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21 February 2020

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

By electronic mail: shareholderproposals@sec.gov

Re: Shareholder proposal to Walmart Inc. from
International Brotherhood of Teamsters General Fund

Dear Counsel:

I write on behalf of the International Brotherhood of Teamsters General Fund (the "Fund") in response to a letter from counsel for Walmart Inc. ("Walmart" or the "Company") dated 3 February 2020 ("Walmart Letter") in which Walmart advises that it intends to omit the Fund's proposal (the "Proposal") from the Company's 2020 proxy materials. For the reasons set forth below, we respectfully ask the Division to advise Walmart that the Division does not concur with the Company's position that the Proposal may be excluded from Walmart's proxy materials.

The Proposal

The Proposal seeks a revision of the Company's current policy with respect to "golden parachutes":

RESOLVED: That shareholders of Walmart Inc. (the "Company"), urge the Compensation and Management Development Committee of the board to change any annual cash incentive program ("Bonus Program") to provide that an award (a "Bonus") to a senior executive that is based on one or more financial measurements (a "Financial Metric") whose performance measurement period ("PMP") is one year or shorter shall not be paid in full for a period (the "Deferral

Period”) following the award, including developing a methodology for determining the length of the Deferral Period and adjusting the remainder of the Bonus over the Deferral Period.

The methodology described above should allow accurate assessment of risks taken during the PMP that could have affected performance on the Financial Metric(s) and allow Walmart to recoup Bonus compensation pursuant to its clawback policy.

The changes should be implemented in a way that does not violate any existing contractual obligation or the terms of any compensation or benefit plan currently in effect.

The Supporting Statement expresses a concern about short-term incentive plans possibly encouraging senior executives to take on excessive risk, noting that the Company’s current plan does not capture the time frames over which ethical and compliance failures may manifest themselves for a given year’s managerial performance. Cited as an example is the current national opioid crisis, with Walmart and other retailers in the supply chain find themselves enmeshed in litigation.

The Proposal thus asks the board’s Compensation and Management Development Committee to develop a methodology to withhold some portion of bonuses to allow adjustment of the unpaid portion during the deferral period both to allow for a more accurate assessment of risks taken during the performance measurement period and also to facilitate any recoupment under Walmart’s clawback policy. The Supporting Statement, in addition to noting that bonus deferral is a widely accepted practice in the banking industry, adds: “The Committee would have discretion to set the terms and mechanics of the process.”

Walmart argues that the Proposal may be excluded as relating to the Company’s “ordinary business” under the (i)(7) exclusion and as having been substantially implemented within the meaning of the (i)(10) exclusion. As we now explain, neither argument is persuasive.

Discussion.

The Proposal does not relate to Walmart’s “ordinary business operations within the meaning of Rule 14a-8(i)(7).”

Walmart argues that the Proposal may be excluded on the ground that it would micromanage the Company by “prescribing a specific method” by which the board’s compensation committee “is required to alter the Company’s executive compensation program to adhere to the specific compensation strategy and method”

in the Proposal. Walmart Letter at 3. Walmart then quotes Staff Legal Bulletin 14K (“SLB 14K”) for the proposition that the Proposal would “unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.” This argument badly overstates what the Proposal is recommending and wrenches the statement in SLB 14K out of context.

Taking the last point first, SLB 14K built upon Staff Legal Bulletin 14J, which stated that compensation proposals may constitute micromanagement if they “seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies.” The concept of “micromanagement addresses the manner in which a proposal raises an issue, and not whether a proposal’s subject matter itself is proper for a shareholder proposal under Rule 14a-8.”

SLB 14K reiterated this point and, looking back on the 2019 no-action decisions, explained that when the Division concurred with a company’s micromanagement argument, it was because of “the level of prescriptiveness of the proposal.” Cited as an example was a proposal to adjust performance metrics to exclude legal or compliance costs, the theory being that it prohibits those adjustments without regard to special circumstances or reasonable exceptions.

The Proposal at issue here suffers from none of these deficiencies. It addresses a topic – incentive pay for senior executives – that for many years has been viewed as transcending the “ordinary business” label. And it does so in a way that can hardly be called “prescriptive”:

- The Proposal does not try to identify what metrics should be considered in any annual incentive plan.
- The Proposal does not seek to dictate how long any deferral period should last.
- The Proposal does not suggest or recommend a specific percentage of annual incentive pay that should be deferred.
- The Proposal explicitly leaves it up to the compensation committee to “develop a methodology” that would more accurately measure risks during the performance measurement period.
- The Proposal is explicit that the compensation committee “would have discretion to set the terms and mechanics of the process.”

This level of discretion thus separates this Proposal from the proposal in the Division’s recent decision in *Johnson & Johnson* (13 February 2020), where the Division credited the Company’s assertion that the proposal at issue there would “categorically prohibit immediate full payment of short-term bonus awards to senior executives would strip the Compensation & Benefits Committee of the discretion and flexibility it requires to properly exercise its business judgment.”

This case is also distinct from the proposals in other cases that Walmart cites, *i.e.*, *Johnson & Johnson* (14 February 2019) and *AbbVie Inc.* (15 February 2019), which were more prescriptive in terms of trying to regulate which cost items should or should be included in performance metrics, *Abbott Laboratories (Oxfam America)* (28 February 2019), which sought board approval of each senior executive's sale of stock during a buyback with an explanation in the proxy statement, or *JPMorgan Chase & Co.* (22 March 2019), which concurred with the exclusion of a proposal to bar equity-based awards to senior executives who resign to enter government service, the reason being that the proposal seeks "to impose specific methods for implementing complex policies."

Here, the Proposal is simply asking Walmart to adopt an executive compensation policy that is well established in the banking sector, while leaving Walmart's board with considerable discretion about how to implement that policy.

The Proposal has not been "substantially implemented within the meaning of Rule 14a-8(j)(10)."

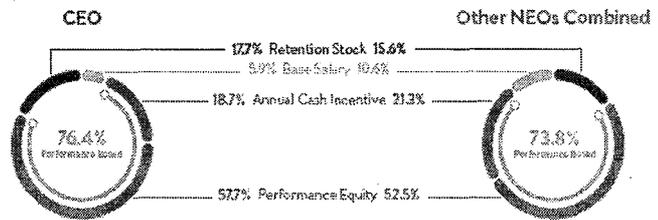
Walmart correctly notes that a proposal may be excluded under this provision if the "essential objective" of the proposal has already been accomplished, a determination that looks to whether a company's "particular policies, practices and procedures compare favorably with the guidelines of the proposal." *Texaco, Inc.* (28 March 1991).

Walmart defines the "essential objective" of the Proposal inaccurately and at too abstract a level to be meaningful. Specifically, Walmart defines the "essential objective" as a desire to "foster a longer-term orientation." Walmart Letter at 8. This objective is already being accomplished, Walmart argues, because according to the 2019 proxy statement (available at <https://www.sec.gov/Archives/edgar/data/104169/000120677419001406/wmt3482341-def14a.htm>), roughly 75% of the total compensation to the CEO and to named executive officers is in the form of equity incentives; moreover, the Letter continues, "approximately 77% of the annual long-term equity incentive granted to the Company's CEO and named executive officers was in the form of performance-based restricted stock units, that use 'one-year performance metrics followed by an additional two-year vesting period.'" Walmart Letter at 8, citing pp. 44 and 46 of the 2019 proxy statement. Walmart then proceeds to quote various statements from the proxy statement to the effect that performance-based compensation is intended to mitigate excessive risk-taking. Walmart Letter at 9.

For convenience, here is the chart from page 45 of that proxy statement, which breaks down the elements of Walmart's compensation plan.

Our Executive Compensation Program Emphasizes Performance

As shown in the charts below, a substantial majority of our NEOs' fiscal 2019 target TDC was performance-based.



As this chart makes clear, the compensation elements that Walmart has described or quoted above all involve the Company's long-term incentive program – not the annual cash incentive program, which is the sole and explicit focus of the Proposal. The Walmart Letter blurs the distinction by referring to “an annual long-term equity incentive,” but that phrase does not appear in the proxy and is a misnomer. The only “annual” program is the annual cash incentive program, and the restricted stock units that are subject to the one-year performance metric and two-year vesting period are part of the “long-term equity incentive” program.

The two programs are distinct. According to the 2019 proxy statement (at p.46), the “annual cash incentive” program is described as “[v]ariable pay intended to focus leaders and incentivize performance against key operational metrics, depending on position,” while the “long-term equity” program is described as “[v]ariable pay intended to focus leaders and incentivize performance against metrics aligned with our long-term strategic goals.” And of course, the form of compensation is different. The annual incentive program pays “cash after the end of the fiscal year, unless voluntarily deferred,” while the long-term plan pays in “[s]hares after the end of a three-year vesting period, unless deferred; payout and value based on performance during first year of vesting period and share price performance over three years.” *Id.*

The thrust of the Fund's Proposal is that the concept of deferred payment makes sense and should not be limited to the long-term equity program, but should be an element of the annual plan as well. Walmart may well believe that the Proposal is unnecessary because the principles applicable to the long-term equity awards program should not apply to the annual cash-based awards program, but that is an argument on the merits, not a reason to exclude the Proposal from this year's proxy statement.

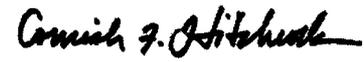
Conclusion

For these reasons, we respectfully ask the Division to advise Walmart that the Division does not concur that the Fund's Proposal may be omitted under Rule

14a-8(i)(7) or Rule 14a-8(i)(10).

Thank you for your consideration of these points. Please feel free to contact me if any additional information would be helpful.

Very truly yours,

A handwritten signature in black ink that reads "Cornish F. Hitchcock". The signature is written in a cursive style with a prominent flourish at the end.

Cornish F. Hitchcock

cc: Kristopher A. Isham

February 3, 2020

VIA E-MAIL to shareholderproposals@sec.gov

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

Re: *Walmart Inc.*
Shareholder Proposal of the International Brotherhood of
Teamsters General Fund
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that Walmart Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2020 Annual Shareholders’ Meeting (collectively, the “2020 Proxy Materials”) a shareholder proposal and statement in support thereof (the “Proposal”) received from the International Brotherhood of Teamsters General Fund (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 2020 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

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

THE PROPOSAL

The Proposal states:

RESOLVED: That shareholders of Walmart Inc. (the “Company”), urge the Compensation and Management Development Committee of the board to change any annual cash incentive program (“Bonus Program”) to provide that an award (a “Bonus”) to a senior executive that is based on one or more financial measurements (a “Financial Metric”) whose performance measurement period (“PMP”) is one year or shorter shall not be paid in full for a period (the “Deferral Period”) following the award, including developing a methodology for determining the length of the Deferral Period and adjusting the remainder of the Bonus over the Deferral Period.

The methodology described above should allow accurate assessment of risks taken during the PMP that could have affected performance on the Financial Metric(s) and allow Walmart to recoup Bonus compensation pursuant to its clawback policy.

The changes should be implemented in a way that does not violate any existing contractual obligation or the terms of any compensation or benefit plan currently in effect.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASES FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2020 Proxy Materials pursuant to:

- Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations; and
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

ANALYSIS

I. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because It Deals With Matters Related To The Company’s Ordinary Business Operations

A. Background On Rule 14a-8(i)(7)

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 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. As relevant here, one of those considerations is “the degree to which the proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). The 1998 Release further states that “[t]his consideration may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” In Staff Legal Bulletin No. 14K (Oct. 16, 2019) (“SLB 14K”), the Staff clarified that in considering arguments for exclusion based on micromanagement, the Staff looks to see “whether the proposal seeks intricate detail or imposes a specific *strategy, method*, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board” (emphasis added).

In Staff Legal Bulletin No. 14J (Oct. 23, 2018), the Staff confirmed that this standard applies to proposals that micromanage senior executive compensation (“[T]he Division may agree that proposals addressing senior executive and/or director compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies can be excluded under Rule 14a-8(i)(7) on the basis of micromanagement.”). In addition, the Staff clarified in SLB 14K that whether a proposal micromanages the company “rests on an evaluation of the manner in which a proposal seeks to address the subject matter raised, rather than the subject matter itself.”

B. The Proposal Is Excludable Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company

The Proposal seeks to micromanage the Company by prescribing a specific method by which the Company’s Compensation and Management Development Committee (the “Committee”) is required to alter the Company’s executive compensation program to adhere to the specific compensation strategy and method as provided in the Proposal and, in the words of SLB 14K, “unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.” Specifically, the Proposal requests the Committee to “change any annual cash incentive program . . . to provide that an award . . . to a senior executive that is based on one or more financial measurements . . . whose performance measurement period . . . is one year or shorter [] not be paid in full for a period . . . following the award.” In this regard, the Proposal both imposes a specific strategy and method in order to address a complex issue (promoting a longer term perspective with respect to executive compensation) as a substitute for the judgment of the Committee and also dictates a particular action. Specifically, the Proposal would require the Company to amend its

compensation policies and practices to (i) preclude the payment in full of certain bonuses, (ii) defer such full payment for a specified period of time, (iii) design a methodology for determining that length of deferral based on the aims expressed in the Proposal, (iv) determine whether any adjustments to the Company's deferred compensation plans (including any matching contributions) would be advisable or necessary, and (v) allow for recoupment by the Company of such bonus awards, which would necessarily require individualized decisions with respect to the level and potential recoupment of the executives' compensation.

The Proposal would effectively mandate that the Company defer payment of any cash incentive awards to senior executives with one-year (or shorter) performance periods. With respect to such awards, the Proposal would force the Committee to act in accordance with the specific requirements of the Proposal to delay payment of a specific portion of a senior executive's total compensation. In doing so, the Proposal would force the Committee to forgo other factors that it might, in its business judgement, deem important or relevant to the design and structure of the Company's executive compensation program, particularly as they relate to the timing and disbursement of senior executive awards. As disclosed in the Company's 2019 Proxy Statement, the Committee has designed the Company's compensation program with a number of considerations in mind, such as the need to attract and retain highly qualified executives while establishing goals that are aligned with the Company's enterprise strategy and financial plans, including the alignment of management interests with the long-term interests of the Company's shareholders.¹ The Committee's executive compensation decisions involve complex considerations, including, but not limited to, recruitment, retention, and other non-financial compensation goals, such as the Company's culture, diversity, and inclusion metrics.

In addition, decisions concerning the timing and disbursement of incentive compensation payments to senior executives, and the relationship between executive compensation and incentivizing appropriate (but not excessive) risk-taking entail a complex process in which shareholders, as a group, are not in the best position to make an informed decision. This decision process involves the judgment of the Committee and the Board of Directors (the "Board"), and includes an assessment of various elements to appropriately incentivize senior executives, including, among other things, a balanced approach to performance-based awards that aligns with the Company's long-term strategy, considering different performance periods and vesting schedules, balancing the mix of pay components, capping incentive awards, adopting stock ownership guidelines, and clawback provisions. The Committee has already considered a myriad of factors relating to the consideration of risk with respect to the Company's executive

¹ See https://www.sec.gov/Archives/edgar/data/104169/000120677419001406/wmt3482341-def14a.htm#compensation_overview at 44.

compensation program. In addition to the factors described below in Part II, the Committee has also considered that:

- The Company's compensation program is designed to provide a mix of both fixed and variable incentive compensation.
- The Company's incentive compensation programs reward performance based on a mix of operating income-based metrics, sales-based metrics, and return on investment, which performance mix is intended to mitigate any incentive to seek to maximize performance under one metric to the detriment of performance under other metrics.
- Cash incentive payments to senior executive officers are subject to reduction or elimination if compliance objectives are not satisfied.
- The Company's cash and stock incentive plans contain clawback provisions, which allow the Company to recoup awards if a senior executive has failed to comply with the Company's policies or committed acts detrimental to the best interests of the Company.²

The Proposal would mandate that the Committee set aside all of these considerations, and prescribes a specific strategy or method to manage risk with respect to the Company's executive compensation program—deferring the payment of certain senior executive awards—therefore overriding the Company's existing executive compensation policies and practices and supplanting the judgment of management and the Board.

The Staff has previously concurred that other shareholder proposals attempting to micromanage a company's executive compensation practices by prescribing specific methods for implementation and specific actions to be taken by the company as a substitute for the judgment of management are excludable under Rule 14a-8(i)(7). For example, in *JPMorgan Chase & Co.* (avail. Mar. 22, 2019), a proposal requested that the board adopt a policy prohibiting the vesting of equity-based awards for senior executives who voluntarily resigned to enter government service. The company argued that by requiring a new policy on all awards or plans after the 2019 annual meeting, the proposal imposed specific outcomes and a specific timeframe with respect to the company's executive and employee benefits. The Staff concurred with exclusion noting that "the [p]roposal micromanages the [c]ompany by seeking to impose specific methods for implementing complex policies."

Additionally, in *General Electric Co.* (avail. Mar. 5, 2019), the proposal requested a board committee to direct an outside firm to "undertake a thorough review of any compensation, including supplementary pension impacts, paid or credited to the 25 most highly compensated executives in any given year for the period of 2014 through 2017 to determine if that level of compensation was warranted for each individual" and "what means and methods of recoupment might be available to [s]hareowners." The proposal further requested that information on the foregoing "be set forth in the 2019 annual report to shareowners," including decisions of the

² See *id.* at 68.

committee regarding “which executives, if any, should be affected, in what manner, and to what extent.” The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) based on micromanagement, noting “the [p]roposal would, among other things, dictate the scope of executives and time period to be covered by the review, direct a board committee to make individualized decisions with respect to the level and potential recoupment of the executives’ compensation, and detail the manner of disclosing the specifics of those decisions.” *See also Abbott Laboratories (Oxfam America)* (avail. Feb. 28, 2019) (concurring with the exclusion of a proposal that would “micromanage[] the [c]ompany because, among other things, the [p]roposal would require the compensation committee to approve each sale by a senior executive during a buyback and [would require] the [c]ompany to include explanatory disclosure in the proxy statement describing how the committee concluded that approving the sale was in the [c]ompany’s long-term best interest”); *AbbVie Inc.* (avail. Feb. 15, 2019) (concurring with the exclusion of a proposal requesting a policy to prohibit financial performance metric adjustments to exclude legal or compliance costs for the purposes of determining senior executive incentive compensation as micromanaging the company with the Staff noting that the proposal “would prohibit any adjustment of the broad categories of expenses covered by the [p]roposal without regard to specific circumstances or the possibility of reasonable exceptions”); *Johnson & Johnson* (avail. Feb. 14, 2019) (same); *Walgreens Boots Alliance, Inc. (Myra Young)* (avail. Nov. 20, 2018) (concurring with the exclusion of a proposal requesting that any open market share repurchase program or stock buybacks not become effective until shareholders approve such program or buyback because it “micromanages the [c]ompany”).

Similarly, the Proposal micromanages the Company because it attempts to dictate a specific outcome (*i.e.*, a deferral of certain bonus awards to senior executives) and prescribes the method for doing so. Notably, the Proposal does not ask the Company to reconsider or alter its existing overall approach to executive compensation. Instead, the Proposal expressly prohibits the Company from making payments of specified bonus awards and prescribes a single path forward by requiring that such awards be deferred, reviewed and reevaluated over a specified period of time, and subject to recoupment. Therefore, the Proposal unduly limits the ability of management to manage its existing compensation policies and practices with the level of necessary flexibility. As such the Proposal removes all discretion from the Company to consider and address the concerns raised by the Proposal and instead prescribes the method the Company must implement in order to address the Proposal’s underlying concern.

Like the proposal in *General Electric*, the Proposal effectively dictates the scope of executive compensation that is permissible, prohibits certain payments, requires a time period for review both of the Company’s subsequent performance and the appropriateness of such bonus awards, and necessarily directs a Board committee to make individualized decisions with respect to the level and potential recoupment of the executives’ compensation. Moreover, the Proposal prohibits payment in full of certain bonus awards for senior executives for a specified deferral period, thereby imposing a specific outcome and a specific timeframe, as was the case in *JPMorgan*. Consistent with the shareholder proposals in *General Electric*, *JPMorgan* and the other cited precedent, the Proposal impermissibly micromanages the Company to such a degree that exclusion is warranted.

As in the precedent cited above, the Proposal prescribes the action to be taken as a substitute for the judgment of management. The Proposal does not request that the Company consider whether and how to amend its executive compensation policies to address executive pay and concerns regarding whether its current practices adequately promote long-term perspectives and decision making by executives. Instead, it seeks to dictate what actions the Committee must take in order to satisfy the Proponent. Requirements of this sort are more appropriately addressed through the Board's informed processes, which are described in the Company's annual proxy materials in connection with the annual advisory vote of shareholders on executive compensation. Therefore, consistent with the Staff's decisions in the precedent cited above, the Proposal may be properly excluded under Rule 14a-8(i)(7).

II. The Proposal May Be Excluded Under Rule 14a-8(i)(10) As Substantially Implemented

Rule 14a-8(i)(10) permits the exclusion of a shareholder proposal “[i]f the company has already substantially implemented the proposal.” The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *See* Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief only when shareholder proposals were “‘fully’ effected” by the company. *See* Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” because proponents were successfully convincing the Staff to deny no-action relief by submitting shareholder proposals that differed from existing company policy by only a few words. Exchange Act Release No. 20091, at § II.E.6. (Aug. 16, 1983) (the “1983 Release”). Therefore, in 1983, the Commission adopted a revised interpretation to the rule to permit the omission of shareholder proposals that had been “substantially implemented.” 1983 Release. The 1998 amendments to the proxy rules codified this position. 1998 Release at n.30 and accompanying text.

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the shareholder proposal has been “substantially implemented” and may be excluded as moot. The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc. (Recon.)* (avail. Mar. 28, 1991).

In applying this standard, a company need not implement a shareholder proposal in exactly the manner set forth by the proponent or in the manner that a shareholder may prefer. *See* 1998 Release at n.30 and accompanying text. Differences between a company’s actions and a shareholder proposal are permitted as long as the company’s actions satisfactorily address the shareholder proposal’s essential objectives. For example, the Staff has concurred that companies, when substantially implementing a shareholder proposal, can address aspects of implementation that may differ from the manner in which the shareholder proponent would

implement the proposal. *See, e.g., Wal-Mart Stores, Inc.* (avail. Mar. 25, 2015) (concurring with the exclusion of a proposal that requested the Company include at least one metric related to the Company’s employee engagement as a metric in determining senior executives’ incentive compensation, noting “that [the Company’s] policies, practices and procedures compare favorably with the guidelines of the proposal and that [the company] has, therefor, substantially implemented the proposal”). Therefore, if a company has satisfactorily addressed a proposal’s “essential objective,” the proposal will be deemed “substantially implemented” and, therefore, may be excluded as moot. *See, e.g., Exelon Corp.* (avail. Feb. 26, 2010); *Anheuser-Busch Companies, Inc.* (avail. Jan. 17, 2007); *ConAgra Foods, Inc.* (avail. July 3, 2006); *Johnson & Johnson* (avail. Feb. 17, 2006); *The Talbots Inc.* (avail. Apr. 5, 2002); *Masco Corp.* (avail. Mar. 29, 1999); and *The Gap, Inc.* (avail. Mar. 8, 1996).

Here, the Proposal seeks a change to the Company’s executive compensation program such that certain awards “based on one or more financial measurements . . . whose performance measurement period is one year or shorter” would be subject to a “Deferral Period.” The supporting statement expresses concern that “short-term incentive plans can encourage senior executives to take on excessive risk” and looks to “foster a longer-term orientation.” When read together, the text of the Proposal and the supporting statement make clear that the Proposal’s essential objective is to “foster a longer-term orientation” and “facilitate recoupment” by delaying the payment of certain awards to the Company’s senior executives in order to discourage “excessive risk.”

The Company has already satisfied the Proposal’s essential objective as its current executive compensation program is structured to promote long-term interests. As disclosed in the 2019 Proxy Statement, the Company’s compensation program is designed to support its enterprise strategy and to align leadership with the Company’s culture, strategy, and structure. One aspect of the Company’s global compensation framework, which is particularly relevant to the Proposal, is to “[a]lign management interests with the long-term interests of [the Company’s] shareholders by providing long-term incentives in the form of equity, combined with robust stock ownership guidelines.”³ As disclosed in the 2019 Proxy Statement, approximately 76% and 74%, respectively, of the total compensation paid to the Company’s CEO and named executive officers (averaged collectively) was comprised of equity incentives, which aligns with shareholder interests and fosters a long-term orientation. Moreover, as disclosed in the 2019 Proxy Statement, approximately 77% of the annual long-term equity incentive granted to the Company’s CEO and named executive officers was in the form of performance-based restricted stock units⁴ that use “one-year performance metrics followed by an additional two-year vesting period.”⁵ The additional two-year, time-based vesting period is twice as long as the corresponding performance period for such performance-based award. These performance-based awards comprise nearly 58% of the total compensation paid to the Company’s CEO and nearly 53% (on average) of the total compensation paid to the Company’s other named executive

³ *Id.* at 44.

⁴ *See id.* at 46.

⁵ *See id.* at 44.

officers.⁶ Therefore, the Company's current approach to executive compensation already "fosters a longer-term orientation" and "facilitates recoupment." In addition, under the heading "Risk Considerations in our Compensation Program," the 2019 Proxy Statement discusses the various factors considered by the Committee in structuring the Company's compensation and benefits program.⁷ Specifically, the Committee considered, among other things, the following factors:

- The Company's "performance-based compensation is balanced between an annual incentive and a long-term incentive program" and that "*this design mitigates any incentive for short-term risk-taking that could be detrimental to our company's long-term best interests*" (emphasis added).⁸
- Maximum payouts under both the Company's annual cash incentive plan and its performance share program are capped at 125% and 150% of target payouts, respectively, which are designed to "*mitigate excessive risk-taking, since the maximum amount that can be earned in a single cycle is limited*" (emphasis added).⁹
- The Company's senior executives are subject to robust stock ownership guidelines, which are intended to "motivate [the Company's] executives to consider the long-term interests of [the C]ompany and [its] shareholders and *discourage excessive risk-taking that could negatively impact [the Company's] stock price*" (emphasis added).¹⁰
- The Company's "performance-based incentive compensation programs are designed with payout curves that are relatively smooth and do not contain steep payout 'cliffs' that might encourage short-term business decisions in order to meet a payout threshold."¹¹

Moreover, as explained in the 2019 Proxy Statement, the Company has aligned its executive compensation program with its transformational omni-channel strategy, the ultimate success of which will be measured by the Company's ability to deliver solid returns to its shareholders over the long term. As part of these efforts, the Company has shifted its senior executive pay mix with a greater emphasis on long-term equity (often with a three-year vesting period).

Therefore, as described above, the Company's current executive compensation program is already structured by the Committee in a way that satisfies the essential objective of the Proposal to "foster a longer-term orientation" and "facilitate recoupment" by delaying the payment of certain awards to the Company's senior executives in order to discourage "excessive risk," which aligns incentive awards with the long-term interests of shareholders of the Company. Accordingly, consistent with the precedent cited above, the Proposal may properly be excluded under Rule 14a-8(i)(10).

⁶ See *id.* at 45.

⁷ See *id.* at 68.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

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 2020 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 provide 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,

A handwritten signature in cursive script that reads "Kristopher A. Isham". The signature is written in dark ink and has a long horizontal flourish extending to the right.

Kristopher A. Isham
Senior Counsel
Walmart Inc.

Enclosures

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP
Ken Hall, International Brotherhood of Teamsters General Fund

EXHIBIT A

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

JAMES P. HOFFA
General President

25 Louisiana Avenue, NW
Washington, DC 20001



KEN HALL
General Secretary-Treasurer

202.624.6800
www.teamster.org

December 17, 2019

Via E-mail: Rachel.brand@walmart.com

Via UPS Ground

Rachel Brand, Esq., Executive Vice President
of Global Governance, Chief Legal Officer
& Corporate Secretary

Walmart Inc.
702 Southwest 8th Street
Bentonville, AR 72716-6299

Dear Ms. Brand:

I hereby submit the enclosed resolution on behalf of the Teamsters General Fund, in accordance with SEC Rule 14a-8, to be presented at the Company's 2020 Annual Meeting.

The General Fund has owned 160 shares of Walmart Inc., continuously for at least one year and intends to continue to own at least this amount through the date of the annual meeting. Enclosed is relevant proof of ownership.

Any written communication should be sent to the above address via U.S. Postal Service, UPS, or DHL, as the Teamsters have a policy of accepting only union delivery. If you have any questions about this proposal, please direct them to Louis Malizia of the Capital Strategies Department at (202) 624-6930.

Sincerely,

A handwritten signature in black ink that reads "Ken Hall".

Ken Hall
General Secretary-Treasurer

KH/lm
Enclosures



RESOLVED: That shareholders of Walmart Inc. (the “Company”), urge the Compensation and Management Development Committee of the board to change any annual cash incentive program (“Bonus Program”) to provide that an award (a “Bonus”) to a senior executive that is based on one or more financial measurements (a “Financial Metric”) whose performance measurement period (“PMP”) is one year or shorter shall not be paid in full for a period (the “Deferral Period”) following the award, including developing a methodology for determining the length of the Deferral Period and adjusting the remainder of the Bonus over the Deferral Period.

The methodology described above should allow accurate assessment of risks taken during the PMP that could have affected performance on the Financial Metric(s) and allow Walmart to recoup Bonus compensation pursuant to its clawback policy.

The changes should be implemented in a way that does not violate any existing contractual obligation or the terms of any compensation or benefit plan currently in effect.

SUPPORTING STATEMENT: We are concerned short-term incentive plans can encourage senior executives to take on excessive risk. Even as structured, with a qualitative assessment of what the Company terms its “ethics and compliance” goals factored into the annual incentive award, we believe the plan fails to capture the time-frames over which ethical and compliance failures can manifest themselves for a given year’s managerial performance.

In our view, the opioid crisis reflects overly risky behavior by companies in the supply chain, including retailers such as Walmart. This has led to costly litigation, with potential financial and reputational consequences. Walmart is a defendant in the pending multi-district opioid litigation in Ohio.

To foster a longer-term orientation, this proposal asks the Committee to develop a methodology for withholding some portion of Bonuses to allow adjustment of the unpaid portion during the Deferral Period both to allow more accurate assessment of the risks taken during the PMP and to facilitate recoupment pursuant to Walmart’s clawback policy. The Committee would have discretion to set the terms and mechanics of this process.

Bonus deferral is widely used in the banking industry, where overly risky behavior was widely viewed as contributing to the financial crisis. In 2009, the Financial Stability Board, which coordinates national financial authorities in developing strong financial sector policies, adopted *Principles for Sound Compensation Practices* and implementation standards for those principles, including bonus deferral. Deferral is “particularly important” because it allows “late-arriving information about risk-taking and outcomes” to alter payouts and reduces the need to claw back compensation already paid out, which may “fac[e] legal barriers,” in the event of misconduct. Banking supervisors in 16 jurisdictions, including the US, have requirements or expectations regarding bonus deferral. (<https://www.fsb.org/wp-content/uploads/P170619-1.pdf>)

We urge shareholders to vote FOR this proposal.



December 17, 2019

Rachel Brand, Executive V.P. of Global Governance
Chief Legal Officer and Corporate Secretary
Walmart Inc.
702 Southwest 8th Street
Bentonville, AR 72716-6299

RE: Wal-Mart Stores Inc. - Cusip # 931142103

Dear Ms. Brand:

Amalgamated Bank is the record owner of 160 shares of common stock (the "Shares") of Walmart Inc., beneficially owned by the International Brotherhood of Teamsters General Fund. The shares are held by Amalgamated Bank at the Depository Trust Company in our participant account # 2352. The International Brotherhood of Teamsters General Fund has held the shares continuously since 9/25/2006, and will continue to hold these shares through the date of the annual shareholders meeting.

If you have any questions or need anything further, please do not hesitate to call me at (212) 895-4974.

Very truly yours,

A handwritten signature in black ink, appearing to read "Suzette Spooner", with a long horizontal flourish extending to the right.

Suzette Spooner
Vice President

cc: Louis Maliza

America's Labor Bank®

275 SEVENTH AVENUE NEW YORK, NY 10001 212-255-6200 www.amalgamatedbank.com

From: [Kristopher Isham - Legal](#)
To: MJhingory@teamster.org
Subject: Teamsters General Fund Proposal - Walmart, Inc.

Hello Ms. Jhingory,

I confirm receipt of your email and attachments sent to Rachel Brand yesterday afternoon, Dec. 17.
We will review and confirm if we need anything further.

Kind regards,

Kris Isham, Senior Counsel - Corporate

Office: 479.204.8684; Fax (479) 277-5991

Mobile: 479.586.0394

kristopher.isham@walmartlegal.com

Walmart 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: [Jhingory, Marcia](#)
To: [Kristopher Isham - Legal](#)
Subject: EXT: RE: Teamsters General Fund Proposal - Walmart, Inc.
Date: Wednesday, December 18, 2019 9:14:05 AM

Mr. Isham,

I appreciate you letting me know you received the email.

Marcia Jhingory
202.624.8100