay gap," including "reputational, competitive, and operational risks" to the Company as well as "risks related to recruiting and retaining female talent," necessarily requires the Company to discuss whether the Company has a gender pay gap that impacts the Company's reputation, competitiveness, operations, recruiting and retention of women.

Contrary to the Company's assertions, the Proposal does not require the Company to disclose whether there is a gender pay gap at the Company. Instead, the Proposal requests disclosures on risks posed by gender equity laws. The Company is well accustomed to reporting in its 10-K on risk factors relative to public policies, and to matters of litigation without making inappropriate admissions. Nevertheless, the Company claims:

> …. the Proposal would require the Company to issue a report that involves the principal issue being litigated, as noted above, and thus by its very nature would interfere with the Company's defense of pending litigation. Thus, by requesting the Company to report on the risks to the Company from emerging public policies regarding gender-based pay inequity, 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 possible existence of a so-called "gender pay gap" at the Company.

The idea that the company might have to take a "public position" on the ***"possible existence"*** of a so-called gender pay gap at the Company is not an appropriate dividing line between excludable and nonexcludable proposals. If so, all proposals that address significant policy issued that are also subjects of litigation would be excludable, and as noted above, this is not the case.

The current proposal is unlike the excluded proposals cited in the Company Letter, because in both *Johnson & Johnson* and *R.J. Reynolds Tobacco*, the proposals, as documented above, required the company to make an admission that went to the crux of the litigation.

6. **Discussion of impact of regulations associated with a significant policy issue does not render the proposal excludable.**

The Company also asserts that the Proposal would require reporting on the impact of government

regulation. The precedents cited relate to proposals on which there was a request to report on government regulatory impacts where there was no significant and transcendent policy issue recognized. For instance *in Sempra Energy* (avail. Jan. 12, 2012, recon. denied Jan. 23, 2012) there was lack of significant policy issue focus. The proposal focused on "risks posed by Sempra operations in any country that may pose an evaluated risk of corrupt practices." The Staff found that "although the proposal request[ed] that the board conduct an independent oversight review of . . . risks, the underlying subject matter of these risks appear[ed] to involve ordinary business matters"). The same lack of a significant policy focus existed in *General Electric Co.* (avail. Jan. 30, 2007), *Yahoo! Inc.* (Apr. 5, 2007), and the other cited decisions.

For any significant policy issue, reporting on the impact of government regulation is certainly an appropriate request. Examples of proposals demonstrating that such an approach is not excludable under Rule 14a-8(i)(7) include Dominion Resources (February 27, 2014) requesting a report evaluating the environmental and climate change impacts of the company using biomass as a key renewable energy and climate mitigation strategy, including an assessment of risks to the company's finances and operations posed by emerging public policies on biomass energy and climate change; Dow Chemical (February 23, 2005) requesting how public policies may restrict markets for each category of Dow product lines, including under the Stockholm POPs treaty, emerging state programs, and the proposed European REACH program; in *Anadarko Petroleum Corporation* (February 4, 2004), *Apache Corporation* (February 6, 2004), *Unocal Corporation* (February 23, 2004), *Valero Energy Corp* (February 6, 2004), *Reliant Resources Inc.* (March 5, 2004) the Staff concluded that the Proposals properly asked the company to prepare a report on how "the company is responding to rising regulatory, competitive, and public pressure to significantly reduce" greenhouse gas emissions"; Procter & Gamble Company (August 16, 2016) requesting a report detailing the known and potential risks and costs to the company caused by any enacted or proposed state policies supporting discrimination against LGBT people.

Since gender pay equity is a recognized public policy issue, discussing the impact of regulation is relevant and appropriate.

The Company Letter further asserts that because only "*40 percent* of the wage gap may be attributed to discrimination" the request for discussion of the impacts of policy and legislation targeting discrimination touches on matters of ordinary business beyond the significant policy issue. To the contrary, the requested reporting is solely focused on how those new laws and policies aimed at addressing discrimination would affect the Company. The fact that the laws may touch on other aspects of the employer-employee relationship does not eliminate the transcendent focus on the proposal.

7. **The risk factors disclosure in the 10K is a reasonable model for reporting under the proposal**

As demonstrated above, the *emerging public policies on the gender pay gap* are a clear external threat and risk representing a significant policy issue to this massive company with its operations in many states. For instance, a discussion consistent with the proposal might mention that laws have been enacted in several jurisdictions where the company does business including New York, California, Maryland and Massachusetts, which have passed or amended legislation to

enhance pay equity based on sex and/or gender. These laws address permissible factors and comparisons by location, transparency of wages, retentions of records, and enforcement. The laws will require the Company to be more transparent on issues of wage equity, and encourage employers to conduct self-evaluation of pay practices. Some of the laws require the Company to provide new information to employees about promotion and advancement. All of the new State laws and amendments limit the factors that may be considered in a pay differential. The Company could state whether or not it believes this will have a material effect on its current assignment of wages.

We would expect that the report would also mention that a legislative proposal is pending in the Company's home state to establish an equal pay law, and a summary discussion of whether and how that law might affect operations in its headquarters, including whether the company is opposing the legislation.

The Company already provides disclosures in its 10K regarding wages that are at a level of detail consistent with the request of the Proposal. Form 10-K for the fiscal year ended December 31, 2016 stated:

> ITEM 1A. RISK FACTORS
>
> The risks described below could materially and adversely affect our business, results of operations, financial condition and liquidity. Our business operations could also be affected by additional factors that apply to all companies operating in the U.S. and globally.
>
> * * *
>
> **Our failure to attract and retain qualified associates, increases in wage and benefit costs, changes in laws and other labor issues could materially adversely affect our financial performance.**
>
> Our ability to continue to conduct and expand our operations depends on our ability to attract and retain a large and growing number of qualified associates globally. Our ability to meet our labor needs, including our ability to find qualified personnel to fill positions that become vacant at our existing stores, clubs and distribution centers, while controlling our associate wage and related labor costs, is generally subject to numerous external factors, including the availability of a sufficient number of qualified persons in the work force of the markets in which we are located, unemployment levels within those markets, prevailing wage rates, changing demographics, health and other insurance costs and adoption of new or revised employment and labor laws and regulations. If we are unable to locate, to attract or to retain qualified personnel, the quality of service we provide to our customers may decrease and our financial performance may be adversely affected.
>
> The wage increases for over 500,000 associates in our operations in the U.S. and investment in other initiatives for our associates in the U.S. that we announced in February 2015, and related wage increases for 1.2 million associates aggregating $1.5 billion in the year ending January 31, 2017 ("fiscal 2017") will increase our wage and other labor expenses significantly. If we cannot offset the increases in our wage expenses resulting from those wage increases by increasing our gross profit, achieving decreases in our operating, selling, general and administrative expense or a combination of both in the

> year ending January 31, 2018 and thereafter, our consolidated operating income and our consolidated income from continuing operations could continue to be less than our consolidated operating income and consolidated income from continuing operations for our fiscal years prior to fiscal 2017. In addition, if our costs of labor or related costs increase even more significantly for other reasons or if new or revised labor laws, rules or regulations or healthcare laws are adopted or implemented that further increase our labor costs, our financial performance could be materially adversely affected.

Consistent with this discussion from the 10-K, the Company could be expected to publish, in response to the proposal, a discussion of the national, state and federal legislative efforts, on gender equity and the risks that they pose to the company, if any, including reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. We would expect the disclosure to be roughly at the same level of detail as the above disclosure from the 10K, which, indeed, inspired the current proposal. Without disclosing its current status of gender pay equity, the company could readily issue a disclosure similar to these disclosures in the 10K.

Moreover, the Company's no action request provides quite a bit more information than provided anywhere else in the company's SEC disclosures regarding the kinds of issues that the company is grappling with on the gender equity issue. We would expect that a report issued by the company might well reference many of the items, including the ongoing litigation discussed in its no action request.

CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2018 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request.

Sincerely,

Natasha Lamb

Cc:
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January 29, 2018

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 Margaret E. Jacobs
Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Wal-Mart Stores, Inc.[1] (the "Company") intends to omit from its proxy statement and form of proxy for its 2018 Annual Shareholders' Meeting (collectively, the "2018 Proxy Materials") a shareholder proposal (the "Proposal") and statements in support thereof received from Arjuna Capital and Baldwin Brothers, Inc. on behalf of Margaret E. Jacobs (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 2018 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.

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[1] As previously announced, the Company's legal name will change to Walmart Inc. effective February 1, 2018.

THE PROPOSAL

The Proposal states:

> **Resolved:** Shareholders request Wal-Mart prepare a report on the risks to the company associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The report should be prepared at a reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.
>
> The gender pay gap is defined as the difference between male and female median earnings expressed as a percentage of male earnings (Organization for Economic Cooperation and Development).

A copy of the Proposal and its supporting statement, as well as related correspondence with 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 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations.

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.

As discussed below, the Proposal may be omitted as it implicates the Company's ordinary business operations, including the Company's litigation strategy and the conduct of ongoing litigation to which it is a party, the Company's assessment of the impact of government regulation and the Company's management of its workforce, and it does not focus upon a significant policy issue.

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)).

A shareholder proposal being framed in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Release No. 20091 (Aug. 16, 1983). In addition, the Staff has indicated that "[where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under rule 14a-8(i)(7)." *Johnson Controls, Inc*. (avail. Oct. 26, 1999). A proposal's request for a review of certain risks also does not preclude exclusion if the underlying subject matter of the proposal is ordinary business. The Staff indicated in Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E") that in evaluating shareholder proposals that request a risk assessment the Staff:

> rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk. . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

A. The Proposal is Excludable Because It Relates To The Company's Litigation Strategy and the Conduct of Litigation That The Company Is A Party To

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).

Of particular note, in *Wal-Mart Stores, Inc*. (avail. April 14, 2015), the Staff concurred with the exclusion, as relating to the Company's litigation strategy, of a proposal similar to the Proposal (the "2015 Proposal") where the Company was subject to various pending lawsuits and claims alleging gender-based discrimination in pay (the "2015 No-Action Letter"). In that no-action request, the Company outlined numerous pending lawsuits and claims alleging gender-based discrimination in pay, and discussed how disclosure of the information requested by the 2015 Proposal would adversely affect the Company's litigation strategy in those matters.

The Company believes that the Proposal similarly may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(7) because, just as with the proposal at issue in the 2015 No-Action Letter, the Proposal involves the same subject matter as, and implicates the Company's conduct of litigation in, pending lawsuits involving the Company and therefore relates to the Company's ordinary business operations. First, the 2015 Proposal and the 2018 Proposal both request that the Company prepare a report addressing the gender pay gap at the Company. While the specific details regarding this subject differ (the 2015 Proposal requested a goal and a report on progress made towards eliminating this difference and the 2018 Proposal requests a report on the risks to the Company associated with public policies concerning the gender pay gap), both seek information that would require the Company to take action that could be deemed an admission by the Company and therefore would interfere with the pending litigation.

In this regard, many of the pending lawsuits and claims discussed in the 2015 No-Action Letter remain active today, and disclosure of the report requested by the Proposal would adversely affect the Company's litigation strategy in those pending lawsuits and claims alleging gender-based discrimination in pay. Many of these pending actions and claims are follow-ons to *Wal-Mart Stores, Inc. v. Dukes, No. 10-277*, in which the Company was 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 named plaintiffs asserted 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 continued to pursue that case on a regional basis, and former class members filed a number of parallel putative regional class actions. *Stephanie Odle, et al. v. Wal-Mart Stores, Inc., Northern District of Texas, 3:11-CV-02954-O* and *Cheryl Phipps, et al. v. Wal-Mart Stores, Inc., Middle District of Tennessee, 3:12-CV-01009* remain pending today, as does another Florida case (*Forbes et al v. Wal-Mart Stores, Inc., 9:17-CV-81225-RLR*) that involves plaintiffs who attempted to intervene in *Zenovdia Love, et al. v. Wal-Mart Stores, Inc., Southern District of Florida, 0:12-CV-61959-RNS*. Additional cases asserting claims on behalf of individual former *Dukes* class members have been filed and are pending in multiple states, including Florida, Illinois, and Minnesota. Moreover, many 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 several of the individual cases because the plaintiffs were unable to prove their claims of gender-based pay and promotion discrimination. 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 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 the Exxon Valdez oil spill as relating to litigation strategy and related decisions).

One of the principal issues in the gender discrimination lawsuits and claims currently pending against the Company is the various plaintiffs' allegation that the Company has discriminated against women with respect to pay. The Proposal similarly turns on whether there is a "gender pay gap" at the Company, which the Proposal defines as "the difference between male and female median earnings, expressed as a percentage of male earnings." Specifically, the Proposal requests a report related to the impact of certain matters (emerging public policies on the gender pay gap) on the Company, where the specifics of that report will turn on whether there is a so-called "gender pay gap" at the Company. For example, reporting on the "risks to the [C]ompany associated with emerging public policies on the gender pay gap," including "reputational, competitive, and operational risks" to the Company as well as "risks related to recruiting and retaining female talent," necessarily requires the Company to discuss whether the Company has a gender pay gap that impacts the Company's reputation, competitiveness, operations, recruiting and retention of women. Moreover, the Proposal does not resolve this problem simply by stating that "litigation strategy and legal compliance information" should be omitted from the requested report. Specifically, this carve-out is irrelevant because the requested report would not lead to disclosure of "information" about the Company's "litigation strategy." Instead, the Proposal would require the Company to issue a report that involves the principal issue being litigated, as noted above, and thus by its very nature would interfere with the Company's defense of pending litigation. Thus, by requesting the Company to report on the risks to the Company from emerging public policies regarding gender-based pay inequity, 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 possible existence of a so-called "gender pay gap" at the Company. Thus, as in the 2015 Proposal, and similar to the *Johnson & Johnson* and *R.J. Reynolds Tobacco* proposals, the Proposal implicates the Company's litigation strategy and 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 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 2018 Proxy Materials under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

B. The Proposal is Excludable Because It Relates To The Company's Assessment Of The Impact Of Government Regulation And Management Of Its Workforce

As the Staff indicated in Staff Legal Bulletin No. 14E (Oct. 27, 2009), in evaluating shareholder proposals that request a risk assessment, "rather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk." *See, e.g., Sempra Energy* (avail. Jan. 12, 2012, recon. denied Jan. 23, 2012) (concurring with exclusion of the proposal that asked for a report on "risks posed by Sempra operations in any country that may pose an evaluated risk of corrupt practices" because "although the proposal request[ed] that the board conduct an independent oversight review of . . . risks, the underlying subject matter of these risks appear[ed] to involve ordinary business matters"). The Proposal is excludable under Rule 14a-8(i)(7) as the Proposal's request for a report on "the risks to the [C]ompany associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent" includes ordinary business matters related to assessing the impact of proposed and current government regulation and the Company's management of its workforce.

The Staff has repeatedly concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking an assessment of the impact of proposed and current government regulation on a company's ordinary business matters. For example, in *General Electric Co.* (avail. Jan. 30, 2007), the proposal requested a report on legislative initiatives affecting the Company, including the Company's plans to "reduc[e] the impact on the [c]ompany of: unmeritorious litigation (lawsuit/tort reform); unnecessarily burdensome laws and regulations (e.g., Sarbanes-Oxley reform); and taxes on the [c]ompany (i.e., tax reform)." The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it involved evaluating the impact of government regulation on the company. *See also Yahoo! Inc.* (avail. Apr. 5, 2007) (concurring with the exclusion of a proposal calling for an evaluation of the impact on the company of expanded government regulation of the Internet); *General Electric Co.* (avail. Jan. 17, 2006) (concurring with the exclusion of a proposal relating to a report on the impact of a flat tax); *Niagara Mohawk Holdings, Inc.* (avail. Mar. 5, 2001) (concurring with the exclusion of a proposal requesting that the company report on pension-related issues being considered in federal regulatory and legislative proceedings).

Similar to the proposals in the cited letters, the Proposal seeks an assessment of the impact of proposed and current government regulation on ordinary business matters. For example, the Proposal itself acknowledges that the "gender pay gap" to be reported on may be the result of various factors—not just discrimination—when it states, "The Congressional Joint Economic Committee reports *40 percent* of the wage gap may be attributed to discrimination" (emphasis added). In addition, the "emerging public policies" cited in the Proposal include ordinary

business matters. For example, the Proposal states that "[t]he Paycheck Fairness Act pending before Senate" would "punish[] employers for retaliating against workers who share wage information." The ability of employees to share "wage information" has implications for the Company's employee relations generally and not just with respect to any "gender pay gap." Finally, the Proposal's request that the Company assess "reputational, competitive, and operational risks" as well as "risks related to recruiting and retaining female talent" also relates to ordinary business matters. This request would require the Company to report on a variety of business risks arising from how the Company's manages its operations on a day-to-day basis. For example, the reference to the Company's efforts related to "recruiting and retaining female talent" is broad and could encompass a variety of human resources programs and efforts unrelated to the Proposal.

The Company devotes significant time and resources to evaluating the potential impact of proposed laws and regulations. This process involves the study of a number of concrete factors, including the dynamics of public policy formulation in the jurisdictions in which the Company operates, the evaluation of potential responses to such regulations by the Company and its competitors, and the anticipated effect of public policies on the Company's financial position and shareholder value. Assessing the impact of such initiatives are matters more appropriately addressed by management because shareholders, as a group, are not in a position to make such judgments. Accordingly, as with the precedent cited above, the Proposal seeks to subject to shareholder oversight ordinary business assessments that are within the scope of Rule 14a 8(i)(7).

We also believe that the Proposal improperly concerns the Company's management of its workforce. The Commission recognized in the 1998 Release that "management of the workforce" is "fundamental to management's ability to run a company on a day-to-day basis." Consistent with the 1998 Release, the Staff has recognized that proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). For example, in *Sprint Corp.* (avail. Jan 28, 2004), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on the potential impact on the recruitment and retention of Sprint employees due to changes to retiree health care and life insurance coverage by Sprint. *See also Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring that a proposal requesting verification and documentation of U.S. citizenship for the company's U.S. workforce could be excluded because it concerned "procedures for hiring and training employees"). As noted above, the Proposal seeks to have the Company report on the impact of ordinary business matters encompassed by the reference to "emerging public policies on the gender pay gap" on the Company's efforts related to "recruiting and retaining female talent." As in the cited letters, the Company's recruiting and retention of employees, including female employees, are part of the Company's day-to-day operations.

C. Regardless Of Whether The Proposal Touches Upon A Significant Policy Issue, The Entire Proposal Is Excludable Because It Addresses Ordinary Business Matters

The 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). *See* 1998 Release. *See also Apache Corp.* (avail. Mar. 5, 2008) (concurring with the exclusion of a proposal requesting that the company "implement equal employment opportunity policies based on principles specified in the proposal prohibiting discrimination based on sexual orientation and gender identity" where the proposal addressed "corporate advertising and marketing policy," "employee benefits" and corporate charitable contributions" to specific groups because "some of the principles [mentioned in the proposal] related to [the company's] ordinary business operations"); *CVS Caremark Corp.* (avail. Jan. 31, 2008, recon. denied Feb. 29, 2008) (concurring with the exclusion of a proposal requesting the adoption of "principles for comprehensive health care reform" that also requested annual reporting on how it is implementing such principles," which is an ordinary business matter); *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 [c]ompany, 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, as discussed above the Proposal (*e.g.*, the Company's report "on the risks to the company associated with emerging public policies on the gender pay gap") addresses various matters related to the Company's ordinary business operations. In this regard, the Proposal also is meaningfully different from the proposal in *Citigroup* (avail. Feb. 2, 2016), where the Staff denied exclusion under Rule 14a-8(i)(7). Specifically, unlike the Proposal, the *Citigroup* proposal only asked for a report related to a company's "gender pay gap." Thus, because the Proposal is not focused on a significant policy issue, the Proposal is excludable under Rule 14a-8(i)(7).

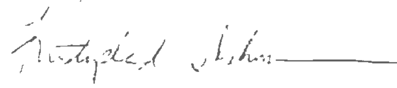
CONCLUSION

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 2018 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Please direct any correspondence regarding this matter to me at Kristopher.Isham@walmartlegal.com. If we can be of any further assistance in this

matter, please do not hesitate to call me at (479) 204-8684, or Elizabeth A. Ising of Gibson, Dunn & Crutcher LLP at (202) 955-8287.

Sincerely,



Kristopher A. Isham
Senior Associate Counsel
Wal-Mart Stores, Inc.

Enclosures

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP
Margaret E. Jacobs
Natasha Lamb, Arjuna Capital
Taylor Baldwin, Baldwin Brothers, Inc.

EXHIBIT A

Kristopher Isham - Legal

From: Natasha Lamb <natasha@arjuna-capital.com>
Sent: Thursday, December 21, 2017 10:56 AM
To: Kristopher Isham - Legal
Subject: EXT: Shareholder Proposal on Gender Pay Equity
Attachments: BNY verification letter .pdf; WMT CL 2018.pdf; WMT Client Authorization 2018.pdf; WMT Shareholder Proposal_Gender Pay_Equity_2018_FINAL.pdf

Importance: High

Dear Mr. Isham,
Please find attached a shareholder proposal we have submited regarding gender pay equity, and accompanying cover letter, client authorization, and custodian authorization. The enclosures were mailed to Wal-Mart yesterday and were signed for by J. Sly at 10am today.
Best regards,
Natasha

Natasha Lamb
MANAGING PARTNER / PORTFOLIO MANAGER

WWW.ARJUNA-CAPITAL.COM
natasha@arjuna-capital.com
978.704.0014

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ARJUNA CAPITAL
ENLIGHTENED INVESTING

BALDWIN BROTHERS
The evolution of investment

December 20, 2017

VIA OVERNIGHT MAIL

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

Re: Shareholder Proposal for 2018 Annual Meeting

Dear Mr. Allison:

Baldwin Brothers Inc. is an investment firm, based in Marion MA. Arjuna Capital is an investment firm focused on sustainable and impact investing.

We are hereby authorized to notify you of our intention to lead file the enclosed shareholder resolution with Wal-Mart Stores, Inc. on behalf of Margaret Jacobs. Arjuna Capital and Baldwin Brothers Inc. submit this shareholder proposal for inclusion in the 2018 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, Margaret Jacobs holds more than $2,000 of WMT common stock, acquired more than one year prior to today's date and held continuously for that time. Ms. Jacobs will remain invested in this position continuously through the date of the 2018 annual meeting. Enclosed please find verification of the position and a letter from Margaret Jacobs authorizing Arjuna Capital and Baldwin Brothers Inc. to undertake this filing on her behalf. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We would welcome discussion with Wal-Mart Stores, Inc. about the contents of the proposal.

Please contact Natasha Lamb of Arjuna Capital |natasha@arjuna-capital.com; (978) 704-0114] for all matters related to this resolution; she will be handling the communication with the company regarding this resolution on behalf of the Proponent.

Please also confirm receipt of this letter via email.

Sincerely,

Taylor Baldwin	Natasha Lamb
Chief Operating Officer	Managing Partner
Baldwin Brothers, Inc.	Arjuna Capital
204 Spring Street	49 Union Street
Marion, MA 02738	Manchester, MA 01944

Enclosures

BALDWIN BROTHERS

December 11, 2017

Dylan Sage
Executive Vice President
Baldwin Brothers Inc.
204 Spring Street
Marion, MA 02738

Dear Mr. Sage,

I hereby authorize Baldwin Brothers Inc. and Arjuna Capital to file a shareholder proposal on my behalf at Wal-Mart Stores Inc. (WMT) regarding Gender Pay Equity.

I am the beneficial owner of more than $2,000 worth of common stock in WMT that I have held continuously for more than one year. I intend to hold the aforementioned shares of stock through the date of the Company's annual meeting in 2018.

I specifically give Baldwin Brothers Inc. and Arjuna Capital full authority to deal, on my behalf, with any and all aspects of the aforementioned shareholder proposal. I understand that my name may appear on the Corporation's proxy statement as the filer of the aforementioned proposal.

Sincerely,

Margaret Jacobs

c/o Baldwin Brothers Inc.
204 Spring Street
Marion, MA 02738

Gender Pay Equity

Whereas: The World Economic Forum estimates the gender pay gap costs the economy 1.2 trillion dollars annually. The median income for women working full time in the United States is 80 percent of that of their male counterparts. This 10,470 dollar disparity can equal nearly half a million dollars over a career. The gap for African America and Latina women is 60 percent and 55 percent. At the current rate, women will not reach pay parity until 2059.

The gender pay gap is present across society and no industries are immune. *Fortune* reports the wage gap is 70.3 percent for retail salespersons, ranking such positions at number 8 in their top 20 jobs with the highest gender pay gaps list. *Glassdoor* finds an unexplained 5.9 percent gender pay gap in the retail industry after statistical controls. *Robeco Sam* finds a 10 percent pay gap for retail managers.

Mercer finds actively managing pay equity "is associated with higher current female representation at the professional through executive levels and a faster trajectory to improved representation." *Morgan Stanley, McKinsey*, and *Robeco Sam* research suggests more gender diverse leadership leads to superior stock price performance and return on equity. *McKinsey* states, "the business case for the advancement and promotion of women is compelling."

Yet, while women hold over half of retail industry positions, they are underrepresented in higher paying management positions and overrepresented in low paying front line jobs. At Wal-Mart, the largest private employer in the United States, 55 percent of our employees are women, but women account for 30 percent of corporate officers.

While there is a compelling business case to manage gender pay equity, addressing related public policy risk is of particular import to United States companies. The Paycheck Fairness Act pending before Senate "punishes employers for retaliating against workers who share wage information, puts the justification burden on employers as to why someone is paid less and allows workers to sue for punitive damages of wage discrimination." The Congressional Joint Economic Committee reports 40 percent of the wage gap may be attributed to discrimination.

California, Massachusetts, New York, and Maryland have passed some of the strongest equal pay legislation to date.

In the United Kingdom, where Wal-Mart owns the second largest grocery chain, Asada, companies are required to analyze and report on gender pay equity by 2018.

Retail peers Amazon, Nike, Costco and The Gap have publicly addressed gender pay equity, along with many companies in the technology sector.

Resolved: Shareholders request Wal-Mart prepare a report on the risks to the company associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.

The gender pay gap is defined as the difference between male and female median earnings expressed as a percentage of male earnings (Organization for Economic Cooperation and Development).

One Pershing Plaza
Jersey City, New Jersey 07399
pershing.com

December 20, 2017

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

Dear Mr. Allison,

Re: Margaret Jacobs / Account # ***

This letter is to confirm that Pershing LLC is the record holder for the beneficial owners of the account of above, which Baldwin Brothers Inc. manages and which holds in the account *** , 513 shares of common stock in Wal-Mart Stores, Inc. (WMT).*

As of December 20th, Margaret Jacobs held, and has held continuously for at least one year, 513 shares of WMT stock.

This letter serves as confirmation that the account holder listed above is the beneficial owner of the above referenced stock.

Sincerely,

Jessica Pizarro
Senior Representative, Client Services
Advisor Solutions

*DATE: The date that the stock position was received by Pershing LLC is 12/17/2014

Brokerage custody provided by Pershing Advisor Solutions LLC, a BNY Mellon company. Member FINRA, SIPC
Bank custody provided by BNY Mellon, National Association. Member FDIC

*** FISMA & OMB Memorandum M-07-16

Kristopher Isham - Legal

From: Kristopher Isham - Legal
Sent: Thursday, December 21, 2017 11:34 AM
To: 'Natasha Lamb'
Subject: RE: Shareholder Proposal on Gender Pay Equity

Thank you Natasha. I confirm receipt by email.

Kind regards,
Kris Isham, Senior Associate Counsel - Corporate
Office: 479.204.8684; Fax (479) 277-5991
Mobile: 479.586.0394
kristopher.isham@walmartlegal.com

Wal-Mart Stores, Inc.
Legal Department – Corporate Division
702 S.W. 8th Street
Bentonville, AR 72716-0215
Save money. Live better.

CONFIDENTIALITY NOTE: This e-mail and any attachments are confidential and may be protected by legal privilege.

From: Natasha Lamb [mailto:natasha@arjuna-capital.com]
Sent: Thursday, December 21, 2017 10:56 AM
To: Kristopher Isham - Legal
Subject: EXT: Shareholder Proposal on Gender Pay Equity
Importance: High

Dear Mr. Isham,
Please find attached a shareholder proposal we have submited regarding gender pay equity, and accompanying cover letter, client authorization, and custodian authorization. The enclosures were mailed to Wal-Mart yesterday and were signed for by J. Sly at 10am today.
Best regards,
Natasha

Natasha Lamb
MANAGING PARTNER / PORTFOLIO MANAGER

WWW.ARJUNA-CAPITAL.COM
natasha@arjuna-capital.com
978.704.0014

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From: Natasha Lamb <natasha@arjuna-capital.com>
Sent: Thursday, January 18, 2018 11:12 AM
To: Kary Brunner
Subject: EXT: Re: WMT request for engagement on shareholder proposal - Gender Pay Equity

Ok, great. Let's wrap by 2:55.

Sent from my iPhone

On Jan 18, 2018, at 12:10 PM, Kary Brunner <Kary.Brunner@walmart.com> wrote:

Unfortunately, we have a conflict at 2 PM. We expect that 30 minutes will be sufficient, so if we start at 2:30, we will be sure to wrap by 3 PM ET. Will that work?

From: Natasha Lamb [mailto:natasha@arjuna-capital.com]
Sent: Thursday, January 18, 2018 10:09 AM
To: Kary Brunner
Subject: EXT: Re: WMT request for engagement on shareholder proposal - Gender Pay Equity

Can we make it 2PM as I have another engagement at 3?

<image001.png>

Natasha Lamb
MANAGING PARTNER / PORTFOLIO MANAGER

WWW.ARJUNA-CAPITAL.COM
natasha@arjuna-capital.com
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From: Kary Brunner <Kary.Brunner@walmart.com>
Date: Thursday, January 18, 2018 at 9:24 AM
To: Natasha Lamb <natasha@arjuna-capital.com>

Cc: Kary Brunner <Kary.Brunner@walmart.com>
Subject: RE: WMT request for engagement on shareholder proposal - Gender Pay Equity

Great – 1/24 at 2:30 EST works well for us. I'll send a calendar invite for a conference call and will include dial-in instructions.

Best,

Kary

From: Natasha Lamb [mailto:natasha@arjuna-capital.com]
Sent: Wednesday, January 17, 2018 11:42 AM
To: Kary Brunner
Subject: EXT: Re: WMT request for engagement on shareholder proposal - Gender Pay Equity

Hi Kary,
I would be happy to talk with your team. Would the 25th before 3pm est work or the 24th between 12 and 3 est?
All best,
Natasha

On Jan 15, 2018, at 6:15 PM, Kary Brunner <Kary.Brunner@walmart.com> wrote:

> Natasha – we would like the opportunity to set up a call to discuss your proposal in more detail. If you would be interested in this, could you propose several dates/times that work for you?
>
> Best,
>
> Kary Brunner
> Senior Director of Investor Relations
> Wal-Mart Stores, Inc.
> Bentonville, AR
> (479) – 277-8782
>
> ---
>
> **From:** Natasha Lamb [mailto:natasha@arjuna-capital.com]
> **Sent:** Thursday, December 21, 2017 10:56 AM
> **To:** Kristopher Isham - Legal
> **Subject:** EXT: Shareholder Proposal on Gender Pay Equity
> **Importance:** High
>
> Dear Mr. Isham,
> Please find attached a shareholder proposal we have submited regarding gender pay equity, and accompanying cover letter, client authorization, and custodian authorization. The enclosures were mailed to Wal-Mart yesterday and were signed for by J. Sly at 10am today.
> Best regards,
> Natasha
>
> <image001.png>

Natasha Lamb
MANAGING PARTNER / PORTFOLIO MANAGER

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natasha@arjuna-capital.com
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<WMT Shareholder Proposal_Gender Pay_Equity_2018_FINAL.pdf>