

**Legal  
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February 1, 2021

VIA E-MAIL to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

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

Re: *Walmart Inc.*  
*Shareholder Proposal of Terry Michael Rippy*  
*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 2021 Annual Shareholders’ Meeting (collectively, the “2021 Proxy Materials”) a shareholder proposal and statements in support thereof (the “Proposal”) received from Terry Michael Rippy (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 2021 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 a shareholder proponent is required to send companies a copy of any correspondence that the proponent elects 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 he elects to submit additional correspondence to the Commission or the Staff with respect to the 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.

## **BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur with our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) because the Proponent failed to provide the requisite proof of continuous share ownership in response to the Company's request for that information.

In addition, to the extent the Staff is unable to concur with our view that the Proposal may be excluded pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1), we hereby respectfully request that the Staff concur with our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company's ordinary business operations, as it impermissibly seeks to impose prescriptive methods for implementing complex policies related to the Company's product offerings and the Company's approach to how it sources those products.

## **BACKGROUND**

The Proponent submitted the Proposal to the Company in an email on August 16, 2020. *See Exhibit A.* The Proponent did not include with the email any documentary evidence of his ownership of Company shares. In addition, the Company reviewed its stock records, which did not indicate that the Proponent was a record owner of Company shares.

Accordingly, the Company properly sought verification of share ownership from the Proponent. Specifically, on September 25, 2020, the Company sent the Proponent a letter via email identifying the deficiency, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiency (the "Deficiency Notice"). The Deficiency Notice, attached hereto as Exhibit B, provided detailed information regarding the "record" holder requirements, as clarified by Staff Legal Bulletin No. 14F (Oct. 18, 2011) ("SLB 14F"), and attached a copy of Rule 14a-8 and SLB 14F. Specifically, the Deficiency Notice stated:

- the ownership requirements of Rule 14a-8(b);
- that, according to the Company's stock records, the Proponent was not a record owner of sufficient shares;
- the type of statement or documentation necessary to demonstrate beneficial ownership under Rule 14a-8(b), including "a written statement from the 'record' holder of [the Proponent's] shares (usually a broker or a bank) verifying that [the Proponent] continuously held the required number or amount of Company shares for the one-year period preceding and including August 16, 2020," the date the Proposal was submitted to the Company; and

- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the Deficiency Notice.

The Deficiency Notice was sent via email at 2:52 p.m. local time on September 25, 2020. *See Exhibit B.* The deadline for any response to the Deficiency Notice was October 9, 2020, based on the September 25, 2020 delivery date of the emailed Deficiency Notice. While the Company has corresponded with the Proponent since then, the Company has not received any ownership proof from the Proponent. *See Exhibit C.*

## ANALYSIS

### **I. The Proposal May Be Excluded Pursuant To Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish The Requisite Eligibility To Submit The Proposal.**

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate his eligibility to submit the Proposal in compliance with Rule 14a-8. Rule 14a-8(b)(1) provides, in part, that “[i]n order to be eligible to submit a proposal, [a shareholder] must have continuously held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date [the shareholder] submit[s] the proposal.” Staff Legal Bulletin No. 14 (July 13, 2001) (“SLB 14”) specifies that when the shareholder is not the registered holder, the shareholder “is responsible for proving his or her eligibility to submit a proposal to the company,” which the shareholder may do by one of the two ways provided in Rule 14a-8(b)(2). *See* Section C.1.c., SLB 14. Rule 14a-8(f)(1) permits a company to exclude a shareholder proposal from the company’s proxy materials if the proponent fails to comply with the eligibility or procedural requirements under Rule 14a-8, including failing to provide the beneficial ownership information required under Rule 14a-8(b), provided that the company has notified the proponent of the deficiency, and the proponent has failed to correct such deficiency within 14 calendar days of receipt of such notice.

The Staff has consistently concurred with the exclusion of proposals when proponents have failed, following a proper request by a company, to timely furnish evidence of eligibility to submit the shareholder proposal pursuant to Rule 14a-8(b). For example, in *FedEx Corp.* (avail. June 5, 2019), the proponent submitted a proposal without any accompanying proof of ownership and did not provide any documentary support until 15 days following receipt of the company’s deficiency notice. Despite being just one day late, the Staff concurred with the exclusion of the proposal pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1). *See also Time Warner Inc.* (avail. Mar. 13, 2018); *ITC Holdings Corp.* (avail. Feb. 9, 2016); *Prudential Financial, Inc.* (avail. Dec. 28, 2015); *Mondelēz International, Inc.* (avail. Feb. 27, 2015) (each concurring with the exclusion of a shareholder proposal where the proponent supplied proof of ownership 18, 35, 23, and 16 days, respectively, after receiving the company’s deficiency notice). This was the outcome even if the evidence ultimately furnished otherwise

satisfied Rule 14a-8(b). Here, the Proponent submitted a proposal without any accompanying proof of ownership, and did not provide *any* documentary support following receipt of the Company's Deficiency Notice. As such, the Company may exclude the Proposal pursuant to Rule 14a-8(f)(1) and Rule 14a-8(b).

As discussed above and consistent with this guidance, the Company satisfied its obligation under Rule 14a-8 to notify the Proponent of this deficiency by providing the Proponent with the Deficiency Notice, clearly identifying the deficiency and specifically setting forth the requirement that the Proponent include a written statement from the record holder of his shares. *See Exhibit B.* The Deficiency Notice further explained that if the Proponent's "broker or bank is not a DTC participant" and the "DTC participant that holds [such] shares is not able to confirm [the Proponent's] individual holdings but is able to confirm the holdings of [the Proponent's] broker or bank," then that Proponent must submit two written statements: "(i) one from [the Proponent's] broker or bank confirming [the Proponent's] ownership, and (ii) the other from the DTC participant confirming the broker or bank's ownership." *See id.* The Deficiency Notice also included copies of both Rule 14a-8 and SLB 14F.

Although the Deficiency Notice was not sent to the Proponent within the first 14 calendar days after receiving the Proposal, the Deficiency Notice was sent soon thereafter and provided the Proponent with 14 full calendar days to respond, as required by Rule 14a-8(f). Accordingly, because the Proponent failed to provide any documentary evidence of ownership of Company shares, either with the original Proposal or within 14 calendar days after receiving the Company's Deficiency Notice, the Proponent has not demonstrated eligibility under Rule 14a-8 to submit the Proposal and the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1). This is consistent with the Staff's prior position where a proponent failed to timely cure procedural deficiencies in response to a company's deficiency notice that was transmitted after the first 14 calendar days following the company's receipt of a proposal. For example, in *Exelon Corp.* (avail. Feb. 23, 2009), the Staff concurred with the exclusion of a shareholder proposal under Rule 14a-8(b) and Rule 14a-8(f)(1) of a proposal received by the company on September 24, 2008, where the company did not send its deficiency notice until November 24, 2008—61 calendar days after it first received the proposal. The company argued that the proponents were not affected or prejudiced by its failure to provide written notice of the deficiencies within Rule 14a-8(f)(1)'s 14-day period because the company allowed them 14 calendar days from the receipt of the company's deficiency notice to correct the procedural deficiencies. Because the proponents failed to respond to the company's notice within 14 calendar days, the Staff concurred that the company could exclude the proposal. Here, although the Company sent the Deficiency Notice 40 calendar days after receiving the Proposal, the Company provided the Proponent ample opportunity to remedy the Proposal's defects by affording him 14 days calendar days to respond to the Deficiency Notice. Therefore, consistent with the Staff's position in *Exelon*, the Proponent was not affected or prejudiced by the Company's delay in transmitting the Deficiency Notice, and because the Proponent failed to provide any documentary evidence of ownership of Company shares, either with the original Proposal or in response to

the Company's Deficiency Notice, he has therefore not demonstrated eligibility under Rule 14a-8 to submit the Proposal.

Accordingly, we ask that the Staff concur that the Company may exclude the Proposal under Rule 14a-8(b) and Rule 14a-8(f)(1).

## **II. The Proposal May Be Excluded Pursuant To Rule 14a-8(i)(7) Because The Proposal Relates To The Company's Ordinary Business Operations.**

The Proposal requests that the Company adopt a policy to "require [the Company] to reduce imports from China and other foreign countries" to "assur[e] that fifty-one percent of [the Company's] products sold throughout [its] stores in the United States will be manufactured in the United States" and, as described below, imposes a specific time-frame and method for implementing the requested policy, including what stores must be subject to the policy and how the policy must be audited. As discussed below, the Staff has consistently concurred that proposals seeking to direct a company's specific actions with respect to complex policy matters and restrict the discretion or flexibility of the company's management or board to act on those matters may be excluded. Under well-established precedent, we believe that the Proposal is therefore excludable under Rule 14a-8(i)(7) because it seeks to micromanage the Company's actions with respect to its product offerings and import strategy.

### *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 1998 Release, 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 explained 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 second consideration, which is applicable to the Proposal, relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)).

The 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. 14J (Oct. 23, 2018) ("SLB 14J"), the Staff explained that "[u]nlike the first consideration [of the ordinary business exception], which looks to a proposal's subject matter, the second

consideration looks only to the degree to which a proposal seeks to micromanage. Thus, a proposal that may not be excludable under the first consideration may be excludable under the second if it micromanages the company.” Moreover, under Rule 14a-8(i)(7) a shareholder proposal that seeks to micromanage a company’s business operations is excludable even if it involves a significant policy issue

In addition, Staff Legal Bulletin No. 14K (Oct. 16, 2019) (“SLB 14K”) clarified that in considering arguments for exclusion based on micro-management, the Staff looks to see “whether the proposal . . . imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” Furthermore, the Staff noted that if a proposal “potentially limit[s] the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” SLB 14K.

*B. The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Seeks To Micromanage The Company*

The Proposal seeks to dictate how the Company determines what products it may offer in specific retail stores by “impos[ing] a specific strategy, method, action, outcome or timeline for addressing an issue” and “prescrib[ing] specific timeframes.” SLB 14K. Specifically, the Proposal directs the Company to adopt a detailed policy with respect to the products it imports and offers for sale (requiring the Company “to reduce imports from China and other foreign countries” to “assur[e] that fifty-one percent of [the Company’s] products sold throughout [its] stores in the United States will be manufactured in the United States”). The Proposal further requires a specific timeline for the implementation of the requested policy and imposes specific prescriptive methods to implement the requested policy.

Consistent with the guidance in the 1998 Release, and as described in SLB 14J and SLB 14K, the Staff consistently has concurred that shareholder proposals attempting to micromanage a company by providing specific details for implementing a proposal as a substitute for the judgment of management are excludable under Rule 14a-8(i)(7). For example, in *RH* (avail. May 11, 2018), the proposal requested that the company “enact a policy that will ensure no down products are sold by” the company. The company argued that the proposal micromanaged the company and was thus excludable under Rule 14a-8(i)(7) because it sought “to have the [c]ompany discontinue the sales of specific products” and “[d]ecisions with respect to the [c]ompany’s product mix involve a complex analysis of numerous factors, including the features of a particular product, the product’s cohesiveness with the [c]ompany’s other . . . offerings, and competitive factors, among others.” The Staff concurred with exclusion on micromanagement grounds, noting that “the [p]roposal micromanages the [c]ompany by seeking to impose specific methods for implementing complex policies.”

Similarly, in *Amazon.com, Inc.* (avail. Jan. 18, 2018, *recon. denied* Apr. 5, 2018) (“*Amazon 2018*”), the proponent submitted a proposal requiring the company to list specific

showerheads before other showerheads and include additional disclosures about the highlighted showerheads. The company argued that the proposal sought to micromanage the company by “mandat[ing] a specific reordering of products and requir[ing] specific additional disclosures.” The Staff concurred with the exclusion of the proposal, noting that “the [p]roposal seeks to micromanage the [c]ompany 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.” *See also Amazon.com, Inc. (Sacks)* (avail. Mar. 27, 2020) (concurring with the exclusion on micromanagement grounds under Rule 14a-8(i)(7) of a proposal requesting the company have a department category on its website concerning sustainability products to address climate change); *SeaWorld Entertainment, Inc.* (avail. Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (concurring with the exclusion on micromanagement grounds under Rule 14a-8(i)(7) of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as micromanagement); *Marriott International, Inc.* (avail. Mar. 17, 2010, *recon. denied* Apr. 19, 2010) (concurring with the exclusion on micromanagement grounds under Rule 14a-8(i)(7) of a proposal requiring the installation of low-flow showerheads at certain of the company’s hotels, noting that “although the proposal raises concerns with global warming, the proposal seeks to micromanage the company to such a degree that exclusion of the proposal is appropriate”).

As with the proposals in *RH, Amazon 2018* and the other precedents discussed above, the Proposal seeks to “impose[] a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” SLB 14K. Through the requested policy, the Proposal seeks to dictate the Company’s decisions with respect to its product offerings and its approach to how it sources those products (*i.e.*, by requiring the Company “to reduce imports from China and other foreign countries” until “the foreign imports [are] reduced to forty-nine percent”). Moreover the Proposal prescribes both specific timeframes and methods for implementing the complex policy it requests. Specifically, the Proposal seeks to impose:

- a specific three-phase timeline for the reduction of imported products (requiring imported products be reduced to 60% by January 2022; 55% by June 2022; and 49% percent by January 2023);
- the policy’s required duration (“[t]his policy will continue until shareholders vote to cancel or expand it”);
- the method through which the Company must monitor compliance with the requested policy (“[t]he adherence of this policy will be audited by Ernst & Young LLP, annually”); and
- the consequences if the Company fails to meet the above time-constrained limits and overall forty-nine percent directive (“[i]f this policy is not adhered to in any year, then the [C]ompany will be required to decrease Foreign

imports for sale at [the Company’s] stores by an additional one percent the following year”).

The effects of the Proposal’s constraints would change how the Company—which has approximately 11,400 stores in 26 countries,<sup>1</sup> including more than 5,000 in the United States<sup>2</sup>—operates on a day-to-day basis, by requiring that the Company impose a specific, time-bound limit on the ratio of its products that it sources from foreign countries. The Proposal would require the Company to change its product offerings and reduce products imported from foreign countries, regardless of whether the costs to the Company for these products are comparable to domestic products or whether there is market demand for these products. Implementing such a policy would be impractical because it places an arbitrary limit on management’s ability to use their knowledge of the Company’s business and operations to tailor the Company’s broad assortment of product offerings based on an evaluation of customer demand, product cost, and various other factors.

As in *RH* and *Amazon 2018*, the Proposal prescribes specific details for implementation of complex policies as a substitute for the judgment of management. The Proposal does not merely request that concerns related to the import of products be considered; it instead requires the Company to restructure how it determines what products it offers and change how it makes determinations about where to source the broad assortment of products it offers for sale. The extent to which the detailed requirements of the Proposal seek to micromanage the Company is comparable to the specific policy position prescribed in *RH* and the specific department category mandated by *Amazon 2018*. The shareholder proposal process is not intended to provide an avenue for shareholders to impose detailed requirements of this sort in areas where they, as a group, are not in the best position to manage the day-to-day business of a company. Decisions about where to source products and which products to sell are decisions that are beyond the purview of shareholders as they are multifaceted and require management to evaluate complex issues. The Company has gone to great lengths to develop the Company’s approach to how it sources the broad assortment of products it offers for sale in its operations. By mandating how the Company approaches the sourcing of its broad assortment of product offerings, the Proposal would “supplant[] the judgment of management and the board” as to how the Company can best serve its customers and enhance long-term shareholder value. The Proposal thus micromanages the Company’s fundamental day-to-day decisions and policies with respect to how it sources the products sold in its operations and therefore may be excluded under Rule 14a-8(i)(7).

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<sup>1</sup> See Walmart Releases Q3 FY21 Earnings, available at <https://corporate.walmart.com/newsroom/2020/11/17/walmart-releases-q3-fy21-earnings>.

<sup>2</sup> See Location Facts, available at <https://corporate.walmart.com/our-story/locations/united-states?multi=false>.

### 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 2021 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [Kristopher.Isham@walmartlegal.com](mailto: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, appearing to read "Kristopher A. Isham", followed by a horizontal line.

Kristopher A. Isham  
Senior Counsel  
Walmart Inc.

Enclosures

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP  
Michael Terry Rippy

**EXHIBIT A**

**From:** terry rippy \*\*\*  
**Sent:** Sunday, August 16, 2020 6:06 PM  
**To:** WM Investor Relations Inquiries <[invrelinq@wal-mart.com](mailto:invrelinq@wal-mart.com)>  
**Subject:** EXT: Policy proposal

Dear Sir:

Please include this proposal to be voted on in the next Walmart shareholders' meeting.

Dr. Terry Michael Rippy

## **Shareholder Proxy Title- Re-instituting Mr. Sam's Philosophy of Made in America Policy**

This proposal is presented by Dr. Terry Michael Rippy, Walmart shareholder with 106.714 shares.

Proxy proposal: Resolves that shareholders do hereby recommend that Walmart administrators require our Walmart company to reduce imports from China and other foreign countries. This proposal would limit imports of products for sale from foreign countries to sixty percent by January 2022. By June 2022, foreign imports will be reduce to fifty-five percent. On January 2023, the foreign imports will be reduced to forty-nine percent , thereby assuring that fifty-one percent of Walmart products sold throughout our stores in the United States will be manufactured in the United States. This policy will continue until shareholders vote to cancel or expand it. This policy does not apply to Walmart stores in other countries, but it does encourage the export of as many American products as possible to be sold in Walmart locations in other countries.

The adherence of this policy will be audited by Ernst & Young LLP, annually. If this policy is not adhered to in any year, then the company will be required to decrease Foreign imports for sale at Walmart stores by an additional one percent the following year. Advantages Of this Policy: The revival of Sam Walton's philosophy of his "Made in America policy" will promote our company's image to the people in the United States. It will encourage them to buy at Walmart. It will also promote American jobs for the American people. Shipping cost will be reduced, since fewer products will be imported.

We therefore request that the policy be supported by management. However, if it is not, then we believe that the majority of shareholders should vote to endorse this policy.

Quote by Mr. Sam Walton: "There is only one boss, the customer. He can fire everyone in the company from the chairman on down simply by spending his money somewhere else."To avoid that, we should sell American-made merchandise in the U.S. to please our customers".

Therefore please vote for this proposal.

**From:** terry rippy \*\*\*  
**Sent:** Tuesday, September 8, 2020 8:39 PM  
**To:** WM Investor Relations Inquiries <[invreling@wal-mart.com](mailto:invreling@wal-mart.com)>  
**Subject:** Re: EXT: Policy proposal

9-09-2020

Dear Sir:

I emailed your office last month with my proposal titled- **Re-instituting Mr. Sam's Philosophy of Made in America Policy**. I noticed that your office disagreed with the google's published percentage of merchandise that Walmart derives from foreign countries. I asked your office for the proof of the percentage of foreign products sold by Walmart and I have received no reply.

I will fly to Arkansas in November. I would like to know who to meet with in person concerning my proposal. I need to know the location of your office and your office hours.

Sincerely,,

Dr. Terry Michael Rippy

On Monday, 17 August 2020, 12:48:36 pm GMT-7, terry rippy \*\*\*

wrote:

Dear Sir:

If that is true, then you need to start a campaign telling people that. The percent of foreign goods sold in Walmart, that is published is 70 to 80 percent is foreign made. I would like the audit numbers or push through my proposal. Please show me the numbers because America has been told that most goods at Walmart are made in China.

Dr. Terry Michael Rippy

P.S. Here is the google information

Walmart China “firmly believes” in local sourcing with over 95 percent of their merchandise coming from local sources. In America, estimates say that Chinese suppliers make up **70-80 percent** of Walmart's merchandise, leaving less than 20 percent for American-made products.<sup>Jun 27, 2016</sup>

On Monday, 17 August 2020, 07:06:56 am PDT, WM Investor Relations Inquiries <[invreling@walmart.com](mailto:invreling@walmart.com)> wrote:

Hi Terry – Thanks for reaching out. According to our vendor data, approximately two-thirds of what we sell at Walmart U.S. is made in the United States.

Best,

Walmart IR Team

**EXHIBIT B**

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**From:** Kristopher Isham <Kristopher.Isham@walmartlegal.com>  
**Sent:** Friday, September 25, 2020 2:52 PM  
**To:** \*\*\*  
**Subject:** Shareholder Proposal - WMT 2021 Shareholders' Meeting  
**Attachments:** Letter to Dr Terry Michael Rippy - Shareholder Proposal - 2021 Proxy Statement.pdf

Hello Dr. Rippy – Attached is a letter regarding the shareholder proposal you submitted for consideration at Walmart’s 2021 Annual Shareholders’ Meeting. This letter is being sent via email only because we did not see a physical address in your correspondence.

Please let me know if I can be of further assistance.

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  
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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.

## Legal Corporate

Kristopher A. Isham  
Senior Counsel



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[Kristopher.Isham@walmartlegal.com](mailto:Kristopher.Isham@walmartlegal.com)

September 25, 2020

**VIA EMAIL**

Dr. Terry Michael Rippy

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Dear Dr. Rippy:

I am writing on behalf of Walmart Inc. (the "Company"), which received on August 16, 2020, your shareholder proposal entitled "Re-instituting Mr. Sam's Philosophy of Made in America Policy" submitted pursuant to Securities and Exchange Commission ("SEC") Rule 14a-8 for inclusion in the proxy statement for the Company's 2021 Annual Shareholders' Meeting (the "Proposal").

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that shareholder proponents must submit sufficient proof of their continuous ownership of at least \$2,000 in market value, or 1%, of a company's shares entitled to vote on the proposal for at least one year as of the date the shareholder proposal was submitted. The Company's stock records do not indicate that you are the record owner of sufficient shares to satisfy this requirement. In addition, to date we have not received proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to the Company.

To remedy this defect, you must submit sufficient proof of your continuous ownership of the required number or amount of Company shares for the one-year period preceding and including August 16, 2020, the date the Proposal was submitted to the Company. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

- (1) a written statement from the "record" holder of your shares (usually a broker or a bank) verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including August 16, 2020; or
- (2) if you have filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, reflecting your ownership of the required number or amount of Company shares as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number or amount of Company shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the “record” holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers’ securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC’s participant list, which is available at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>. In these situations, shareholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If your broker or bank is a DTC participant, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including August 16, 2020.
- (2) If your broker or bank is not a DTC participant, then you need to submit proof of ownership from the DTC participant through which the shares are held verifying that you continuously held the required number or amount of Company shares for the one-year period preceding and including August 16, 2020. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for the one-year period preceding and including August 16, 2020, the required number or amount of Company shares were continuously held: (i) one from your broker or bank confirming your ownership, and (ii) the other from the DTC participant confirming the broker or bank’s ownership.

In addition, under Rule 14a-8(b) of the Exchange Act, a shareholder must provide to the Company a written statement of the shareholder’s intent to continue to hold the required number or amount of shares (as discussed above, at least \$2,000 in market value, or 1%, of the Company’s securities entitled to be voted on the Proposal at the shareholders’ meeting) through the date of the shareholders’ meeting at which the Proposal will be voted on by the shareholders. Your correspondence did not include such a statement. To remedy this defect, you must submit a written statement that you intend to continue holding the required number or amount of Company shares through the date of the Company’s 2021 Annual Shareholders’ Meeting.

Any response to this letter must be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 702 SW 8th Street, MS 0215, Bentonville, AR 72716-0215. Alternatively, you may transmit any

Dr. Terry Michael Rippy

September 25, 2020

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response to me by facsimile at (479) 277-5991 or by email at Kristopher.Isham@walmartlegal.com.

If you have any questions with respect to the foregoing, please contact me at (479) 204-8684. For your reference, I enclose a copy of Rule 14a-8 and Staff Legal Bulletin No. 14F.

Sincerely,

A handwritten signature in cursive script that reads "Kristopher Isham" followed by a horizontal line.

Kristopher Isham  
Senior Counsel

Enclosures

## Rule 14a-8 – Shareholder Proposals

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This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?*

(1) In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

(2) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(i) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

(ii) The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

(A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;

(B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and

(C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3:* How many proposals may I submit? Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal?

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal?

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

*Note to paragraph (i)(1):* Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

*Note to paragraph (i)(2):* We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority:* If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

- (i) Would disqualify a nominee who is standing for election;
- (ii) Would remove a director from office before his or her term expired;
- (iii) Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

*Note to paragraph (i)(9)*: A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

*Note to paragraph (i)(10)*: A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year ( i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*: If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i) Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii) Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or
- (iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal?

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11*: May I submit my own statement to the Commission responding to the company's arguments? Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12*: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13*: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.



**Division of Corporation Finance  
Securities and Exchange Commission**

**Shareholder Proposals**

**Staff Legal Bulletin No. 14F (CF)**

**Action:** Publication of CF Staff Legal Bulletin

**Date:** October 18, 2011

**Summary:** This staff legal bulletin provides information for companies and shareholders regarding Rule 14a-8 under the Securities Exchange Act of 1934.

**Supplementary Information:** The statements in this bulletin represent the views of the Division of Corporation Finance (the "Division"). This bulletin is not a rule, regulation or statement of the Securities and Exchange Commission (the "Commission"). Further, the Commission has neither approved nor disapproved its content.

**Contacts:** For further information, please contact the Division's Office of Chief Counsel by calling (202) 551-3500 or by submitting a web-based request form at [https://tts.sec.gov/cgi-bin/corp\\_fin\\_interpretive](https://tts.sec.gov/cgi-bin/corp_fin_interpretive).

**A. The purpose of this bulletin**

This bulletin is part of a continuing effort by the Division to provide guidance on important issues arising under Exchange Act Rule 14a-8. Specifically, this bulletin contains information regarding:

- Brokers and banks that constitute "record" holders under Rule 14a-8 (b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8;
- Common errors shareholders can avoid when submitting proof of ownership to companies;
- The submission of revised proposals;
- Procedures for withdrawing no-action requests regarding proposals submitted by multiple proponents; and
- The Division's new process for transmitting Rule 14a-8 no-action responses by email.

You can find additional guidance regarding Rule 14a-8 in the following bulletins that are available on the Commission's website: [SLB No. 14](#), [SLB No. 14A](#), [SLB No. 14B](#), [SLB No. 14C](#), [SLB No. 14D](#) and [SLB No. 14E](#).

## **B. The types of brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

### **1. Eligibility to submit a proposal under Rule 14a-8**

To be eligible to submit a shareholder proposal, a shareholder must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the shareholder meeting for at least one year as of the date the shareholder submits the proposal. The shareholder must also continue to hold the required amount of securities through the date of the meeting and must provide the company with a written statement of intent to do so.<sup>1</sup>

The steps that a shareholder must take to verify his or her eligibility to submit a proposal depend on how the shareholder owns the securities. There are two types of security holders in the U.S.: registered owners and beneficial owners.<sup>2</sup> Registered owners have a direct relationship with the issuer because their ownership of shares is listed on the records maintained by the issuer or its transfer agent. If a shareholder is a registered owner, the company can independently confirm that the shareholder's holdings satisfy Rule 14a-8(b)'s eligibility requirement.

The vast majority of investors in shares issued by U.S. companies, however, are beneficial owners, which means that they hold their securities in book-entry form through a securities intermediary, such as a broker or a bank. Beneficial owners are sometimes referred to as “street name” holders. Rule 14a-8(b)(2)(i) provides that a beneficial owner can provide proof of ownership to support his or her eligibility to submit a proposal by submitting a written statement “from the ‘record’ holder of [the] securities (usually a broker or bank),” verifying that, at the time the proposal was submitted, the shareholder held the required amount of securities continuously for at least one year.<sup>3</sup>

### **2. The role of the Depository Trust Company**

Most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company (“DTC”), a registered clearing agency acting as a securities depository. Such brokers and banks are often referred to as “participants” in DTC.<sup>4</sup> The names of these DTC participants, however, do not appear as the registered owners of the securities deposited with DTC on the list of shareholders maintained by the company or, more typically, by its transfer agent. Rather, DTC's nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants. A company can request from DTC a “securities position listing” as of a specified date, which identifies the DTC participants having a position in the company's securities and the number of securities held by each DTC participant on that date.<sup>5</sup>

### **3. Brokers and banks that constitute “record” holders under Rule 14a-8(b)(2)(i) for purposes of verifying whether a beneficial owner is eligible to submit a proposal under Rule 14a-8**

In *The Hain Celestial Group, Inc.* (Oct. 1, 2008), we took the position that an introducing broker could be considered a “record” holder for purposes of

Rule 14a-8(b)(2)(i). An introducing broker is a broker that engages in sales and other activities involving customer contact, such as opening customer accounts and accepting customer orders, but is not permitted to maintain custody of customer funds and securities.<sup>6</sup> Instead, an introducing broker engages another broker, known as a “clearing broker,” to hold custody of client funds and securities, to clear and execute customer trades, and to handle other functions such as issuing confirmations of customer trades and customer account statements. Clearing brokers generally are DTC participants; introducing brokers generally are not. As introducing brokers generally are not DTC participants, and therefore typically do not appear on DTC’s securities position listing, *Hain Celestial* has required companies to accept proof of ownership letters from brokers in cases where, unlike the positions of registered owners and brokers and banks that are DTC participants, the company is unable to verify the positions against its own or its transfer agent’s records or against DTC’s securities position listing.

In light of questions we have received following two recent court cases relating to proof of ownership under Rule 14a-8<sup>7</sup> and in light of the Commission’s discussion of registered and beneficial owners in the Proxy Mechanics Concept Release, we have reconsidered our views as to what types of brokers and banks should be considered “record” holders under Rule 14a-8(b)(2)(i). Because of the transparency of DTC participants’ positions in a company’s securities, we will take the view going forward that, for Rule 14a-8(b)(2)(i) purposes, only DTC participants should be viewed as “record” holders of securities that are deposited at DTC. As a result, we will no longer follow *Hain Celestial*.

We believe that taking this approach as to who constitutes a “record” holder for purposes of Rule 14a-8(b)(2)(i) will provide greater certainty to beneficial owners and companies. We also note that this approach is consistent with Exchange Act Rule 12g5-1 and a 1988 staff no-action letter addressing that rule,<sup>8</sup> under which brokers and banks that are DTC participants are considered to be the record holders of securities on deposit with DTC when calculating the number of record holders for purposes of Sections 12(g) and 15(d) of the Exchange Act.

Companies have occasionally expressed the view that, because DTC’s nominee, Cede & Co., appears on the shareholder list as the sole registered owner of securities deposited with DTC by the DTC participants, only DTC or Cede & Co. should be viewed as the “record” holder of the securities held on deposit at DTC for purposes of Rule 14a-8(b)(2)(i). We have never interpreted the rule to require a shareholder to obtain a proof of ownership letter from DTC or Cede & Co., and nothing in this guidance should be construed as changing that view.

*How can a shareholder determine whether his or her broker or bank is a DTC participant?*

Shareholders and companies can confirm whether a particular broker or bank is a DTC participant by checking DTC’s participant list, which is currently available on the Internet at <http://www.dtcc.com/~media/Files/Downloads/client-center/DTC/alpha.ashx>.

*What if a shareholder’s broker or bank is not on DTC’s participant list?*

The shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held. The shareholder should be able to find out who this DTC participant is by asking the shareholder's broker or bank.<sup>9</sup>

If the DTC participant knows the shareholder's broker or bank's holdings, but does not know the shareholder's holdings, a shareholder could satisfy Rule 14a-8(b)(2)(i) by obtaining and submitting two proof of ownership statements verifying that, at the time the proposal was submitted, the required amount of securities were continuously held for at least one year – one from the shareholder's broker or bank confirming the shareholder's ownership, and the other from the DTC participant confirming the broker or bank's ownership.

*How will the staff process no-action requests that argue for exclusion on the basis that the shareholder's proof of ownership is not from a DTC participant?*

The staff will grant no-action relief to a company on the basis that the shareholder's proof of ownership is not from a DTC participant only if the company's notice of defect describes the required proof of ownership in a manner that is consistent with the guidance contained in this bulletin. Under Rule 14a-8(f)(1), the shareholder will have an opportunity to obtain the requisite proof of ownership after receiving the notice of defect.

### **C. Common errors shareholders can avoid when submitting proof of ownership to companies**

In this section, we describe two common errors shareholders make when submitting proof of ownership for purposes of Rule 14a-8(b)(2), and we provide guidance on how to avoid these errors.

First, Rule 14a-8(b) requires a shareholder to provide proof of ownership that he or she has "continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal" (emphasis added).<sup>10</sup> We note that many proof of ownership letters do not satisfy this requirement because they do not verify the shareholder's beneficial ownership for the entire one-year period preceding and including the date the proposal is submitted. In some cases, the letter speaks as of a date *before* the date the proposal is submitted, thereby leaving a gap between the date of the verification and the date the proposal is submitted. In other cases, the letter speaks as of a date *after* the date the proposal was submitted but covers a period of only one year, thus failing to verify the shareholder's beneficial ownership over the required full one-year period preceding the date of the proposal's submission.

Second, many letters fail to confirm continuous ownership of the securities. This can occur when a broker or bank submits a letter that confirms the shareholder's beneficial ownership only as of a specified date but omits any reference to continuous ownership for a one-year period.

We recognize that the requirements of Rule 14a-8(b) are highly prescriptive and can cause inconvenience for shareholders when submitting proposals.

Although our administration of Rule 14a-8(b) is constrained by the terms of the rule, we believe that shareholders can avoid the two errors highlighted above by arranging to have their broker or bank provide the required verification of ownership as of the date they plan to submit the proposal using the following format:

“As of [date the proposal is submitted], [name of shareholder] held, and has held continuously for at least one year, [number of securities] shares of [company name] [class of securities].”<sup>11</sup>

As discussed above, a shareholder may also need to provide a separate written statement from the DTC participant through which the shareholder’s securities are held if the shareholder’s broker or bank is not a DTC participant.

#### **D. The submission of revised proposals**

On occasion, a shareholder will revise a proposal after submitting it to a company. This section addresses questions we have received regarding revisions to a proposal or supporting statement.

##### **1. A shareholder submits a timely proposal. The shareholder then submits a revised proposal before the company’s deadline for receiving proposals. Must the company accept the revisions?**

Yes. In this situation, we believe the revised proposal serves as a replacement of the initial proposal. By submitting a revised proposal, the shareholder has effectively withdrawn the initial proposal. Therefore, the shareholder is not in violation of the one-proposal limitation in Rule 14a-8 (c).<sup>12</sup> If the company intends to submit a no-action request, it must do so with respect to the revised proposal.

We recognize that in Question and Answer E.2 of SLB No. 14, we indicated that if a shareholder makes revisions to a proposal before the company submits its no-action request, the company can choose whether to accept the revisions. However, this guidance has led some companies to believe that, in cases where shareholders attempt to make changes to an initial proposal, the company is free to ignore such revisions even if the revised proposal is submitted before the company’s deadline for receiving shareholder proposals. We are revising our guidance on this issue to make clear that a company may not ignore a revised proposal in this situation.<sup>13</sup>

##### **2. A shareholder submits a timely proposal. After the deadline for receiving proposals, the shareholder submits a revised proposal. Must the company accept the revisions?**

No. If a shareholder submits revisions to a proposal after the deadline for receiving proposals under Rule 14a-8(e), the company is not required to accept the revisions. However, if the company does not accept the revisions, it must treat the revised proposal as a second proposal and submit a notice stating its intention to exclude the revised proposal, as required by Rule 14a-8(j). The company’s notice may cite Rule 14a-8(e) as the reason for excluding the revised proposal. If the company does not accept the revisions and intends to exclude the initial proposal, it would also need to submit its reasons for excluding the initial proposal.

### **3. If a shareholder submits a revised proposal, as of which date must the shareholder prove his or her share ownership?**

A shareholder must prove ownership as of the date the original proposal is submitted. When the Commission has discussed revisions to proposals,<sup>14</sup> it has not suggested that a revision triggers a requirement to provide proof of ownership a second time. As outlined in Rule 14a-8(b), proving ownership includes providing a written statement that the shareholder intends to continue to hold the securities through the date of the shareholder meeting. Rule 14a-8(f)(2) provides that if the shareholder “fails in [his or her] promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of [the same shareholder’s] proposals from its proxy materials for any meeting held in the following two calendar years.” With these provisions in mind, we do not interpret Rule 14a-8 as requiring additional proof of ownership when a shareholder submits a revised proposal.<sup>15</sup>

### **E. Procedures for withdrawing no-action requests for proposals submitted by multiple proponents**

We have previously addressed the requirements for withdrawing a Rule 14a-8 no-action request in SLB Nos. 14 and 14C. SLB No. 14 notes that a company should include with a withdrawal letter documentation demonstrating that a shareholder has withdrawn the proposal. In cases where a proposal submitted by multiple shareholders is withdrawn, SLB No. 14C states that, if each shareholder has designated a lead individual to act on its behalf and the company is able to demonstrate that the individual is authorized to act on behalf of all of the proponents, the company need only provide a letter from that lead individual indicating that the lead individual is withdrawing the proposal on behalf of all of the proponents.

Because there is no relief granted by the staff in cases where a no-action request is withdrawn following the withdrawal of the related proposal, we recognize that the threshold for withdrawing a no-action request need not be overly burdensome. Going forward, we will process a withdrawal request if the company provides a letter from the lead filer that includes a representation that the lead filer is authorized to withdraw the proposal on behalf of each proponent identified in the company’s no-action request.<sup>16</sup>

### **F. Use of email to transmit our Rule 14a-8 no-action responses to companies and proponents**

To date, the Division has transmitted copies of our Rule 14a-8 no-action responses, including copies of the correspondence we have received in connection with such requests, by U.S. mail to companies and proponents. We also post our response and the related correspondence to the Commission’s website shortly after issuance of our response.

In order to accelerate delivery of staff responses to companies and proponents, and to reduce our copying and postage costs, going forward, we intend to transmit our Rule 14a-8 no-action responses by email to companies and proponents. We therefore encourage both companies and proponents to include email contact information in any correspondence to each other and to us. We will use U.S. mail to transmit our no-action response to any company or proponent for which we do not have email contact information.

Given the availability of our responses and the related correspondence on the Commission's website and the requirement under Rule 14a-8 for companies and proponents to copy each other on correspondence submitted to the Commission, we believe it is unnecessary to transmit copies of the related correspondence along with our no-action response. Therefore, we intend to transmit only our staff response and not the correspondence we receive from the parties. We will continue to post to the Commission's website copies of this correspondence at the same time that we post our staff no-action response.

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<sup>1</sup> See Rule 14a-8(b).

<sup>2</sup> For an explanation of the types of share ownership in the U.S., see Concept Release on U.S. Proxy System, Release No. 34-62495 (July 14, 2010) [75 FR 42982] ("Proxy Mechanics Concept Release"), at Section II.A. The term "beneficial owner" does not have a uniform meaning under the federal securities laws. It has a different meaning in this bulletin as compared to "beneficial owner" and "beneficial ownership" in Sections 13 and 16 of the Exchange Act. Our use of the term in this bulletin is not intended to suggest that registered owners are not beneficial owners for purposes of those Exchange Act provisions. See Proposed Amendments to Rule 14a-8 under the Securities Exchange Act of 1934 Relating to Proposals by Security Holders, Release No. 34-12598 (July 7, 1976) [41 FR 29982], at n.2 ("The term 'beneficial owner' when used in the context of the proxy rules, and in light of the purposes of those rules, may be interpreted to have a broader meaning than it would for certain other purpose[s] under the federal securities laws, such as reporting pursuant to the Williams Act.").

<sup>3</sup> If a shareholder has filed a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5 reflecting ownership of the required amount of shares, the shareholder may instead prove ownership by submitting a copy of such filings and providing the additional information that is described in Rule 14a-8(b)(2)(ii).

<sup>4</sup> DTC holds the deposited securities in "fungible bulk," meaning that there are no specifically identifiable shares directly owned by the DTC participants. Rather, each DTC participant holds a pro rata interest or position in the aggregate number of shares of a particular issuer held at DTC. Correspondingly, each customer of a DTC participant – such as an individual investor – owns a pro rata interest in the shares in which the DTC participant has a pro rata interest. See Proxy Mechanics Concept Release, at Section II.B.2.a.

<sup>5</sup> See Exchange Act Rule 17Ad-8.

<sup>6</sup> See Net Capital Rule, Release No. 34-31511 (Nov. 24, 1992) [57 FR 56973] ("Net Capital Rule Release"), at Section II.C.

<sup>7</sup> See *KBR Inc. v. Chevedden*, Civil Action No. H-11-0196, 2011 U.S. Dist. LEXIS 36431, 2011 WL 1463611 (S.D. Tex. Apr. 4, 2011); *Apache Corp. v. Chevedden*, 696 F. Supp. 2d 723 (S.D. Tex. 2010). In both cases, the court concluded that a securities intermediary was not a record holder for purposes of Rule 14a-8(b) because it did not appear on a list of the

company's non-objecting beneficial owners or on any DTC securities position listing, nor was the intermediary a DTC participant.

<sup>8</sup> *Techne Corp.* (Sept. 20, 1988).

<sup>9</sup> In addition, if the shareholder's broker is an introducing broker, the shareholder's account statements should include the clearing broker's identity and telephone number. See Net Capital Rule Release, at Section II.C.(iii). The clearing broker will generally be a DTC participant.

<sup>10</sup> For purposes of Rule 14a-8(b), the submission date of a proposal will generally precede the company's receipt date of the proposal, absent the use of electronic or other means of same-day delivery.

<sup>11</sup> This format is acceptable for purposes of Rule 14a-8(b), but it is not mandatory or exclusive.

<sup>12</sup> As such, it is not appropriate for a company to send a notice of defect for multiple proposals under Rule 14a-8(c) upon receiving a revised proposal.

<sup>13</sup> This position will apply to all proposals submitted after an initial proposal but before the company's deadline for receiving proposals, regardless of whether they are explicitly labeled as "revisions" to an initial proposal, unless the shareholder affirmatively indicates an intent to submit a second, *additional* proposal for inclusion in the company's proxy materials. In that case, the company must send the shareholder a notice of defect pursuant to Rule 14a-8(f)(1) if it intends to exclude either proposal from its proxy materials in reliance on Rule 14a-8(c). In light of this guidance, with respect to proposals or revisions received before a company's deadline for submission, we will no longer follow *Layne Christensen Co.* (Mar. 21, 2011) and other prior staff no-action letters in which we took the view that a proposal would violate the Rule 14a-8(c) one-proposal limitation if such proposal is submitted to a company after the company has either submitted a Rule 14a-8 no-action request to exclude an earlier proposal submitted by the same proponent or notified the proponent that the earlier proposal was excludable under the rule.

<sup>14</sup> See, e.g., Adoption of Amendments Relating to Proposals by Security Holders, Release No. 34-12999 (Nov. 22, 1976) [41 FR 52994].

<sup>15</sup> Because the relevant date for proving ownership under Rule 14a-8(b) is the date the proposal is submitted, a proponent who does not adequately prove ownership in connection with a proposal is not permitted to submit another proposal for the same meeting on a later date.

<sup>16</sup> Nothing in this staff position has any effect on the status of any shareholder proposal that is not withdrawn by the proponent or its authorized representative.

<http://www.sec.gov/interp/leg/cfs14f.htm>

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**From:** Microsoft Outlook  
<MicrosoftExchange329e71ec88ae4615bbc36ab6ce41109e@email.wal-mart.com>  
**To:** \*\*\*  
**Sent:** Friday, September 25, 2020 2:53 PM  
**Subject:** Relayed: Shareholder Proposal - WMT 2021 Shareholders' Meeting

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

\*\*\*

Subject: Shareholder Proposal - WMT 2021 Shareholders' Meeting

**EXHIBIT C**

**From:** terry rippy \*\*\*

**Sent:** Sunday, January 10, 2021 6:21 PM

**To:** Kristopher Isham <[Kristopher.Isham@walmartlegal.com](mailto:Kristopher.Isham@walmartlegal.com)>

**Subject:** EXT: Re: Shareholder Proposal - Walmart 2021 Proxy Statement

Dear Kristopher,

I am currently in the Philippines. I will not be in the US until July. However, I can be reached through facebook. My account

there is Mike Rippy. You can send a friend request to me and I will accept your request. We can talk on facebook messenger.

We will setup a time for us to talk.

Thank You,

Dr. Terry Michael Rippy

On Monday, January 11, 2021, 07:16:29 AM GMT+8, Kristopher Isham <[kristopher.isham@walmartlegal.com](mailto:kristopher.isham@walmartlegal.com)> wrote:

Hello Dr. Rippy,

We have been reviewing the shareholder proposal you submitted for inclusion in the 2021 Walmart annual proxy materials. Would you be interested in speaking with us about your proposal?

If so, please let me know what dates and times would work best for you and the best phone number where you can be reached. We would be happy to work within your schedule.

Thanks,

**Kris Isham, Senior Counsel - Corporate**

Office: 479.204.8684; Fax (479) 277-5991

Mobile: 479.586.0394

[kristopher.isham@walmartlegal.com](mailto:kristopher.isham@walmartlegal.com)

Walmart Inc.

Legal Department – Corporate Division

702 S.W. 8<sup>th</sup> 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:** [terry.rippy](#)  
**To:** [Kristopher Isham](#)  
**Subject:** EXT: Re: 2021 WMT Shareholder Proposal - Made in America  
**Date:** Tuesday, January 19, 2021 5:57:30 PM

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Dear Sir:

I would like to discuss my proposal too. However, before discussing it, I would like for you to send me the data concerning US vs foreign made products you mentioned. Send the data on excel or SPSS.

It is very hard to believe that two-thirds of Walmart products are made in the US. If you have proof, then there is no need for my proposal. However anecdotal data are not valid. If you send the raw data to me, I can analyze it . if you have evidence that your information has been verified by Ernst and Young, then send me the evidence. If you do not, then please submit my proposal for a vote.

Thanks,

Dr. Terry Michael Rippy

On Wednesday, January 20, 2021, 07:50:03 AM GMT+8, Kristopher Isham <kristopher.isham@walmartlegal.com> wrote:

Hello Dr. Rippy – If possible (depending on internet connectivity where you are located), we would like to discuss your shareholder proposal with you and can be available at 9am (your time) on either Thurs or Friday of this week, or at 9am (your time) on any day Monday through Friday next week.

In the meantime, I have included a link below that I hope you will find helpful and informative.

This link will take you to the section of Walmart's corporate website that discusses the company's commitments and initiatives that are intended to help revitalize U.S.-based manufacturing, including Walmart's pledge to purchase approximately \$250 billion in products that support creation of American jobs by 2023. Also discussed on this page are descriptions of different initiatives taken to date including an All-Virtual Open Call Event that was held during 2020, a "Jobs in U.S. Manufacturing Portal" (called the JUMP Portal), and a U.S. Manufacturing Innovation Fund.

There is also a reference on this page that says, "According to data from our suppliers, items that are made, sourced or grown right here in America already account for about two-thirds of what we spend to buy products at Walmart U.S."

<https://corporate.walmart.com/global-responsibility/opportunity/investing-in-american-jobs>

I look forward to hearing from you, and I hope that we are able to set up some time to discuss the proposal with you soon.

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. 8<sup>th</sup> 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.