

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 Cynthia Murray
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 Cynthia Murray (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 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

Shareholders of Walmart Inc. (“Walmart”) urge the board to adopt a policy (the “Policy”) of promoting significant representation of employee perspectives among corporate decision makers by requiring that the initial list of candidates from which new nominees are chosen (the “Initial List”) by the Nominating and Governance Committee include (but need not be limited to) hourly Associates. The Policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates.

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.

ANALYSIS

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

The Proposal requests that the Company’s Board of Directors (the “Board”) increase the representation of employee perspectives on the Board by including hourly associates in the initial list of candidates from which new director nominees are chosen—regardless of whether such list is prepared by the Board’s Nominating and Governance Committee, “any third-party consultant” or others.

As discussed below, the Proposal and its supporting statement demonstrate that the Proposal seeks to add an employee to the Board to provide a “significant” avenue of employee communication with the Company. For example, the supporting statement implies that “employee representation on corporate boards” may encourage companies “to be accountable to and inclusive of a wider array of interests, notably employees” and even help address “stagnant wages.” In this respect, the Proposal squarely implicates the Company’s ordinary business operations as it relates to the Company’s management of its workforce, including the Company’s relationship with its employees. As such, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(7).

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

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it “deals with a matter relating 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 these considerations 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.”

B. *The Proposal Is Excludable Because It Relates To The Company’s Management Of Its Workforce, Including Its Relationship With Employees*

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to a company’s management of its workforce, including its relationship with employees. 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 repeatedly recognized that proposals pertaining to the management of a company’s workforce are excludable under Rule 14a-8(i)(7). For example, in *Bank of America Corp.* (avail. Feb. 14, 2012), the Staff concurred with the exclusion of a shareholder proposal requesting an amendment to a company policy to include “protection to engage in free speech outside the job context, and to participate freely in the political process without fear of discrimination or other repercussions on the job” because the proposal related to the company’s policies concerning its employees. *See also Yum! Brands, Inc.* (avail. Mar. 6, 2019) (concurring with the exclusion of a shareholder proposal relating to adopting a policy not to engage in any inequitable employment practice, as relating “generally to the [c]ompany’s policies concerning its employees and does not focus on an issue that transcends ordinary business matters”); *Costco Wholesale Corp.* (avail. Nov. 14, 2014, *recon. denied* Jan. 5, 2015) (concurring with the exclusion of a shareholder proposal requesting adoption of a company-wide code of conduct including an anti-discrimination policy that protects employees’ right to engage in political and civic activities as “relating to [the company’s] ordinary business operations” and, in particular, “policies concerning [the company’s] employees”); *Donaldson Company, Inc.* (avail. Sept. 13, 2006) (concurring with the exclusion of a shareholder proposal requesting the establishment of “appropriate ethical standards related to employee relations” as relating to the company’s “ordinary business operations (*i.e.*, management of the workforce)”); *Wal-Mart Stores, Inc.* (avail. Mar. 16, 2006) (concurring with the exclusion of a proposal requesting an amendment to a policy barring

intimidation of company employees exercising their right to freedom of association); *Merck & Co., Inc.* (avail. Jan. 23, 1997) (concurring with the exclusion of a shareholder proposal requesting the adoption of a policy “to encourage employees to express their ideas on all matters of concern affecting the company”); *W.R. Grace & Co.* (avail. Feb. 29, 1996) (concurring with the exclusion of a shareholder proposal requesting that the company implement a “high-performance” workplace based on policies of workplace democracy and worker participation).

Recently, the Staff concurred with the exclusion of a shareholder proposal requesting that the board take steps to allow the company’s stakeholder advisory council, which provides feedback to the company’s board from a stakeholder perspective, to appoint an employee representative, as relating to ordinary business. See *Wells Fargo & Co.* (avail. Feb. 27, 2019). The proposal sought to appoint an employee to the council to provide “independent feedback outside the normal channels of employee communication,” thereby creating an additional avenue for employees to communicate with the board and management on ordinary business matters. In concurring that the proposal was properly excludable, the Staff noted that the proposal “concerns employee relations.” See also *Duke Power Co.* (avail. Mar. 4, 1992) (concurring with the exclusion of a shareholder proposal requesting the establishment of an employee advisory council to periodically meet with the board to discuss issues of concern related to board decisions and policies, even where the proposal indicated that the council shall not “discuss the [company]’s day-to-day labor relations,” noting that the proposal related to the company’s “employee relations” and thus implicated the company’s ordinary business operations); *GTE Corp.* (avail. Feb. 4, 1992) (same). Here, the Proposal has the *same aim* as the proposal in *Wells Fargo*: to “promot[e] significant representation of employee perspectives” beyond the normal channels of employee communication. Indeed the focus of the Proposal, as in *Wells Fargo*, is on communications between the Company and its employees regarding ordinary business matters, which squarely relates to the Company’s relationships with its employees and management of its workforce. The Company’s public filings and website highlight key actions already taken by the Company and Board to communicate with employees. The Company’s proxy statement highlights “Respect for the Individual” as one of the Company’s four core beliefs: “We value every associate, own the work we do, and communicate by listening and sharing ideas.”¹ Moreover, the Company discloses that it “was founded on the belief that open communication . . . [is] necessary to be successful,” and its “long-standing ‘Open Door’ communication policy helps management be aware of and address issues in a timely and effective manner.”² As a result, “all associates are encouraged to [speak up] . . . when they are concerned about any matter pertaining to [the Company].”³ The Company’s 2019 Environmental, Social, & Governance Report (the “2019 ESG Report”) states that the Company’s Chief Sustainability Officer “provides regular updates to the Nominating and Governance Committee on ESG issues and

¹ See Walmart Inc. proxy statement for its 2019 Annual Shareholders’ Meeting, “Our Beliefs,” available at <https://www.sec.gov/Archives/edgar/data/104169/000120677419001406/wmt3482341-def14a.htm>.

² See Walmart Inc. 2019 Form 10-K at page 80, available at <https://www.sec.gov/Archives/edgar/data/104169/000010416919000016/wmtform10-kx1312019.htm>.

³ *Id.*

initiatives.”⁴ The 2019 ESG Report also lists the many ways in which the Company seeks feedback from its associates and states, “We want associates to share their ideas for making our business better and relay, in confidence when appropriate, any workplace concerns.”⁵ Moreover, in the Company’s 2019 Proxy Statement, the Company describes the role of the Board and the Compensation and Management Development Committee in providing “oversight and guidance on workforce development, compensation, benefits, recruiting and retention, and culture, diversity and inclusion. We continue to invest in our associates’ wages and training, and recently enhanced our leave and paid-time-off benefits. We believe that these actions have resulted in a more engaged and effective workforce that is better equipped to serve our customers in today’s rapidly changing retail environment.”⁶ Thus, as in *Wells Fargo*, the Company is already addressing as part of its day-to-day operations the issues that the Proposal suggests require increased communication and representation to improve.

The Proposal is distinguishable from the shareholder proposal at issue in *McDonald’s Corp.* (avail. Mar. 16, 2017, *recon. denied* Mar. 29, 2017), which sought to give the company’s franchisees the power to elect one new member of the company’s board through the creation of a new series of preferred stock granting holders this right. In denying the reconsideration request, the Staff indicated that the proposal “transcend[ed] ordinary business matters.” However, that proposal was not focused on the company’s workforce and relationships with employees, but rather focused on capital structure changes through the issuance of a new series of preferred stock with specifically enumerated rights. In contrast, the Proposal at issue deals directly with representation of employees and seeking their perspectives through an additional conduit of communication, and it does not transcend ordinary business matters by requesting that the Company’s capital structure be revised. The Company already has many mechanisms in place to hear and promote employees’ concerns and consider those “employee perspectives” in the “corporate decision mak[ing]” process.

As in *Wells Fargo* and the other precedents described above, the Proposal relates to the company’s management of its workforce, including its relationship with employees. The Proposal thus addresses ordinary business matters and may be excluded 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 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

⁴ See 2019 ESG Report at page 70, available at <https://corporate.walmart.com/media-library/document/2019-environmental-social-governance-report/proxyDocument?id=0000016c-20b5-d46a-aff-f5bdafd30000>.

⁵ See *Id.* at page 50 (“Associate Voice”).

⁶ See Walmart 2019 Proxy Statement at page 31, available at [https://s2.q4cdn.com/056532643/files/doc_financials/2019/annual/348234\(1\)_20_Walmart_NPS_WR.pdf](https://s2.q4cdn.com/056532643/files/doc_financials/2019/annual/348234(1)_20_Walmart_NPS_WR.pdf).

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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" followed by a horizontal line.

Kristopher A. Isham
Senior Counsel
Walmart Inc.

Enclosures

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP
Cynthia Murray

EXHIBIT A

December 10, 2019

Gordon Y. Allison
Senior Vice President, Office of the Corporate Secretary, Chief Counsel for Finance and
Corporate Governance
Walmart Inc.
702 Southwest 8th Street
Bentonville, Arkansas 72716-0215

Dear Mr. Allison:

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in Wal-Mart Stores, Inc.'s ("Company") proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations.

I am the beneficial owner of approximately 28 shares of the Company's common stock, which have been held continuously for more than a year prior to this date of submission. I intend to hold the shares through the date of the Company's next annual meeting of shareholders.

The record holder of the stock will provide the appropriate verification of my beneficial ownership by separate letter. Either the undersigned or a designated representative will present the Proposal for consideration at the annual meeting of shareholders.

If you have any questions or wish to discuss the Proposal, please contact me at ***
or at *** Copies of correspondence or a request for "no-action" relief
should be forwarded to Cynthia Murray, ***

Sincerely,



Cynthia Murray
Walmart Associate, Store #1985

Cc: Bank of America Merrill Lynch
Encl: Shareholder Resolution

RESOLVED

Shareholders of Walmart Inc. (“Walmart”) urge the board to adopt a policy (the “Policy”) of promoting significant representation of employee perspectives among corporate decision makers by requiring that the initial list of candidates from which new nominees are chosen (the “Initial List”) by the Nominating and Governance Committee include (but need not be limited to) hourly Associates. The Policy should provide that any third-party consultant asked to furnish an Initial List will be requested to include such candidates.

WHEREAS

There is growing consensus that the presence of employees on corporate boards can contribute to the long-term sustainability of a company.

Policymakers have noted that the current status quo of having companies be run exclusively for the benefit of shareholders is contributing to “stagnant wages, runaway executive compensation and underinvestment in research and innovation.”¹ Similar arguments are being made in the business community. The Business Roundtable recently announced that it is reevaluating the fundamental purpose of a corporation to align with stakeholders’ interests and generate shared prosperity for business and society.²

New research suggests that employee representation grows the long-term value of a company in several ways. According to the National Bureau of Economic Research, giving workers formal control rights increases female board representation and raises capital formation.³ In Germany, the “co-determination” model of shared governance has been lauded as an excellent check and balance against short-termist capital allocation practices.⁴

Legislators are supportive of this notion as well, with nearly one-third of Senate Democrats supporting an initiative led by Senator Tammy Baldwin.⁵ Both Senator Baldwin and Senator Elizabeth Warren have introduced legislation that codifies employee representation on corporate boards, noting that modern corporate governance needs to be accountable to and inclusive of a wider array of interests, notably employees.⁶ Additionally, recent polling demonstrates⁷ substantial public support (over 53%) across party lines for employee representation.

While the current Walmart board satisfies independence requirements, it is lacking in representation from the hourly Associates who understand the daily store operations thoroughly. Every day, Walmart’s hourly Associates demonstrate their care and commitment to the long-term health of the company, as well as the communities and local economies in which the

¹ <https://www.nytimes.com/2019/01/06/opinion/warren-workers-boards.html>

²

<https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>

³ <http://economics.mit.edu/files/17273>

⁴ <https://prospect.org/labor/codetermination-difference/>

http://rooseveltinstitute.org/wp-content/uploads/2017/10/Corp-Gov_FINAL.pdf

⁵

<https://www.baldwin.senate.gov/press-releases/baldwin-leads-effort-to-give-workers-a-greater-voice-at-public-companies>

⁶ <https://www.wsj.com/articles/companies-shouldnt-be-accountable-only-to-shareholders-1534287687>

<https://www.baldwin.senate.gov/press-releases/reward-work-act-2019>

⁷ <https://www.dataforprogress.org/blog/2018/12/14/employee-governance>

stores operate. They work hard to ensure the company's long-term success and stability, and reflect the racial, gender, and economic diversity of the company's consumer base.⁸

The Policy we propose resembles the Rooney Rule in the National Football League (NFL), which requires teams to interview minority candidates for head coaching and senior football operations openings. By adopting the Rooney Rule, the NFL was able to increase diversity and set a precedent for other industries.⁹ Policies like the one advanced in this Proposal have been adopted by the nominating and governance committees of Amazon Inc., Costco Wholesale Corporation, Home Depot, and Neogen Corporation.

We urge shareholders to vote for this proposal.

⁸ <https://cdn.corporate.walmart.com/11/0d/f9289df649049a38c14bdeaf2b99/2017-cdi-report-web.pdf>

⁹ <https://www.sec.gov/comments/s7-06-16/s70616-293.pdf>



December 11, 2019

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

Via facsimile (479) 277-5991

Re: Shareholder proposal for 2020 annual meeting

Dear Mr. Allison:

I am writing concerning a shareholder proposal sent to you by Cynthia Murray. Ms. Murray is a participant in the Walmart 401(k) Plan. Ms. Murray beneficially owned 28.8952 shares of Walmart Stores, Inc. common stock, worth more than \$2,000, continuously for at least one year up to and including December 10, 2019 the date on which Ms. Murray submitted the Proposal. Merrill Lynch has acted as recordholder for the Walmart 401(k) Plan and is a DTC participant.

If you require any additional information, please let me know.

Very truly yours,

William Lederhos, Vice President
Bank of America Merrill Lynch

Cc: Ms. Cynthia Murray

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