



DIVISION OF
CORPORATION FINANCE

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

April 18, 2024

Elizabeth A. Ising
Gibson, Dunn & Crutcher LLP

Re: Walmart Inc. (the "Company")
Incoming letter dated February 5, 2024

Dear Elizabeth A. Ising:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board of directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters and the effect of those actions on the Company's financial sustainability, and that the Company should issue a public report on the committee's findings.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(b)(1)(i) and Rule 14a-8(f). In our view, the Proponent has supplied clear documentary support evidencing the Proponent's eligibility to submit the Proposal. The requirements the Company argues must be imposed on the Proponent are not supported by a plain reading of Rule 14a-8(b)(2)(ii).

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(10). In our view, the Company has not substantially implemented the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(11) because it appears the Company will omit the proposal submitted by the National Legal and Policy Center from its 2024 proxy materials.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Scott Shepard
National Center for Public Policy Research

February 5, 2024

VIA ONLINE SUBMISSION

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 the National Center for Public Policy Research
Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that our client, Walmart Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2024 Annual Shareholders’ Meeting (collectively, the “2024 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from the National Center for Public Policy Research (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 2024 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 the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

Resolved: Shareholders request that the Board of Directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability. The Company should issue a public report on the committee’s findings by the end of 2024.

The Proposal and related correspondence with the Proponent are 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 properly be excluded from the 2024 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 proper request for that information; and
- Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.

Alternatively, if the Staff does not concur that the Proposal may be excluded pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) or excluded pursuant to Rule 14a-8(i)(10), we believe that the Proposal also may be excluded pursuant to Rule 14a-8(i)(11) because (1) the Proposal substantially duplicates a different shareholder proposal received from a shareholder (National Legal and Policy Center) by the Company before the Proposal (the “NLPC Proposal”), and (2) if the Staff does not concur with the exclusion of the NLPC Proposal pursuant to a separate no-action request, the Company expects to include the NLPC Proposal in the 2024 Proxy Materials.

I. The Proposal May Be Excluded Under Rule 14a-8(b) And Rule 14a-8(f)(1) Because The Proponent Failed To Establish Eligibility To Submit The Proposal Despite Proper Notice

A. Background

The Proposal was submitted to the Company by Stefan Padfield on behalf of the Proponent on December 12, 2023 (the “Submission Date”) via FedEx and received by the Company on

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December 13, 2023. *See Exhibit A.* Mr. Padfield's submission did not include any documentary evidence of the Proponent's ownership of Company shares. In addition, the Company reviewed its share records, which did not indicate that the Proponent was a record owner of Company shares. Accordingly, the Company properly sought verification of share ownership and other documentary support from the Proponent. Specifically, the Company sent the Proponent a letter, dated December 27, 2023, identifying a proof of ownership deficiency, notifying the Proponent of the requirements of Rule 14a-8 and explaining how the Proponent could cure the procedural deficiencies identified (the "First Deficiency Notice").

The First 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 Staff Legal Bulletin No. 14L (Nov. 3, 2021) ("SLB 14L"), and attached a copy of Rule 14a-8, SLB 14F and SLB 14L. Specifically, the First 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 Company shares;
- that, as of the date of the First Deficiency Notice, the Company had not received any documentation evidencing the Proponent's proof of continuous ownership, as required under Rule 14a-8(b);
- 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, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the [o]wnership [r]equirements" of Rule 14a-8(b); and
- that any response had to be postmarked or transmitted electronically no later than 14 calendar days from the date the Proponent received the First Deficiency Notice.

The Company sent the First Deficiency Notice to the Proponent via email and UPS overnight delivery on December 27, 2023, which was within 14 calendar days of the Company's receipt of the Proposal. *See Exhibit B.*

Subsequently, on January 1, 2024, the Company received an email from Stefan Padfield, on behalf of the Proponent, stating, "[p]lease find attached our proof of ownership." *See*

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Exhibit C. Attached to the email was a letter from Wells Fargo Advisors dated December 26, 2023 (the “Wells Fargo Letter”), stating that

As of December 28, 2023, the National Center for Public Policy Research holds, and has held continuously since December 11, 2020, more than \$2,000 of Walmart Inc common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

The Wells Fargo Letter did not contain any indication that Wells Fargo was affiliated with UBS or was otherwise authorized to speak on behalf of UBS. The Wells Fargo Letter also did not attach any documentation from UBS.

Accordingly, the Company again properly sought verification of share ownership from the Proponent. Specifically, and in accordance with SLB 14L, on January 8, 2024, which was within 14 calendar days of the Company’s receipt of the Wells Fargo Letter, the Company sent a second deficiency notice (the “Second Deficiency Notice”) via email and FedEx overnight delivery to the Proponent, which explained that the Wells Fargo letter did not cure the previously identified proof of ownership deficiency, reiterated the requirements of Rule 14a-8, and explained how the Proponent could cure the procedural deficiency. *See Exhibit D.* The Second Deficiency Notice also included a copy of Rule 14a-8, SLB 14F, and SLB 14L. Specifically, the Second Deficiency Notice stated:

The Wells Fargo Letter does not state that Wells Fargo Advisors has been the “record” holder of the Proponent’s shares during the three years preceding and including the Submission Date, and in fact, by seeking to rely on “cost-basis data” provided by UBS, indicates that UBS was the “record” holder for some unspecified portion of the three years preceding and including the Submission Date.

To remedy this defect, the Proponent must obtain new proof of ownership verifying that such Proponent has satisfied at least one of the [o]wnership [r]equirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

(1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) confirming its status as the “record” holder of the Proponent’s shares and verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held through the record holder the requisite amount of Company shares to satisfy at least one of the [o]wnership [r]equirements above; . . .

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If the Proponent's shares were held by more than one "record" holder over the course of the applicable one-, two-, or three-year ownership period, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on the Proponent's behalf, and those documents must collectively demonstrate the Proponent's continuous ownership of sufficient shares to satisfy at least one of the [o]wnership [r]equirements.

On January 8, 2024, the Company received an email from Mr. Padfield stating, "[t]he Wells Fargo Letter satisfies our proof of ownership obligations. As a courtesy, we are attaching a letter from UBS that underscores this fact. We will not be providing any additional proof of ownership." Exhibit E. The email included a letter from UBS Financial Services Inc. dated December 4, 2023 (the "UBS Letter"). See Exhibit E. The UBS Letter stated:

Please accept this letter as a confirmation of the following facts:

- During the month of October 2023, the National Center for Public Policy Research transferred assets, including 95 individual equity positions, from UBS Financial Services account [PII] to Wells Fargo account [PII].
- As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions transferred to Wells Fargo.
- UBS has reviewed a copy of the October 2023 Wells Fargo statement for account [PII] and has confirmed the original purchase dates and purchase prices which were transmitted by UBS Financial Services to Wells Fargo are being accurately and correctly reported on this statement.

Neither the Wells Fargo Letter nor the UBS Letter (collectively, the "Financial Institution Letters") contained any indication that Wells Fargo Advisors or Wells Fargo N.A. were affiliated with UBS or were otherwise authorized to speak on behalf of UBS, and did not confirm that Wells Fargo Advisors or Wells Fargo N.A. had continuously served as record holder for the Proponent of sufficient shares to satisfy at least one of the ownership requirements of Rule 14a-8.

As discussed below, the Financial Institution Letters are insufficient to cure the ownership deficiency because they are not statements from the record holder of the Proponent's securities verifying that as of the Submission Date the Proponent had satisfied any of the continuous ownership requirements of Rule 14a-8(b)(1) for any of the full time periods set

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forth in the rule (specifically, the three-year holding period as the Financial Institution Letters purport to verify holdings of “more than \$2,000”). As of the date of this letter, the Company has not received any further proof of ownership from the Proponent.

B. Overview of Rule 14a-8(b)(1)

The Company may exclude the Proposal under Rule 14a-8(f)(1) because the Proponent failed to substantiate its eligibility to submit the Proposal under Rule 14a-8(b). Rule 14a-8(b)(1) provides, in part, that to be eligible to submit a proposal, a shareholder proponent must have continuously held:

- (A) at least \$2,000 in market value of the company’s securities entitled to vote on the proposal for at least three years preceding and including the Submission Date;
- (B) at least \$15,000 in market value of the company’s securities entitled to vote on the proposal for at least two years preceding and including the Submission Date;
or
- (C) at least \$25,000 in market value of the company’s shares entitled to vote on the proposal for at least one year preceding and including the Submission Date.

Each of these ownership requirements were specifically described by the Company in both the First Deficiency Notice and the Second Deficiency Notice.

Rule 14a-8(f) provides that a company may exclude a shareholder proposal if the proponent fails to provide evidence of eligibility under Rule 14a-8, including the beneficial ownership requirements of Rule 14a-8(b), provided that the company timely notifies the proponent of the problem and the proponent fails to correct the deficiency within the required time. 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 ways provided in Rule 14a-8(b)(2). *See* Section C.1.c, SLB 14.

SLB 14F provides that proof of ownership letters may fail to satisfy Rule 14a-8(b)(1)’s requirement if they do not verify ownership “for the entire one-year period preceding and including the date the proposal [was] submitted.” This may occur if the letter verifies ownership as of a date before the submission date (leaving a gap between the verification date and the submission date) or if the letter verifies ownership as of a date after the submission date and only covers a one-year period, “thus failing to verify the shareholder’s beneficial ownership over the required full one-year period preceding the date of the proposal’s submission.” SLB 14F. SLB 14F further notes, “[t]he shareholder will need to obtain proof of ownership from the DTC participant through which the securities are held.” The guidance in SLB 14F remains applicable even though Rule 14a-8 has since been

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amended to provide the tiered ownership thresholds described above. In each case, consistent with the Staff's guidance in SLB 14F and as required by Rule 14a-8(b), a shareholder proponent must submit adequate proof from the record holder of its shares demonstrating such proponent's continuous ownership of the requisite amount of company shares for the requisite time period.

As discussed in the "Background" section above, the Financial Institution Letters, taken together or separately, do not satisfy what SLB 14F describes as the "highly prescriptive" requirements of Rule 14a-8(b), and the Proposal may therefore be excluded. After receiving the Wells Fargo letter, the Company timely provided the Second Deficiency Notice, which, consistent with SLB 14L identified the specific defects in the Proponent's proof of ownership submissions and described how the deficiencies could be remedied. The Proponent has not corrected the deficiency.

C. The Financial Institution Letters Fail To Cure The Deficiency Because The Financial Institution Letters Fail To Demonstrate Continuous Ownership Of Company Shares For The Requisite Period

The Financial Institution Letters are insufficient because they do not satisfy Rule 14a-8(b)(2)(ii)'s requirement of a written statement from the "record" holder of the Proponent's securities demonstrating that as of the submission date the Proponent had satisfied one of the ownership requirements of Rule 14a-8(b). Specifically, the Wells Fargo letter confirms that Wells Fargo N.A. is the record holder of the Proponent's Company shares, but does not confirm that Wells Fargo N.A. has been the record holder of the Proponent's shares continuously for the entire period purportedly covered by the letter (*i.e.*, December 11, 2020 through December 28, 2023). In fact, the Wells Fargo Letter explicitly states that the duration of the holdings discussed in the letters is based on information obtained from UBS in connection with the transfer of the Proponent's holdings. As such, Wells Fargo Advisors is unable to independently provide adequate documentation confirming the Proponent's continuous ownership for the period during which Wells Fargo N.A. was not the record holder of the Proponent's shares.

Notably, the UBS Letter itself does not provide any identifying information regarding the issuers of the 95 securities purportedly covered, the number of shares purportedly held, or the duration of the purported holdings. In fact, the UBS Letter only purports to verify that the "October 2023 Wells Fargo statement for account [REDACTED] PII" accurately reflects the "original purchase dates and purchases prices which were transmitted by UBS Financial Services to Wells Fargo." The UBS Letter does not attach the October 2023 Wells Fargo statement for account [REDACTED] PII. However, even if the UBS Letter included such an account statement, the Staff has consistently stated that account statements are insufficient to demonstrate continuous ownership. *See* SLB 14 (noting that a shareholder's monthly,

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quarterly or other periodic investment statements are insufficient to demonstrate continuous ownership of securities). Moreover, the UBS Letter does not address the Proponent's holding of the Company's shares as it does not identify any of the 95 companies in which the Proponent previously held shares at UBS Financial Services.

In this situation, as explained in both the First Deficiency Notice and the Second Deficiency Notice, each record holder must provide proof of ownership for the period in which they held the shares, as was done for example by the record holders in *The AES Corp.* (avail. Jan. 21, 2015) (providing one ownership letter from BNY Mellon verifying the proponent's ownership from October 20, 2013 through October 31, 2013 and a second letter from State Street verifying the proponent's ownership from November 1, 2013 through October 20, 2014). The Staff has consistently concurred with the exclusion of proposals pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) where, after receiving proper notice from a company, the proof of ownership submitted failed to establish that as of the date the shareholder submitted the proposal the shareholder had continuously held the requisite amount of company securities for the entire required period. See *Amazon.com, Inc. (Phyllis Ewen Trust)* (avail. Apr. 3, 2023) (concurring in the exclusion of a shareholder proposal when the proponent provided proof of ownership of company shares that covered a holding period of only 122 days); see also *Starbucks Corp.* (avail. Dec. 11, 2014) (concurring with the exclusion of a proposal where the proponent's proof established continuous ownership of company securities for one year as of September 26, 2014, but the proponent submitted the proposal on September 24, 2014); *PepsiCo, Inc. (Albert)* (avail. Jan. 10, 2013) (concurring with the exclusion under Rule 14a-8(b) and Rule 14a-8(f) of a proposal where the proponent's purported proof of ownership covered the one-year period up to and including November 19, 2012, but the proposal was submitted on November 20, 2012); *Union Pacific Corp.* (avail. Mar. 5, 2010) (letter from broker stating ownership for one year as of November 17, 2009 was insufficient to prove continuous ownership as of November 19, 2009); *The McGraw Hill Companies, Inc.* (avail. Jan. 28, 2008) (letter from broker stating ownership for one year as of November 16, 2007 was insufficient to prove continuous ownership for one year as of November 19, 2007).

When a proponent's shares were transferred during the applicable holding period, the proponent can satisfy Rule 14a-8(b)'s requirement to provide sufficient proof of continuous ownership by submitting letters from each record holder demonstrating that there was no interruption in the proponent's chain of ownership. For example, in *Associated Estates Realty Corp.* (avail. Mar. 17, 2014), the proponent submitted letters from its introducing broker and the two record holders that held the proponent's shares during the previous one-year period. The first record holder's letter confirmed that the proponent's account held the company's securities "until December 7, 2012 on which dates the [s]hares were transferred out," and the second record holder's letter confirmed that it "became the registered owner . . . on December 7, 2012 . . . when the shares were transferred . . . at the behest of [the

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proponent] as a broker to broker transfer between accounts” Similarly, in *Bank of America Corp.* (avail. Feb. 29, 2012), the proponent provided proof of ownership of the company’s shares by submitting letters from TD Ameritrade, Inc. and Charles Schwab & Co. The TD Ameritrade letter confirmed ownership of the company’s shares “from December 03, 2009 to April 21, 2011,” and the Charles Schwab letter confirmed that the company’s shares “have been held in this account continuously since April 21, 2011.” See also *Moody’s Corp.* (avail. Jan. 29, 2008) (the proponent’s continuous ownership of the company’s shares was verified by two letters, with the first letter stating that “[a]ll securities were transferred from Morgan Stanley on November 8, 2007” and the second letter stating that the proponent transferred the company’s securities into his account on November 8, 2007); *Eastman Kodak Co.* (avail. Feb. 19, 2002) (the proponent provided letters from Merrill Lynch & Co., Inc. and Salomon Smith Barney Inc. to demonstrate his continuous ownership, with the Merrill Lynch letter stating that the proponent’s shares were “transferred to Salomon Smith Barney Inc. on 09-28-2001” and the Salomon Smith Barney letter confirming that the shares were “transferred over from Merrill Lynch on 09/28/01”); *Comshare, Inc.* (avail. Sept. 5, 2001) (the proponent demonstrated sufficient ownership in response to the company’s deficiency notice by providing two broker letters, with one letter stating that the proponent owned at least \$2,000 of the company’s shares “from March 30, 2000 until March 26, 2001 when the account was transferred to Charles Schwab,” and the second letter stating that the proponent has held the shares “continuously at Charles Schwab & Co., Inc. since March 26, 2001 to present”).

In this instance, consistent with the foregoing precedent, the Proponent was required to provide documentary evidence from each record holder verifying that the end date of the first record holder’s holding period matched the start date of the second record holder’s holding period, showing that the Proponent maintained continuous ownership throughout the three-year period despite the change in record holders. As such, the Proponent has not demonstrated eligibility under Rule 14a-8 to submit the Proposal because the Proponent failed to provide adequate documentary evidence of ownership of Company shares. 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 Under Rule 14a-8(i)(10) Because It Has Been Substantially Implemented

A. Overview of Rule 14a-8(i)(10)

Rule 14a-8(i)(10) permits the exclusion of a shareholder proposal “[i]f the company has already substantially implemented the proposal.” The Commission stated in 1976 that the predecessor to Rule 14a-8(i)(10) was “designed to avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the

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management.” See Exchange Act Release No. 12598 (July 7, 1976). Originally, the Staff narrowly interpreted this predecessor rule and granted no-action relief for the exclusion of proposals on this basis only when proposals were “‘fully’ effected” by the company. See Exchange Act Release No. 19135 (Oct. 14, 1982). By 1983, the Commission recognized that the “previous formalistic application of [the Rule] defeated its purpose” because proponents were successfully convincing the Staff to deny no-action relief by submitting proposals that differed from existing company policy in minor respects. Exchange Act Release No. 20091 at § II.E.6 (Aug. 16, 1983). Therefore, in 1983, the Commission adopted a revised interpretation of the rule to permit the omission of proposals that had been “substantially implemented.” *Id.* The 1998 amendments to Rule 14a-8 codified this position. See Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”), at n.30 and accompanying text.

Under this standard, when a company can demonstrate that it already has taken actions to address the underlying concerns and essential objectives of a shareholder proposal, the Staff has concurred that the proposal has been “substantially implemented” and may be excluded from the company’s proxy materials as moot. The Staff has noted that “a determination that the company has substantially implemented the proposal depends upon whether [the company’s] particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Walgreen Co.* (avail. Sept. 26, 2013); *Texaco, Inc.* (avail. Mar. 28, 1991).

At the same time, a company need not implement a proposal in exactly the same manner as set forth by the proponent. See 1998 Release at n.30 and accompanying text. The Staff has not required that a company implement the action requested in a proposal exactly in all details but has been willing to issue no-action relief under the predecessor of Rule 14a-8(i)(10) in situations where the “essential objective” of the proposal had been satisfied. See *General Motors Corp.* (avail. Mar. 4, 1996) (concurring with the exclusion of a proposal where the company argued, “[i]f the mootness requirement of paragraph (c)(10) [of the predecessor rule] were applied too strictly, the intention of [the rule]—permitting exclusion of ‘substantially implemented’ proposals—could be evaded merely by including some element in the proposal that differs from the registrant’s policy or practice”). Thus, differences between a company’s actions and a shareholder proposal are permitted as long as the company’s actions satisfactorily address the proposal’s essential objectives.

For example, in *The Wendy’s Co.* (avail. Apr. 10, 2019), the Staff concurred with the exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company report on its “process for identifying and analyzing potential and actual human rights risks of operation and supply chain” where the company already publicly disclosed its risk management processes and the framework used to assess potential human rights risks. See also *Kohl’s Corp.* (avail. Jan. 16, 2020) (concurring with the exclusion under Rule 14a-8(i)(10) of a

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proposal requesting that the company report on its “process for identifying and analyzing potential and actual human rights risks of operations and its supply chain” where the company already publicly disclosed various relevant policies and initiatives on its website); *Wells Fargo & Co.* (avail. Mar. 6, 2018) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting the adoption of a (1) “a global policy regarding the rights of indigenous peoples,” (2) “which includes respect for the free, prior and informed consent of indigenous communities affected by [company] financing,” and (3) “include[s] oversight mechanisms for its continued development, evaluation and implementation” where the company demonstrated that it had addressed each of these elements through statements the company made available on its website); *The Boeing Co.* (avail. Feb. 17, 2011) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal that requested that the company “review [its] policies related to human rights” and report its findings, where the company had already adopted human rights policies and provided an annual report on corporate citizenship); *Entergy Corp.* (avail. Feb. 14, 2014) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal calling for a report “on policies the company could adopt to take additional near-term actions to reduce its greenhouse gas emissions” when the company already provided environmental sustainability disclosures on its website and in its CDP report); *Exelon Corp.* (avail. Feb. 26, 2010) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on different aspects of the company’s political contributions when the company had already adopted its own set of corporate political contribution guidelines and issued a political contributions report that provided “an up-to-date view of the [c]ompany’s policies and procedures with regard to political contributions”); *The Dow Chemical Co.* (avail. Mar. 5, 2008) (concurring with the exclusion under Rule 14a-8(i)(10) of a proposal requesting a “Global Warming Report” discussing how the company’s efforts to ameliorate climate change may have affected the global climate when the company had already made various statements about its efforts related to climate change in various corporate documents and disclosures).

B. The Company’s Existing Board Committees’ Oversight Responsibilities And Existing Public Disclosures Substantially Implement The Proposal

The Proposal requests that the Board of Directors (the “Board”) of the Company (1) create a Board committee on “corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability”; and (2) issue a public report on the proposed committee’s findings. As discussed below, the Company has already addressed these requests by the Board allocating oversight and review of these specific topics to several Board committees, including the oversight of risks relating to each topic, and by providing public disclosure on the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters on the Company’s financial sustainability. Thus, the Company has addressed the Proposal’s

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underlying concern and essential objective, which means the Company has substantially implemented the Proposal for purposes of Rule 14a-8(i)(10).

1. Board-Level Oversight Of The Impacts and Effects of the Proposal’s Enumerated Topics On The Company’s Financial Sustainability

The first element of the Proposal requests that the Company create a Board committee on “corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships, and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability.” As discussed below, the current Board oversight structure compares favorably to the Proposal’s first request of providing Board-level oversight by allocating to the Board’s committees both direct oversight and oversight of risks related to the Company’s corporate financial sustainability, including the Proposal’s enumerated topics of Company’s policy positions, advocacy, partnerships, and charitable giving on social and political matters.

While the full Board has primary responsibility for overseeing risk management, as disclosed in the 2023 Proxy Statement,¹ the Board delegates certain oversight responsibilities (including with respect to related risks) to Board committees and receives regular reports from Board committee chairs regarding these items. Specifically:

- The Nominating and Governance Committee reviews and advises the Company’s management regarding “the Company’s social, community and sustainability initiatives, . . . the charitable giving strategy of the Company, its subsidiaries and affiliates . . . [and] the Company’s legislative affairs and public policy engagement strategy”²;
- the Audit Committee reviews and discusses with the Company’s management “the Company’s major financial and other risk exposures and the steps management has taken to monitor and mitigate such exposures”³; and
- the Company’s Strategic Planning and Finance Committee, which has a primary purpose to review and analyze financial matters and assist the Board in long-range strategic planning, and reviews and advises the Company’s management and the full

¹ See Notice and Proxy Statement for the 2023 Annual Meeting of Shareholders (the “2023 Proxy Statement”), at p. 32, *available at* <https://www.sec.gov/ix?doc=/Archives/edgar/data/104169/000010416923000034/wmt-20230420.htm>.

² See Walmart Inc. Nominating and Governance Committee Charter, *available at* https://s201.q4cdn.com/262069030/files/doc_governance/CommitteeCharters/2023/04/legal-10614502-v1-wmt_ngc_charter_4_11_23.pdf.

³ See Walmart Inc. Audit Committee Charter, *available at* https://s201.q4cdn.com/262069030/files/doc_governance/CommitteeCharters/2023/04/legal-10614491-v1-wmt_audit_committee_charter_4_11_2023.pdf.

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Board regarding financial matters.⁴

Thus, through the Nominating and Governance, Audit, and Strategic Planning and Finance Committees, the Board's committees already provide Board-level oversight of the Company's "policy positions, advocacy, partnerships and charitable giving on social and political matters" and the related impact on the Company's corporate financial stability, as requested by the Proposal.

Furthermore, as disclosed in the Company's 2023 Proxy Statement,⁵ the Company's operations require significant Board engagement with the Company's strategy, with the Board playing a key role in the Company's strategic oversight, including examining both potential opportunities available to the Company and the effect and risks that the Company might experience due to these opportunities with a focus on sustainable shareholder and stakeholder value:

The Board has oversight responsibility for our company's business strategy and strategic planning.⁶ Walmart operates in a rapidly changing environment that requires significant Board engagement with our strategy. . . Throughout the

⁴ See Walmart Inc. Strategic Planning and Finance Committee Charter, *available at* https://s201.q4cdn.com/262069030/files/doc_governance/CommitteeCharters/Strategic_Planning_and_Finance_Committee_Charter.pdf.

⁵ See 2023 Proxy Statement at p. 31.

⁶ For instance, the Audit Committee reviews the Company's Annual Reports on Form 10-K, and the Company included the following risk factor in its 2023 Form 10-K:

Our reputation may be adversely affected if we are not able to achieve our ESG goals.

We strive to deliver shared value through our business and our diverse stakeholders expect us to make significant progress in certain ESG priority issue areas. From time to time, we announce certain aspirations and goals relevant to our priority ESG issues. We periodically publish information about our ESG priorities, strategies, and progress on our corporate website and update our ESG reporting from time to time. Achievement of these aspirations and goals is subject to risks and uncertainties, many of which are outside of our control, and it is possible that we may fail, or be perceived to have failed, in the achievement of our ESG goals or that certain of our customers, associates, shareholders, investors, suppliers, business partners, government agencies, and non-governmental organizations might not be satisfied with our goals or our efforts toward achieving those goals. Certain challenges we face in the achievement of our ESG objectives are also captured within our ESG reporting, which is not incorporated by reference into and does not form any part of this Annual Report on Form 10-K. A failure or perceived failure to meet our goals could adversely affect public perception of our business, associate morale or customer or shareholder support.

See 2023 Annual Report on Form 10-K at p. 27 *available at* <https://www.sec.gov/Archives/edgar/data/104169/000010416923000020/wmt-20230131.htm>.

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year, the Board and its committees oversee and guide management with respect to a variety of strategic matters, and strategic discussions are embedded in Board and Board committee meetings. . . . While the Board and its committees oversee our strategic planning process, management is responsible for executing our strategy. The Board receives regular updates and engages actively with our senior management team regarding key strategic initiatives, technology updates, competitive and economic trends, and other developments. *The Board's oversight and our management's execution of our business strategy are intended to help promote the creation of long-term shareholder and stakeholder value in a sustainable manner, with a focus on assessing both potential opportunities available to us and risks that we might encounter.* (Emphasis added.)

The Board therefore already has Board-level oversight of the topics enumerated in the Proposal (including the Company's policy positions, advocacy, partnerships, and charitable giving on social and political matters) and the related risks to the Company's corporate financial sustainability. Additionally, as disclosed in the 2023 Proxy Statement, the Board's oversight role includes a focus on assessing both potential opportunities available to the Company, and risks that the Company might encounter due to these opportunities. Together, this oversight structure compares favorably to the Proposal's underlying concern and essential objective of having Board-level oversight of the impacts and effects of the Company's "policy positions, advocacy, partnerships and charitable giving on social and political matters" on the Company's financial sustainability.

2. The Company Already Reports On The Impacts and Effects of Proposal's Enumerated Topics On The Company's Financial Sustainability

The second element of the Proposal requests that the Company publicly report on the impact of the Company's policy positions, advocacy, partnerships, and charitable giving on social and political matters on the Company's financial sustainability. The Company has substantially implemented the second request of the Proposal through posting on its website the Company's Environmental, Social & Governance Reporting with ESG briefs covering topics such as "Engagement in Public Policy," "Equity & Inclusion at Walmart & Beyond," "Human Rights," and "Serving Communities" (the "ESG Reporting," and each an "ESG Brief").⁷ As discussed below, the ESG Reporting publicly discloses the impact of the Company's policy positions, advocacy, partnerships, and charitable giving, and the effect those actions have on the Company's financial sustainability, thereby substantially implementing the Proposal's second request. The Nominating and Governance Committee reviews and advises management regarding the Company's social, community and

⁷ See Environmental, Social & Governance Reporting, *available at* <https://corporate.walmart.com/purpose/esgreport>.

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sustainability initiatives, and reviews the Company's strategy with respect to these initiatives at least annually.

Further, the Company's ESG Disclosure Committee, a subcommittee of the Company's Disclosure Committee, supervises, reviews, and monitors the preparation of ESG reports and information for publication (including the ESG Reporting and ESG Briefs).⁸ The ESG Disclosure Committee reports to the Disclosure Committee, and the Disclosure Committee reports to the Audit Committee.

The Company's ESG Reporting specifically discloses the Company's sustainability strategy,⁹ noting that the Company's efforts center on:

Shared value — addressing societal issues in ways that create value for our business and stakeholders — lies at the heart of Walmart's enterprise strategy and our approach to ESG issues.

We believe we maximize long-term value for shareholders by serving our stakeholders: our customers, associates, suppliers, business partners, communities, and even the planet.

Addressing such societal needs builds the value of our business and as business strengthens society, society strengthens business.

We aspire to become a regenerative company — helping to renew people and the planet through our business. Each of our ESG priority issue areas offers a discrete shared value proposition: an opportunity to meet a societal need through our business. Doing so aligns our business objectives with societal objectives and increases our ability to create value for the long term.

As disclosed in the Company's ESG Reporting, the Company prioritizes environmental, social, and governance issues that “offer the greatest potential for [the Company] to create shared value . . . [f]or each priority ESG issue, our disclosures aim to: [a]rticulate the relevance of the issue for society and Walmart's business; [r]eflect an understanding of stakeholder expectations; [s]hare our aspirations, goals, and strategies to create shared value; [d]escribe our progress, opportunities, and challenges.”¹⁰

⁸ See Corporate Governance, *available at* <https://corporate.walmart.com/purpose/esgreport/governance/corporate-governance>

⁹ See Environmental, Social, and Governance Highlights FY2023 (“FY2023 ESG Highlights”), p. 8, *available at* <https://corporate.walmart.com/content/dam/corporate/documents/esgreport/fy2023-walmart-esg-highlights.pdf>.

¹⁰ See FY2023 ESG Highlights at p. 9.

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The ESG Reporting includes the following ESG Briefs, which discuss the impact of each issue, and how each issue effects the Company's financial sustainability:

- *Engagement in Public Policy ESG Brief.*¹¹ The Engagement in Public Policy ESG Brief discloses that the Company believes that good public policy strengthens its business and promotes a stable and predictable business environment. Additionally, the ESG Brief explains that public policy can also catalyze positive action on issues that are important to business and society, including economic opportunity and capacity building, as well as improving the Company's natural environment and climate to ensure sustainable supply chains. The Company thus aims to shape public policy that enables its business and the creation of shared value for its stakeholders. The ESG Brief concludes by reporting on challenges the Company may be faced with relating to advocacy and public policy, specifically noting that the public expects a company's political engagement to align with its values, but there can be simultaneous pressure to weigh in on issues that are not core to the Company's business or critical to a majority of its stakeholders. As disclosed in the ESG Brief, the Company has decision-making processes to determine whether and how to speak up, but may not always meet all stakeholders' expectations.
- *Equity & Inclusion at Walmart & Beyond ESG Brief.*¹² The Equity & Inclusion ESG Brief reports on the Company's aim of advancing equity and inclusion within and through the Company's business, creating opportunities for associates, suppliers, and business partners and leveraging the Company's position to strengthen the communities in which the Company operates. The ESG Brief highlights that the Company believes that people live better in stronger, more connected communities where they feel they belong, can depend on and work with one another, and can meaningfully contribute, and that a thriving community is good for the businesses within those communities. The ESG Brief also highlights that numerous studies have shown that diverse, inclusive businesses tend to outperform their peers. The ESG Brief concludes by reporting on challenges equity and inclusion can present to the Company, including unequal opportunities and representation, delayed effects of the Company's human capital strategy, economic trends, and the Company's rapid business evolution.
- *Human Rights ESG Brief.*¹³ The Human Rights ESG Brief discloses that the Company believes business has a responsibility to respect human rights, and beyond

¹¹ See Engagement in Public Policy, available at <https://corporate.walmart.com/purpose/esgreport/governance/engagement-in-public-policy>.

¹² See Equity & Inclusion at Walmart & Beyond, available at <https://corporate.walmart.com/purpose/esgreport/social/equity-inclusion-at-walmart-beyond>.

¹³ See Human Rights, available at <https://corporate.walmart.com/purpose/esgreport/social/human-rights>.

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respect, the Company believes that business thrives when the Company's associates, people in the Company's supply chain, customers, and the Company's communities thrive. The ESG Brief concludes by reporting on challenges the Company may be faced with relating to human rights, including that progress in addressing human rights issues is dependent on the maturity, rigor, and efficacy of third-party standards and initiatives, which requires a critical mass of suppliers and other businesses to align on common standards and best practices, and that the success of the Company's programs is also dependent on suppliers' and contractors' capacity and willingness to meet high standards.

- *Serving Communities ESG Brief*.¹⁴ The Service Communities ESG Brief discloses information on the Company's charitable giving. Specifically, the Company believes that strong businesses help communities thrive; likewise, strong communities help businesses thrive. The Company believes that its business success is interdependent with meeting the needs and expectations of its customers, associates, and other stakeholders by contributing to these communities in ways that create lasting value. In addition to providing information on the Company's charitable giving programs, the ESG Brief concludes by reporting on challenges the Company faces related to giving, including that navigating the diverse and sometimes divergent perspectives of the Company's customers and other stakeholders can lead to the alienation of one or more stakeholder groups.

Together, the Company's ESG Reporting includes detailed information on the Company's numerous policy positions, advocacy efforts and priorities, partnerships, and charitable giving. Each related ESG Brief reports not only on these topics, their impacts to the Company, and why each is a priority for the Company's financial sustainability, but the related challenges and effects each topic may have on the Company's long-term shareholder and stakeholder value. The Company's ESG Reporting therefore compares favorably with the Proposal's request to publicly report on the impact of the Company's policy positions, advocacy, partnerships, and charitable giving, and the effect those actions have on the Company's financial sustainability, thereby substantially implementing the Proposal's second request.

C. *Analysis*

The Proposal requests that the Board of the Company (1) create a Board committee on "corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability"; and (2) "issue a public

¹⁴ See *Serving Communities*, available at <https://corporate.walmart.com/purpose/esgreport/social/serving-communities>.

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report” on these findings. As discussed above, the Company has already addressed these requests by providing Board-level oversight of these topics via the Board’s committees, including the oversight of risks relating to each topic, and by providing public disclosure, through the Company’s ESG Reporting, on the impact of the Company’s policy positions, advocacy, partnerships, and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability:

Oversight Topic Requested by Proposal	Committee Oversight of Topic and Related Risks	Report on Impact and Effect of Topic
Policy Positions	<ul style="list-style-type: none"> Nominating and Governance Committee 	<ul style="list-style-type: none"> Engagement in Public Policy ESG Brief Equity & Inclusion at Walmart & Beyond ESG Brief Human Rights ESG Brief Serving Communities ESG Brief
Advocacy	<ul style="list-style-type: none"> Nominating and Governance Committee 	<ul style="list-style-type: none"> Engagement in Public Policy ESG Brief Equity & Inclusion at Walmart & Beyond ESG Brief Human Rights ESG Brief Serving Communities ESG Brief
Partnerships	<ul style="list-style-type: none"> Nominating and Governance Committee 	<ul style="list-style-type: none"> Engagement in Public Policy ESG Brief Equity & Inclusion at Walmart & Beyond ESG Brief Human Rights ESG Brief Serving Communities ESG Brief
Charitable Giving	<ul style="list-style-type: none"> Nominating and Governance Committee 	<ul style="list-style-type: none"> Serving Communities ESG Brief

The Staff has previously concurred with the exclusion of proposals requesting the creation of a board committee with oversight of a specific topic, where the company had specifically delegated oversight of the topic to another board committee or board committees. For example, in *Verizon Communications Inc.* (avail. Feb. 19, 2019), the Staff concurred with the exclusion of a proposal requesting the establishment of a public policy committee to oversee the company’s “policies and practices that relate to public policy issues that may affect [the company’s] operations, performance, reputation and stockholders value, including, among other things, human rights, corporate social responsibility, and political and lobbying

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activities and expenditures.” In *Verizon*, the company had existing systems and controls, including a governance and policy committee and an audit and finance committee of the board, which were designed to provide board-committee oversight of “important public policy issues” and “significant business risk exposures.” In concurring with the exclusion of the proposal under Rule 14a-8(i)(10), the Staff noted that it appeared the company’s “policies, practices and procedures compare favorably with the guidelines of the [p]roposal and that the [c]ompany ha[d], therefore, substantially implemented the [p]roposal.” See also *Citigroup, Inc.* (avail. Feb. 5, 2020) (concurring with the exclusion of a proposal requesting that the company “create a standing committee to oversee the [c]ompany’s responses to domestic and international developments in human rights,” where the company’s nomination, governance, and public affairs committee’s charter delegated to that committee responsibility for oversight of public affairs issues, including the responsibility to “receive reports from and advise management on the [c]ompany’s sustainability policies and programs, including . . . human rights.”); *Bank of America Corp.* (avail. Feb. 5, 2020) (concurring with the exclusion of a proposal requesting the creation of a standing committee to oversee human rights, where the board’s governance committee and risk committee oversaw the company’s ESG matters and reputational risks, including issues and risks related to human rights); *Apple Inc.* (avail. Nov. 19, 2018) (concurring with the exclusion of a proposal requesting the formation of an international policy committee of the board to oversee the company’s policies, in which the company argued that the board’s existing audit and finance committee already had oversight of the company’s enterprise risk management and related polices); *The Goldman Sachs Group, Inc.* (avail. Feb. 12, 2014) (concurring with the exclusion of a proposal requesting the formation of a public policy committee as substantially implemented by the board’s existing corporate governance, nominating and public responsibility committee, and its public responsibility subcommittee); *Entergy Corp.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal that requested establishment of a committee to conduct a special review of certain nuclear matters when the board had an existing committee responsible for the matters referenced in the proposal).

As in *Verizon* and the other precedent discussed above, the Company has Board-level oversight of the Company’s corporate financial sustainability and related risks. This oversight includes the Company’s Nominating and Governance Committee (which oversees the Company’s social, community, and sustainability initiatives, charitable giving strategy, and the Company’s legislative affairs and public policy engagement strategy, including related risks), the Audit Committee (which oversees the Company’s major financial and other risk exposures and the steps management has taken to monitor and mitigate such exposures), and the Strategic Planning and Finance Committee (which assists the Board in long-range strategic planning and oversees financial matters and related risks). As disclosed in the 2023 Proxy Statement, the full Board also assesses potential opportunities and the effect they may have on the Company. Thus, the Board, through the Nominating and Governance, Audit, and Strategic Planning and Finance Committees, oversees the

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Company's "policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability" as requested by the first element of Proposal.

Furthermore, the Staff has concurred that, when substantially implementing a shareholder proposal requesting disclosure or public reporting, companies can address aspects of implementation in ways that may differ from the manner in which the shareholder proponent would implement the proposal. For example, the Staff has previously taken the position that a shareholder proposal requesting that a company's board prepare a report pertaining to environmental, social, or governance issues may be excluded when the company has provided information about the initiative in various public disclosures. *See Alliant Energy Corp.* (avail. Mar. 30, 2023) (concurring with the exclusion of a proposal requesting a report on the company's progress towards its goal of net zero by 2050, where the requested information was already disclosed in an ESG performance summary, a climate report, and on its website); *Comcast Corp.* (avail. Apr. 9, 2021) (concurring with the exclusion of a proposal requesting the company prepare a report assessing the company's diversity and inclusion efforts, where the requested information was already disclosed in a related statement, the company's diversity, equity, and inclusion reports, and the company's proxy statement for the prior year's annual meeting); *Apple Inc. (Sum of Us)* (avail. Dec. 17, 2020) (concurring, based on information the company had already posted on its website, with the exclusion of a proposal requesting that the board of directors report annually on the company's management systems and processes for implementing its human rights policy commitments regarding freedom of expression and access to information; the oversight mechanisms for administering such commitments; and a description of actions the company has taken in response to government or other third-party demands that were reasonably likely to limit free expression or access to information).

As in *Alliant*, *Comcast*, and other precedent described above, the Company's public reporting substantially implements the Proposal's second request to report on the impact of the Company's policy positions, advocacy, partnerships, and charitable giving and the effect of those actions on the Company's financial sustainability. Specifically, as discussed above, the Company's ESG Reporting addresses the Company's policy positions, advocacy, partnership, and charitable giving, including how the topics are tied to the Company's financial sustainability and long-term shareholder and stakeholder value.

For these reasons, and consistent with the precedent discussed above, we believe that the Company's Board-level oversight on the impacts and effects of the Proposal's enumerated topics on the Company's financial sustainability, and the Company's public reporting to shareholders on these impacts and effects, substantially implements the Proposal. Accordingly, consistent with the precedent discussed above, there is no further action

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required to address the essential objective of the Proposal, and the Proposal may be excluded from the Company's 2024 Proxy Materials under Rule 14a-8(i)(10).

III. Alternatively, The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because It Substantially Duplicates The NLPC Proposal, Which Was First Received

A. Background

The Company received the NLPC Proposal on December 7, 2023, which is before the Company received the Proposal on December 14, 2023. *See Exhibit F.* Please note that the Company has separately submitted a no-action request asking the Staff to concur that the NLPC Proposal can be excluded for other reasons.

The NLPC Proposal states:

RESOLVED: Shareholders request the Directors create a study panel under an appropriate Board committee to scrutinize the risks and consequences of the Company's associations with external organizations, to determine whether they threaten the growth and sustainability of the Company. Ideally the Committee would issue a public report on the committee's findings by March 31, 2025, and publish it on the Company website.

B. Overview of Rule 14a-8(i)(11)

Rule 14a-8(i)(11) provides that a shareholder proposal may be excluded if it "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." The Commission has stated that "the purpose of [Rule 14a-8(i)(11)] is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976) (the "1976 Release"). When two substantially duplicative proposals are received by a company, the Staff has indicated that the company must include the first of the proposals it received in its proxy materials, unless that proposal otherwise may be excluded. *See, e.g., Great Lakes Chemical Corp.* (avail. Mar. 2, 1998); *Pacific Gas and Electric Co.* (avail. Jan. 6, 1994).

A proposal may be excluded as substantially duplicative of another proposal despite differences in terms or scope and even if the proposals request different actions. *See, e.g., Amazon.com, Inc.* (avail. Apr. 6, 2022) (concurring that a proposal requesting the board commission an independent third-party audit on workplace health and safety, evaluating productivity quotas, surveillance practices, and the effects of these practices on injury rates and turnover was substantially duplicative of a proposal requesting the board commission an

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independent audit and report of the working conditions and treatment that warehouse workers face); *Exxon Mobil Corp.* (avail. Mar. 13, 2020) (concurring with the exclusion of a proposal as substantially duplicative where the Staff explained that “the two proposals share a concern for seeking additional transparency from the [c]ompany about its lobbying activities and how these activities align with the [c]ompany’s expressed policy positions” despite the proposals requesting different actions); *Exxon Mobil Corp.* (avail. Mar. 9, 2017) (concurring with the exclusion of a proposal requesting a report on the company’s political contributions as substantially duplicative of a proposal requesting a report on lobbying expenditures); *Wells Fargo & Co.* (avail. Feb. 8, 2011) (concurring with the exclusion of a proposal seeking a review and report on the company’s loan modifications, foreclosures, and securitizations as substantially duplicative of a proposal seeking a report that would include “home preservation rates” and “loss mitigation outcomes,” which would not necessarily be covered by the other proposal); *Chevron Corp.* (avail. Mar. 23, 2009, *recon. denied* Apr. 6, 2009) (concurring with the exclusion of a proposal requesting that an independent committee prepare a report on the environmental damage that would result from the company’s expanding oil sands operations in the Canadian boreal forest as substantially duplicative of a proposal to adopt goals for reducing total greenhouse gas emissions from the company’s products and operations); *Bank of America Corp.* (avail. Feb. 24, 2009) (concurring with the exclusion of a proposal requesting the adoption of a 75% hold-to-retirement policy as subsumed by another proposal that included such a policy as one of many requests); *Ford Motor Co. (Leeds)* (avail. Mar. 3, 2008) (concurring with the exclusion of a proposal to establish an independent committee to prevent founding family shareholder conflicts of interest with non-family shareholders as substantially duplicative of a proposal requesting that the board take steps to adopt a recapitalization plan for all of the company’s outstanding stock to have one vote per share). The Staff has traditionally referred to Rule 14a-8(i)(11)’s substantial duplication standard as assessing whether the later proposal presents the same “principal thrust” or “principal focus” as a previously submitted proposal, *see Pacific Gas & Electric Co.* (avail. Feb. 1, 1993), or the same core concern.

C. Analysis

Although phrased differently, the core concern and principal focus of the Proposals is the same: Board-level oversight of the Company’s external affiliations and related activities and their impact on Company financial stability, and the publication of a report on these matters. This duplication is demonstrated by the following chart:

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<i>The NLPC Proposal</i>	<i>The Proposal</i>
<i>The Proposals both ask for Board-level oversight.</i>	
“Shareholders request the Directors <i>create a study panel under an appropriate Board committee...</i> ”	“Shareholders request that the Board of Directors <i>create a board committee on corporate financial sustainability...</i> ”
<i>The Proposals both request oversight of the Company’s affiliation with external organizations and associated risks.</i>	
“...to scrutinize the risks and consequences of the <i>Company’s associations with external organizations...</i> ”	“...to oversee and review the impact of the <i>Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters...</i> ”
<i>The Proposals both focus on whether the Company’s affiliations with external organizations impact the Company’s financial stability.</i>	
“...to determine whether they <i>threaten the growth and sustainability of the Company.</i> ”	“...to oversee and review... <i>the effect of those actions on the Company’s financial sustainability.</i> ”
<i>The Proposals both ask the Board to issue a public report on these matters.</i>	
“Ideally the Committee would <i>issue a public report</i> on the committee’s findings...”	“The Company should <i>issue a public report</i> on the committee’s findings...”

As demonstrated above, the differences in scope and wording do not change the conclusion that the Proposals substantially duplicate one another. This is further demonstrated by the concerns raised in the Supporting Statements¹⁵ of both Proposals:

<i>The NLPC Proposal</i>	<i>The Proposal</i>
<i>The Proposals both cite to Bud Light, Target Corporation, and the Walt Disney Company as examples of when an external affiliation has harmed a company’s performance.</i>	
“ <i>Consumers boycotted Bud Light</i> following a campaign featuring transgender influencer Dylan Mulvaney. <i>The backlash resulted in the brand losing its status as the best-selling beer in the United States.</i> ” “ <i>Target Corporation</i> featured ‘tuck-friendly’ swimsuits designed for ‘transgender’	“ <i>Following Bud Light’s embrace of partisanship and disparagement of its customer base, its revenue fell \$395 million in North America when compared to the same time a year ago.</i> This amounts to roughly 10 percent of its revenue in the months following its leap into contentious politics.”

¹⁵ The Company notes that it believes that the Supporting Statements for each of the Proposals contain factual inaccuracies and unfounded statements, which the Company does not address in this letter.

<i>The NLPC Proposal</i>	<i>The Proposal</i>
<p>individuals for ‘Pride month.’ <i>A backlash ensued, the company lost \$10 billion in market value over ten days, and its stock price fell. Target’s quarterly sales fell for the first time in six years, despite increased consumer spending during the period.</i>”</p> <p>“<i>The Walt Disney Company</i> unnecessarily involved itself in a divisive parental rights issue in Florida. Its ongoing placement of adult themes in children’s programming and content <i>has contributed to several consecutive quarters of poor earnings.</i>”</p>	<p>“<i>Target Corporation’s market cap fell over \$15 billion</i> amid backlash for similar actions.”</p> <p>“...<i>Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years</i> – amid its decision to put extreme partisan agendas ahead of parents’ rights.”</p>
<p><i>The Proposals both discuss the Company’s 100% rating on the “Corporate Equality Index” of the Human Rights Campaign.</i></p>	
<p>“Walmart boasts of its <i>perfect score on the Corporate Equality Index</i> of the equally militant LGBTQ pressure group Human Rights Campaign...”</p>	<p>“The Company has a <i>100 percent rating on the ‘Corporate Equality Index’</i> of the Human Rights Campaign (HRC).”</p>
<p><i>The Proposals both discuss concerns about the Company’s policies regarding religious organizations.</i></p>	
<p>“Walmart boasts of its perfect score on the Corporate Equality Index of the equally militant LGBTQ pressure group Human Rights Campaign, which ‘requires donations to LGBTQ+ causes, <i>refusal to donate to non-religious organizations</i> that discriminate based on LGBTQ+ issues, and support of gender transition.’”</p>	<p>“The Company has a 100 percent rating on the ‘Corporate Equality Index’ of the Human Rights Campaign (HRC). Earning that score arguably requires spending shareholder assets to embrace highly partisan positions on hot-button issues, <i>such as supporting legislation that eliminates religious liberties</i> and discriminates against girls and women while opposing legislation to protect children from adult materials.”</p> <p>“The Company has been rated a ‘high risk’ by the 1792 Exchange on its ‘Spotlight Bias Report,’ which is published to ‘shed light on corporate activism’ and lists the following as potential concerns for Walmart: (1) <i>‘discriminating against faith-based charities’</i> . . .”</p>

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<i>The NLPC Proposal</i>	<i>The Proposal</i>
<i>The Proposals both criticize charitable donations made by the Company.</i>	
<p><i>“The Company in 2021 donated \$500,000 to, and has a ‘longtime relationship’ with, radical LGBTQ activist group PFLAG. The theme for the group’s annual conference this year was to advocate for the placement of sexually explicit books such as ‘Gender Queer’ and ‘This Book is Gay’ in school libraries. A Company official serves on PFLAG’s board.”</i></p>	<p><i>“The Company has apparently contributed \$100,000,000.00 to the BLM (Black Lives Matter) movement and related causes since 2020, despite the fact that these causes have been accused of squandering assets and supporting racism and antisemitism and highly divisive and dangerous programs such as police-defunding and ‘anti-racist’ racial discrimination.”</i></p>

The Staff has frequently concurred with the exclusion of a proposal that was substantially similar to a prior proposal. For example, in *Exxon Mobil Corp.* (avail. Mar. 9, 2017), the proponent requested a report on the policies and procedures relating to the company’s political contributions and expenditures while a prior proposal requested a report relating to, among other related things, the company’s policies and procedures “governing lobbying . . . and grassroots lobbying communications.” The company argued that the later proposal substantially duplicated the prior proposal because “its real target [was] disclosure of contributions to third parties that are used for political purposes.” The proponent conceded that there may have been some overlap between the proposals but argued that its proposal was “far broader than the [prior] [p]roposal and request[ed] vastly more information” and even admitted that had the proposals been submitted in the opposite order, then the narrower proposal relating solely to lobbying disclosures might have been excludable. The Staff concurred that the broader proposal was substantially duplicative of the earlier, narrower prior proposal and agreed with exclusion under Rule 14a 8(i)(11). *See also McDonald’s Corp. (John Chevedden)* (avail. Apr. 3, 2023) (concurring with the exclusion under Rule 14a-8(i)(11) of a later proposal when both proposals seek the preparation of a report regarding the company’s lobbying policy, procedures, payments and oversight processes); *Pfizer Inc. (Tara Health Foundation)* (avail. Feb. 22, 2022) (concurring with the exclusion of a later proposal when both proposals seek an analysis of the congruency of the company’s political and electioneering expenditures during the preceding year against the company’s publicly stated values and policies); *Chevron Corp. (Benta B.V.)* (avail. Mar. 30, 2021) (concurring with the exclusion of a later proposal requesting the company to “devis[e] a method to set emission reduction targets” as substantially duplicative of an earlier proposal, requesting a report addressing how certain Scope 3 emissions will be addressed to “meet [the company’s] post 2050 Paris Accord carbon emission reduction goals”) (emphasis added); *Pfizer Inc. (International Brotherhood of Teamsters General Fund)* (avail. Feb. 28, 2019) (concurring with the exclusion of a proposal requesting information on certain categories of lobbying expenditures and related company risks, with a supporting statement that “describe[d] the [p]roponents’ concern that the lack of lobbying disclosure creates

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reputational risk when such lobbying contradicts public positions,” as substantially duplicative of an earlier-received proposal with a supporting statement that “describe[d] lobbying in the context of [the company’s] free speech and freedom of association rights”); *Bank of America Corp. (AFL-CIO Reserve Fund)* (avail. Feb. 14, 2006) (concurring with the exclusion of a proposal as substantially duplicative of a prior political contributions proposal despite the proponent’s assertion that the subsequent proposal was “much broader in scope” and “would capture a much wider array of political contributions than the [prior] [p]roposal”); *Abbott Laboratories* (avail. Feb. 4, 2004) (concurring with the exclusion of a proposal requesting limitations on various types of executive compensation as substantially duplicative of a prior proposal requesting a prohibition on only one of the items covered by the later proposal—future grants of stock options).

Likewise, the Staff has concurred that two proposals were substantially duplicative despite differences in their scope and breadth. For example, in *Ford Motor Co.* (avail. Feb. 19, 2004) the Staff concurred that Ford could exclude a proposal requesting that the company “adopt (as internal corporate policy) goals concerning fuel mileage or [GHG] emissions reductions similar to those which would be achieved by meeting or exceeding the highest standards contained in recent congressional proposals” because it substantially duplicated a prior proposal requesting that the company:

report to shareholders . . . (a) performance data from the years 1994 through 2003 and ten-year projections of estimated total annual [GHG] emissions from its products in operation; (b) how the company will ensure competitive positioning based on emerging near and long-term GHG regulatory scenarios at the state, regional, national and international levels; (c) how the [c]ompany can significantly reduce [GHG] emissions from its fleet of vehicle product (using a 2003 baseline) by 2013 and 2023.

Ford successfully argued that “[a]lthough the terms and the breadth of the two proposals are somewhat different, the principal thrust and focus are substantially the same, namely to encourage the [c]ompany to adopt policies that reduce [GHG] emissions in order to enhance competitiveness.” *See also General Motors Corp.* (avail. Mar. 13, 2008) (concurring with the exclusion of a proposal requesting “that a committee of independent directors . . . assess the steps the company is taking to meet new fuel economy and [GHG] emission standards for its fleets of cars and trucks, and issue a report to shareholders” as substantially duplicating a prior proposal requesting that “the [b]oard of [d]irectors publicly adopt quantitative goals, based on current and emerging technologies, for reducing total [GHG] emissions from the company’s products and operations; and that the company report to shareholders”); *Cooper Industries Ltd.* (avail. Jan. 17, 2006) (concurring with the exclusion of a proposal requesting that the company “review its policies related to human rights to assess areas where the company needs to adopt and implement additional policies and to report its findings” to

Office of Chief Counsel
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shareholders as substantially duplicating a prior proposal requesting “that the company commit itself to the implementation of a code of conduct based on . . . ILO human rights standards and United Nations’ Norms on the Responsibilities of Transnational Corporations with Regard to Human Rights”).

Here, notwithstanding some differences in language and scope, the Proposals have the same principal thrust and focus: requesting Board-level oversight of the Company’s external affiliations and related activities and their impact on Company financial stability, and the publication of a related report on the results. Both of the Proposals address concerns regarding the Company’s performance and the way in which affiliations with external groups could affect the Company’s financial sustainability. As demonstrated in the precedent above, this is not changed by the slight variations in the nature of each request (where the Proposal requests the Company “create a board committee on corporate financial sustainability,” while the NLPC Proposal requests the creation of a “study panel” under a Board committee to conduct the analysis) or their scope (NLPC Proposal’s general focus on “associations with external organizations” compared to the Proposal’s focus on “policy positions, advocacy, partnerships and charitable giving on social and political matters”).¹⁶

Finally, because the Proposal substantially duplicates the NLPC Proposal, if the Company was required to include both Proposals in its proxy materials, there is a risk that the Company’s shareholders would be confused when asked to vote on both. As noted above, the purpose of Rule 14a-8(i)(11) “is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other.” 1976 Release. Accordingly, the Company believes that, unless the Staff concurs that the Company can exclude the NLPC Proposal for the reasons set forth in the no-action request submitted separately, the Proposal may be excluded pursuant to Rule 14a-8(i)(11) as substantially duplicative of the NLPC Proposal.

¹⁶ We note that Exchange Act Release No. 34-95267 (July 13, 2022) (the “2022 Proposing Release”) proposed, among other changes to Rule 14a-8, amendments to Rule 14a-8(i)(11) that would replace the current standard (the “Proposed Amendments”), under which a shareholder proposal may be excluded if it “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,” with a new standard under which “a proposal ‘substantially duplicates’ another proposal if it ‘addresses the same subject matter and seeks the same objective by the same means.’” 2022 Proposing Release. Although this standard has not been adopted by the Commission, and therefore should not be applied to the current request, we believe that the Proposal also satisfies this standard for the reasons noted above; specifically, that each of the Proposal and the NLPC Proposal seeks a Board committee that oversees the Company’s affiliations and how those affiliations affect the Company’s performance, and the publication of a related report on the committee’s findings, and thus share much more than a “vague relation” (as referenced in the 2022 Proposing Release).

GIBSON DUNN

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CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2024 Proxy Materials, and we respectfully request that the Staff concur that the Proposal may be excluded under Rule 14a-8.

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 shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287 or Vicki S. Vasser, the Company's Lead Counsel, at (479) 360-9887.

Sincerely,



Elizabeth A. Ising

Enclosures

cc: Vicki S. Vasser, Walmart Inc.
Stefan Padfield, National Center for Public Policy Research

GIBSON DUNN

EXHIBIT A



December 12, 2023

Via FedEx to

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 SVP Allison,

I hereby submit the enclosed shareholder proposal ("Proposal") for inclusion in the Walmart Inc. (the "Company" or "Walmart") 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 United States Securities and Exchange Commission's proxy regulations.

I submit the Proposal as Deputy Director of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company's 2024 annual meeting of shareholders.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal January 2, 2024, or January 3, 2024, from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at [REDACTED] so that we can determine the mode and method of that discussion.

DEC 13 2023

Copies of correspondence or a request for a no-action letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to [REDACTED]

Sincerely,

A handwritten signature in black ink, consisting of a stylized 'S' followed by a vertical line, a circle, and a horizontal line extending to the right.

Stefan Padfield

cc: Scott Shepard, FEP Director
Enclosures: Shareholder Proposal

Corporate Financial Sustainability Report

Whereas: The Company's policy positions, advocacy, partnerships and charitable giving on significant social policy and political matters should not alienate consumers, decrease sales, or diminish shareholder value.

The Company has a 100 percent rating on the "Corporate Equality Index" of the Human Rights Campaign (HRC).¹ Earning that score arguably requires spending shareholder assets to embrace highly partisan positions on hot-button issues, such as supporting legislation that eliminates religious liberties and discriminates against girls and women while opposing legislation to protect children from adult materials.² In his 2021 book *The Dictatorship of Woke Capital*, Stephen Soukup describes HRC as "influencing businesses by employing a 'soothsayer's trick'" that boils down to increasing the radicalization of businesses by way of a strategy to "simply keep moving the goalposts."³

The Company has been rated a "high risk" by the 1792 Exchange on its "Spotlight Bias Report,"⁴ which is published to "shed light on corporate activism"⁵ and lists the following as potential concerns for Walmart: (1) "discriminating against faith-based charities,"⁶ (2) "does not provide viewpoint protections for its employees,"⁷ (3) "has given to numerous ideological groups hostile to free expression, including PolicyLink, an organization focused on 'racial equity' through promoting the tenets of critical race theory in the corporate world," and (4) "CEO Doug McMillon is a member of the Business Roundtable and signed its 2019 Statement on the Purpose of Corporation, which promotes stakeholder capitalism over traditional obligations to shareholders and customers."

The Company has apparently contributed \$\$100,000,000.00 to the BLM (Black Lives Matter) movement and related causes since 2020,⁸ despite the fact that these causes have been accused of squandering assets⁹ and supporting racism and antisemitism and highly divisive and dangerous programs such as police-defunding and "anti-racist" racial discrimination.¹⁰

Supporting Statement: Recent events have made clear that company bottom-lines, and therefore value to shareholders, drop when companies take overtly political and divisive positions that alienate consumers. Following Bud Light's embrace of partisanship and

¹ <https://www.hrc.org/resources/buyers-guide/walmart-inc.-2>

² <https://www.forbes.com/sites/jonmcgowan/2023/05/29/like-target-walmarts-esg-report-focuses-on-lgbtq-pride-issues/>

³ <https://dcjournal.com/the-hypothetical-conflict-that-may-be-at-the-root-of-disneys-woes/>

⁴ <https://1792exchange.com/company/walmart/>

⁵ <https://1792exchange.com/spotlight-reports/>

⁶ <https://1792exchange.com/company/walmart/>

⁷ *id.*

⁸ <https://dc.claremont.org/blm-funding-database/>

⁹ <https://www.cnn.com/2022/09/04/us/black-lives-matter-executive-lawsuit/index.html>

¹⁰ <https://www.wsj.com/articles/black-lives-matter-and-the-worlds-oldest-hatred-anti-semitism-0e0c324e>

disparagement of its customer base, its revenue fell \$395 million in North America when compared to the same time a year ago.¹¹ This amounts to roughly 10 percent of its revenue in the months following its leap into contentious politics.¹² Target Corporation's market cap fell over \$15 billion amid backlash for similar actions.¹³ And Disney stock fell 44 percent in 2022 – its worst performance in nearly 50 years – amid its decision to put extreme partisan agendas ahead of parents' rights.¹⁴

Resolved: Shareholders request that the Board of Directors create a board committee on corporate financial sustainability to oversee and review the impact of the Company's policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company's financial sustainability. The Company should issue a public report on the committee's findings by the end of 2024.

¹¹ <https://www.cnn.com/2023/08/03/business/anheuser-busch-revenue-bud-light-intl-hnk/index.html>;

¹² <https://www.theguardian.com/business/2023/aug/03/bud-light-revenue-sales-anheuser-busch>

¹³ <https://www.foxbusiness.com/media/target-market-cap-losses-hit-15-7-billion-share-near-52-week-low-amid-woke-backlash>; <https://nypost.com/2023/05/23/target-to-remove-some-lgbtq-merchandise-after-facing-customer-backlash/>

¹⁴ <https://www.washingtonexaminer.com/policy/economy/disney-has-lost-50-billion-in-value-since-war-with-florida-began>; <https://www.hollywoodreporter.com/business/business-news/disney-stock-2022-1235289239/>; <https://markets.businessinsider.com/news/stocks/disney-stock-price-decline-bob-iger-pandemic-inflation-recession-streaming-2022-12>; <https://www.foxnews.com/media/disneys-decline-shows-woke-focus-alienating-fans-wsj-column>

GIBSON DUNN

EXHIBIT B

From: Vicki Vasser [REDACTED]
Sent: Wednesday, December 27, 2023 2:27 PM
To: [REDACTED]
Subject: WMT Shareholder Proposal - Deficiency Notice
Attachments: Walmart_-_NCPPR_deficiency_notice_12-27-2023.pdf; Rule 14a-8 Enclosure.pdf

Good afternoon Stefan:

Please see attached communication regarding your shareholder proposal.

Thank you for your continued interest in Walmart.

Vicki Vasser

Vicki S. Vasser

Lead Counsel – Corporate Governance
Global Governance, Office of the Corporate Secretary

Office Phone [REDACTED]

Mobile [REDACTED]

Fax [REDACTED]

Email: [REDACTED]

Walmart Inc.
702 Southwest 8th Street (MS 0215)
Bentonville, AR 72716-0215



This email and any attachments are from an attorney and may be privileged. They should be treated as confidential. If you have received this email in error, please destroy it immediately and notify the sender.



702 SW 8th Street
Bentonville, AR 72716
www.walmart.com

December 27, 2023

VIA EMAIL

Stefan Padfield
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC 20036
[REDACTED]

Dear Mr. Padfield:

I am writing on behalf of Walmart Inc. (the “**Company**”), which received on December 13, 2023, the shareholder proposal entitled “Corporate Financial Sustainability Report” that you submitted for inclusion in the proxy statement for the Company’s 2024 Annual Shareholders’ Meeting via FedEx on December 12, 2023 (the “**Submission Date**”) on behalf of the National Center for Public Policy Research (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 (the “**Proposal**”).

The Proposal contains certain procedural deficiencies, which SEC regulations require us to bring to your attention and which you and the Proponent should correct as described below if the Company is to consider the Proponent to have properly submitted the Proposal. Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares preceding and including the submission date. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company’s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or
- (3) \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each an “**Ownership Requirement**,” and collectively, the “**Ownership Requirements**”).

The Company’s stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date the Company has not received proof that the Proponent has satisfied any of the Ownership Requirements. To remedy

Stefan Padfield
December 27, 2023
Page 2

this defect, the Proponent must submit sufficient proof that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the “record” holder of the Proponent’s shares (usually a broker or a bank) verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent intends to demonstrate ownership by submitting a written statement from the “record” holder of the Proponent’s 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 the Proponent’s broker or bank is a DTC participant by asking the Proponent’s broker or bank or by checking DTC’s participant list, which is available at <https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf>. If a shareholder’s shares are held through DTC, the shareholder needs to obtain and submit to the Company proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent’s broker or bank is a DTC participant, then the Proponent needs to obtain and submit a written statement from the Proponent’s broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If the Proponent’s broker or bank is not a DTC participant, then the Proponent needs to obtain and submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent’s broker or bank. If the Proponent’s broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent’s account statements, because the clearing broker identified on

Stefan Padfield
December 27, 2023
Page 3

the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's 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 the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (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.

The SEC's rules require that any response to this letter 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 response by email to me at [REDACTED]. Please note that the SEC's staff has stated that a proponent is responsible for confirming our receipt of any correspondence transmitted in response to this letter.

If you have any questions with respect to the foregoing, please contact me at [REDACTED]. For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,



Vicki S. Vasser
Lead Counsel

Enclosures

GIBSON DUNN

EXHIBIT C

From: Stefan Padfield

Date: January 1, 2024 at 10:44:47 AM CST

To: Vicki Vasser [REDACTED]

Subject: EXT: Re: WMT Shareholder Proposal - Deficiency Notice

EXTERNAL: Report suspicious emails to **Email Abuse**.

Please find attached our proof of ownership. Please confirm receipt.

Regards,
Stefan

Stefan J. Padfield, JD
Deputy Director
Free Enterprise Project
National Center for Public Policy Research
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>



Advisors

1650 Tysons Boulevard
Suite 500
McLean, Virginia 22102

Tel: [Redacted]
Fax: [Redacted]

12/28/2023

National Center for Public Policy Research Inc
2005 Massachusetts Avenue NW
Washington DC 20036-1030

RE: Verification of Assets for Account Number ending in [Redacted]

To Whom It May Concern:

In connection with your recent request regarding the verification of certain information about your investment account relationship with Wells Fargo Clearing Services, LLC ("Wells Fargo Advisors"), we are providing this letter as confirmation that:

(i) You maintain a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [Redacted]

(ii) As of December 28, 2023, the National Center for Public Policy Research holds, and has held continuously since December 11, 2020, more than \$2,000 of Walmart Inc common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is record owner of these shares.

This letter is provided for informational purposes and does not represent future Account value, if this said Account will remain with Wells Fargo Advisors in the future, any purposes not mentioned in this letter, or the creditworthiness of the person(s) referenced within. Wells Fargo Advisors will have no liability with any party's reliance on this letter or the information within. This report is not the official record of your account. However, it has been prepared to assist you with your investment planning and is for informational purposes only. Your Wells Fargo Advisors Client Statement is the official record of your account. Therefore, if there are any discrepancies between this report and your Client Statement, you should rely on the Client Statement and call your local Sales Location Manager with any questions. Cost data and acquisition dates provided by you are not verified by Wells Fargo Advisors. Transactions requiring tax consideration should be reviewed carefully with your accountant or tax advisor. Unless otherwise indicated, market prices/values are the most recent closing prices available at the time of this report and are subject to change. Prices may not reflect the value at which securities could be sold. Past performance does not guarantee future results.

Sincerely,

David A. Bos

Senior Vice President - Investments
Branch Manager – Private Client Group

[Redacted contact information]

Investment and Insurance Products are:

- **Not Insured by the FDIC or Any Federal Government Agency**
- **Not a Deposit or Other Obligation of, or guaranteed by, the Bank or Any Bank Affiliate**
- **Subject to Investment Risks, Including Possible Loss of the Principal Amount Invested**

Investment products and services are offered through Wells Fargo Advisors, a trade name used by Wells Fargo Clearing Services, LLC, Member SIPC, a registered broker-dealer and non-bank affiliate of Wells Fargo & Company.



GIBSON DUNN

EXHIBIT D

From: Vicki Vasser [REDACTED]
Sent: Monday, January 8, 2024 1:37 PM
To: Stefan Padfield
Subject: 2024 WMT Shareholder Proposal - Deficiency Notice
Attachments: Ltr - NCPPR deficiency notice 1-8-2024.pdf; Rule 14a-8 Enclosure.pdf

Good afternoon:

Please see attached the communication regarding your organization's 2024 Walmart shareholder proposal.

Thank you.

Vicki

Vicki S. Vasser
Lead Counsel – Corporate Governance
Global Governance, Office of the Corporate Secretary

Office Phone [REDACTED]
Mobile [REDACTED]
Fax [REDACTED]
Email: [REDACTED]

Walmart Inc.
702 Southwest 8th Street (MS 0215)
Bentonville, AR 72716-0215



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702 SW 8th Street
Bentonville, AR 72716
www.walmart.com

January 8, 2024

VIA OVERNIGHT MAIL AND EMAIL

Stefan Padfield
National Center for Public Policy Research
2005 Massachusetts Ave. NW
Washington, DC 20036
[REDACTED]

Dear Mr. Padfield:

I am writing on behalf of Walmart Inc. (the “**Company**”), which received on December 13, 2023, the shareholder proposal entitled “Corporate Financial Sustainability Report” that you submitted for inclusion in the proxy statement for the Company’s 2024 Annual Shareholders’ Meeting via FedEx on December 12, 2023 (the “**Submission Date**”) on behalf of the National Center for Public Policy Research (the “**Proponent**”) pursuant to Securities and Exchange Commission (“**SEC**”) Rule 14a-8 (the “**Proposal**”). In the deficiency notice the Company sent you on December 27, 2023, we notified you of the requirements of Rule 14a-8 and how to cure the procedural deficiencies associated with the Proposal (the “**Deficiency Notice**”). The purpose of this second deficiency notice is to notify you of the defects associated with the response letter from Wells Fargo Advisors, dated December 28, 2023 (the “**Wells Fargo Letter**”), that the Company received on January 1, 2024.

As previously noted in the Deficiency Notice, Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended, provides that a shareholder proponent must submit sufficient proof of its continuous ownership of company shares preceding and including the submission date. Thus, with respect to the Proposal, Rule 14a-8 requires that the Proponent demonstrate that the Proponent has continuously owned at least:

- (1) \$2,000 in market value of the Company’s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
- (2) \$15,000 in market value of the Company’s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date; or
- (3) \$25,000 in market value of the Company’s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date (each an “**Ownership Requirement**,” and collectively, the “**Ownership Requirements**”).

The Company's stock records do not indicate that the Proponent is the record owner of sufficient shares to satisfy any of the Ownership Requirements. In addition, to date the Company has not received adequate proof that the Proponent has satisfied any of the Ownership Requirements. In this regard, we note that the Wells Fargo Letter asserts the following:

“(i) [the Proponent] maintain[s] a Brokerage Cash Service account with Wells Fargo Advisors, number ending in [REDACTED]

(ii) As of December 28, 2023, the National Center for Public Policy Research holds, and has held continuously since December 11, 2020, more than \$2,000 of Walmart Inc common stock. This continuous ownership was established as part of the cost-basis data that UBS transferred to us along with this and other NCPPR holdings. This information routinely transfers when assets are transferred. Wells Fargo N.A. is the record owner of these shares.”

The Wells Fargo Letter does not state that Wells Fargo Advisors has been the “record” holder of the Proponent's shares during the three years preceding and including the Submission Date, and in fact, by seeking to rely on “cost-basis data” provided by UBS, indicates that UBS was the “record” holder for some unspecified portion of the three years preceding and including the Submission Date.

To remedy this defect, the Proponent must obtain new proof of ownership verifying that such Proponent has satisfied at least one of the Ownership Requirements. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of either:

- (1) a written statement from the “record” holder of the Proponent's shares (usually a broker or a bank) confirming its status as the “record” holder of the Proponent's shares and verifying that, at the time the Proponent submitted the Proposal (the Submission Date), the Proponent continuously held through the record holder the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above; or
- (2) if the Proponent was required to and has filed with the SEC a Schedule 13D, Schedule 13G, Form 3, Form 4 or Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent met at least one of the Ownership Requirements above, a copy of the schedule and/or form, and any subsequent amendments reporting a change in the ownership level and a written statement that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.

If the Proponent's shares were held by more than one “record” holder over the course of the applicable one-, two-, or three-year ownership period, then confirmation of ownership needs to be obtained from each record holder with respect to the time during which it held the shares on

the Proponent's behalf, and those documents must collectively demonstrate the Proponent's continuous ownership of sufficient shares to satisfy at least one of the Ownership Requirements.

If the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's 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 the Proponent's broker or bank is a DTC participant by asking the Proponent's broker or bank or by checking DTC's participant list, which is available at <https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf>. If a shareholder's shares are held through DTC, the shareholder needs to obtain and submit to the Company proof of ownership from the DTC participant through which the securities are held, as follows:

- (1) If the Proponent's broker or bank is a DTC participant, then the Proponent needs to obtain and submit a written statement from the Proponent's broker or bank verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above.
- (2) If the Proponent's broker or bank is not a DTC participant, then the Proponent needs to obtain and submit proof of ownership from the DTC participant through which the shares are held verifying that the Proponent continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements above. You should be able to find out the identity of the DTC participant by asking the Proponent's broker or bank. If the Proponent's broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent's account statements, because the clearing broker identified on the account statements will generally be a DTC participant. If the DTC participant that holds the Proponent's 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 the Proponent needs to satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that the Proponent continuously held Company shares satisfying at least one of the Ownership Requirements above: (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.

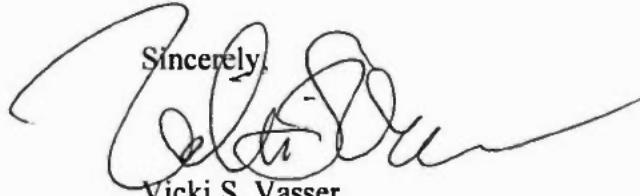
The SEC's rules require that any response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date you receive this letter. Please address any response to me at 702 SW 8th Street, MS 0215, Bentonville, AR 72716-0215. Alternatively, you may transmit any response by email to me at [REDACTED] Please note

Stefan Padfield
January 8, 2024
Page 4

that the SEC's staff has stated that a proponent is responsible for confirming our receipt of any correspondence transmitted in response to this letter.

If you have any questions with respect to the foregoing, please contact me at [REDACTED]
[REDACTED] For your reference, I enclose a copy of Rule 14a-8, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14L.

Sincerely,

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

Vicki S. Vasser
Lead Counsel

Enclosures

GIBSON DUNN

EXHIBIT E

From: Stefan Padfield
Sent: Monday, January 8, 2024 3:44 PM
To: Vicki Vasser
Subject: EXT: Re: 2024 WMT Shareholder Proposal - Deficiency Notice

EXTERNAL: Report suspicious emails to **Email Abuse**.

The Wells Fargo Letter satisfies our proof of ownership obligations. As a courtesy, we are attaching a letter from UBS that underscores this fact. We will not be providing any additional proof of ownership.

Regards,
Stefan

Stefan J. Padfield, JD
Deputy Director
Free Enterprise Project
National Center for Public Policy Research
<https://nationalcenter.org/ncppr/staff/stefan-padfield/>



UBS Financial Services Inc.
1000 Harbor Blvd
3rd Floor
Weehawken, NJ 07086

Confirmation

ubs.com/fs

National Center for Public Policy Research
2005 Massachusetts Ave NW
Washington, DC 20036

12/4/2023

Confirmation: Information regarding the account of The National Center for Public Policy Research

Dear Sir,

Please accept this letter as a confirmation of the following facts:

- During the month of October 2023, the National Center for Public Policy Research transferred assets, including 95 individual equity positions, from UBS Financial Services account [REDACTED] to Wells Fargo account [REDACTED]
- As part of this transfer UBS Financial Services transmitted cost basis data, including purchase date and purchase price, for each of these 95 equity positions transferred to Wells Fargo.
- UBS has reviewed a copy of the October 2023 Wells Fargo statement for account [REDACTED] and has confirmed the original purchase dates and purchase prices which were transmitted by UBS Financial Services to Wells Fargo are being accurately and correctly reported on this statement.

Questions

If you have any questions about this information, please contact the UBS Wealth Advice Center at [REDACTED]

Sincerely,

Evan Yeaw
Head Wealth Advice Center Operations
UBS Financial Services

GIBSON DUNN

EXHIBIT F



NATIONAL LEGAL AND POLICY CENTER

December 7, 2023

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

VIA UPS & EMAIL: [REDACTED]

Dear Mr. Allison/Corporate Secretary:

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in Walmart 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.

National Legal and Policy Center (NLPC) is the beneficial owner of 45,754 shares of the Company’s common stock with a value exceeding \$2,000, which shares have been held continuously for more than three years prior to this date of submission. NLPC intends to hold the shares through the date of the Company’s next annual meeting of shareholders. A proof of ownership letter is forthcoming and will be delivered to the Company.

The Proposal is submitted in order to promote shareholder value by requesting the Board of Directors to conduct an Audit Subcommittee Study on Company Affiliations. Either an NLPC representative or I will present the Proposal for consideration at the annual meeting of shareholders.

I and/or an NLPC representative are able to meet with the Company via teleconference to discuss the Proposal on December 18 at 11:00 a.m., Dec. 19 at 11:00 a.m., or Dec. 20 at 11:00 a.m., in the Central Time Zone of the United States. I can be reached at [REDACTED] or at [REDACTED]

If you have any questions, please contact me at the above phone number. Copies of correspondence or a request for a “no-action” letter should be forwarded to me at [REDACTED]

Nat’l Headquarters: 107 Park Washington Court, Falls Church, Virginia 22046

Phone: [REDACTED] Email: [REDACTED]

Sincerely,

A handwritten signature in blue ink that reads "Paul Chesser". The signature is written in a cursive, flowing style.

Paul Chesser
Director
Corporate Integrity Project

Enclosure: "Audit Subcommittee Study on
Company Affiliations" proposal

Audit Subcommittee Study on Company Affiliations

WHEREAS: Viewpoint disagreements have intensified in recent years, and businesses are caught in the middle. While shareholders should expect a degree of issue engagement over matters that affect a firm's operations and viability – like taxation and regulation – many companies get involved in matters that are immaterial, or even detrimental, to their businesses, often damaging their brands.

SUPPORTING STATEMENT: Potentially controversial relationships, especially tethered to social and cultural issues, can hurt reputations with customers, employees, suppliers, and investors, and present material risks to companies' sustainability. For example:

- Consumers boycotted Bud Light following a campaign featuring transgender influencer Dylan Mulvaney. The backlash resulted in the brand losing its status as the best-selling beer in the United States.¹
- Target Corporation featured “tuck-friendly” swimsuits designed for “transgender” individuals for “Pride month.”² A backlash ensued, the company lost \$10 billion in market value over ten days, and its stock price fell.³ Target's quarterly sales fell for the first time in six years,⁴ despite increased consumer spending during the period.⁵
- The Walt Disney Company unnecessarily involved itself in a divisive parental rights issue in Florida.⁶ Its ongoing placement of adult themes in children's programming and content has contributed to several consecutive quarters of poor earnings.⁷

Boycotts, silent or boisterous, can arise without warning. Once they gain momentum, the damage can be difficult to contain. InBev, Target and Disney are learning the hard way. Thus, it is critical the Board of Walmart Inc. (“Walmart” or “Company”) focus on its own vulnerabilities before they become a liability.

Concerns include:

- Walmart also sells LGBTQ-themed merchandise and reported in May that “we haven't changed anything in our assortment.”⁸ Among the products are a “breathable” chest

¹ <https://www.theguardian.com/business/2023/jun/14/bud-light-loses-top-us-beer-spot-after-promotion-with-transgender-influencer>

² <https://nypost.com/2023/05/24/targets-reputation-takes-a-hit-after-pride-2023-collection/>

³ <https://nypost.com/2023/05/28/target-loses-10b-following-boycott-calls-over-lgbtq-friendly-clothing/>

⁴ <https://www.cnn.com/2023/08/16/investing/target-stock-earnings/index.html>

⁵ <https://www.reuters.com/markets/us/us-consumer-spending-july-surges-weekly-jobless-claims-fall-2023-08-31/>

⁶ <https://www.foxbusiness.com/politics/desantis-pushes-ceo-criticism-disney-fight-right-thing>

⁷ <https://www.reuters.com/business/media-telecom/disney-ceo-says-company-will-quiet-noise-culture-wars-analyst-2023-09-20/>

⁸ <https://www.reuters.com/business/retail-consumer/walmart-has-not-made-changes-pride-merchandise-security-2023-05-31/>

binder aimed at “trans, lesbian, and tomboys.”⁹ “The only difference between Target and Walmart on LGBTQ+ issues in their ESG reports is a matter of semantics. Their policies are the same...”¹⁰

- The Company in 2021 donated \$500,000 to, and has a “longtime relationship” with, radical LGBTQ activist group PFLAG.¹¹ The theme for the group’s annual conference this year was to advocate for the placement of sexually explicit books such as “Gender Queer” and “This Book is Gay” in school libraries.¹² A Company official serves on PFLAG’s board.¹³
- Walmart boasts of its perfect score on the Corporate Equality Index of the equally militant LGBTQ pressure group Human Rights Campaign,¹⁴ which “requires donations to LGBTQ+ causes, refusal to donate to non-religious organizations that discriminate based on LGBTQ+ issues, and support of gender transition.”¹⁵

RESOLVED: Shareholders request the Directors create a study panel under an appropriate Board committee to scrutinize the risks and consequences of the Company’s associations with external organizations, to determine whether they threaten the growth and sustainability of the Company. Ideally the Committee would issue a public report on the committee’s findings by March 31, 2025, and publish it on the Company website.

⁹ <https://www.theepochtimes.com/article/not-just-target-walmarts-esg-efforts-focus-on-catering-to-lgbt-agenda-5298050>

¹⁰ <https://www.forbes.com/sites/jonmcgowan/2023/05/29/like-target-walmarts-esg-report-focuses-on-lgbtq-pride-issues/?sh=225e8b801bac>

¹¹ <https://corporate.walmart.com/news/2022/06/13/pride-every-day-supporting-lgbtq-associates-and-the-communities-we-serve>

¹² <https://nlpc.org/corporate-integrity-project/oreo-sponsors-conference-backing-lgbtq-groomer-books-in-school-libraries/>

¹³ <https://pflag.org/press/pflag-national-board-of-directors-welcomes-walmarts-kathy-martinez/>

¹⁴ <https://corporate.walmart.com/purpose/esgreport/social/equity-inclusion-at-walmart-beyond>

¹⁵ <https://www.forbes.com/sites/jonmcgowan/2023/05/29/like-target-walmarts-esg-report-focuses-on-lgbtq-pride-issues/?sh=225e8b801bac>



March 5, 2024

Via Online Shareholder Proposal Form

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

Re: No-Action Request from Walmart Inc. Regarding Shareholder Proposal by the National Center for Public Policy Research (“Proponent”)

Ladies and Gentlemen:

This correspondence is in response to the letter (“NAR”) of Elizabeth A. Ising on behalf of Walmart Inc. (the “Company” or “Walmart”) dated February 5, 2024, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our shareholder proposal (the “Proposal”) from its 2024 proxy materials for its 2024 annual shareholder meeting.

RESPONSE TO THE COMPANY’S CLAIMS

Our Proposal asks the Company to:

[C]reate a board committee on corporate financial sustainability to oversee and review the impact of the Company’s policy positions, advocacy, partnerships and charitable giving on social and political matters, and the effect of those actions on the Company’s financial sustainability. The Company should issue a public report on the committee’s findings by the end of 2024.

The Company seeks to exclude the Proposal from the 2024 Proxy Materials pursuant to the following rules (emphasis added).

- “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 proper request for that information;”
- “Rule 14a-8(i)(10) because the Company has substantially implemented the Proposal.”
- “Alternatively, if the Staff does not concur that the Proposal may be excluded pursuant to Rule 14a-8(b) and Rule 14a-8(f)(1) or excluded pursuant to Rule 14a-8(i)(10), we believe that the Proposal also may be excluded pursuant to Rule 14a-8(i)(11) because”:

- “(1) the Proposal substantially duplicates a different shareholder proposal received from a shareholder (National Legal and Policy Center) by the Company before the Proposal (the ‘NLPC Proposal’), and”
- “(2) if the Staff does not concur with the exclusion of the NLPC Proposal pursuant to a separate no-action request, the Company expects to include the NLPC Proposal in the 2024 Proxy Materials.”

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) provide that companies are required to send proponents a copy of any correspondence that they elect to submit to the Commission or the Staff. Accordingly, we remind the Company that if it were to submit correspondence to the Commission or the Staff or individual members thereof with respect to our Proposal or this proceeding, a copy of that correspondence should concurrently be furnished to us.

I. Sequence of Arguments

A. Proof of Ownership

We believe the proof-of-ownership issue has been resolved in Proponent’s favor by the Staff’s response in *Pfizer Inc.* (February 28, 2024). Accordingly, we limit our discussion of that issue to relying on that decision.

B. Substantial Implementation

The Company’s argument that the Proposal is excludable because it has already been substantially implemented is addressed in Part II below.

C. Substantial Duplication

The Company’s argument that the Proposal is excludable because it may be substantially duplicated is addressed in Part III below.

C. Constitutional and Administrative Law Concerns

Arguments related to the constitutional and administrative law concerns that would arise should the Staff grant no-action relief are addressed in Part IV below.

II. Substantial Implementation

The Company’s argument that it has already substantially implemented the Proposal fails for at least two reasons.

A. None of the Company’s proffered activities address the problem of politicization like the Proposal

Among other things, the Proposal requests a board committee on corporate financial sustainability to oversee and review the impact of [A] the Company’s policy positions, advocacy, partnerships and charitable giving on [B] social and political matters. Then, having reviewed and overseen the impact of

[A] on [B], the committee is further to assess [C] the effect of those actions on the Company's financial sustainability.

In other words, the Proposal (1) takes a set of corporate engagements (policy positions, advocacy, partnerships and charitable giving), (2) applies committee powers of oversight and review to assess the impact of these engagements on social and political matters, and (3) asks the committee to evaluate the effect of this politicization on the Company's financial sustainability.

None of the Company's proffered activities address the problem of politicization and the risks associated therewith in the manner that the Proposal does. In fact, if one puts aside the self-serving references to political matters in the NAR, the only excerpt remotely on point is the Company's "Engagement in Public Policy" publication.¹ In that publication, the Company states the following:

We determine whether and how to weigh in on [public policy discussions] by considering three factors:

1. Relevance to our business and brand: How closely the issue relates to our core business and whether engagement aligns with our strategies, values, and vision.
2. Stakeholder expectations: How customers, associates, communities and other stakeholder groups view the particular issue and the degree of stakeholder alignment on the issue.
3. Our ability to be an effective and credible actor: Whether Walmart can make a difference on the issue (alone or alongside others), and the degree to which Walmart taking action on the issue would be helpful and welcome.

Note what is glaringly absent here: any reference to shareholder value. And yet the impact of any business decision, including decisions to engage politically, must first and foremost be driven by the expected impact of that decision on shareholder value. The absence of any reference to shareholder value in the foregoing makes clear that (1) there is a cavernous gap in the Company's approach to engagement, (2) that gap represents a failure to properly satisfy fiduciary duties, and (3) the Proposal addresses that gap in a manner that has not been substantially implemented by the Company.

B. The Proposal is focused on shareholder value while the Company is focused on "shared value"

It is striking that "shareholder value" is referenced in the opening paragraph of the Proposal but not mentioned once in the Company's NAR. To be sure, there are references to "sustainable shareholder and stakeholder value" and "shared value" and similar phrases. But basic "shareholder value" is not mentioned once. Yet, Walmart is a Delaware corporation and thus duty-bound to "promote the value of the corporation for the benefit of its stockholders."²

At one point the Company does say: "We believe we maximize long-term value for shareholders by serving our stakeholders: our customers, associates, suppliers, business partners, communities, and

¹ <https://corporate.walmart.com/purpose/esgreport/governance/engagement-in-public-policy>

² *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 34 (Del. Ch. 2010).

even the planet.” This is great as far as it goes, but nowhere does the Company explain how it resolves zero-sum disputes. Compare what UCLA law professor Stephen Bainbridge, a renowned expert on corporate law, said when was asked, “How do you define shareholder value maximization?”

[S]hareholder value maximization recognizes that most situations are win-win opportunities. Doing what is good for the planet, for example, will often maximize the company’s long-run profit. But when the company is faced with a zero-sum decision, shareholder interests must come first.³

Yet not one of the Company’s proffered activities clearly and unequivocally prioritizes shareholder value.

Because the Proposal clearly focuses on shareholder value while the Company can’t even bring itself to say “shareholder value” without various stakeholder modifiers, the Company’s current initiatives do not substantially implement the Proposal.

III. Substantial Duplication

The Company goes to great lengths attempting to demonstrate the overlap between our Proposal and the proposal submitted by the National Legal and Policy Center (NLPC). But what is striking is that the Company fails to compare the most obviously central terms of the two proposals. While our Proposal covers “the Company’s policy positions, advocacy, partnerships and charitable giving” and the impact of those on “social and political matters” (to the end of assessing the effect of those initiatives and impacts on “the Company’s financial sustainability”) the NLPC proposal covers merely “the Company’s associations with external organizations.”

<u>NCPPR</u>	<u>NLPC</u>
<p>[C]reate a board committee on corporate financial sustainability to oversee and review the impact of the Company’s</p> <ul style="list-style-type: none"> • policy positions, • advocacy, • partnerships and • charitable giving <p>on</p> <ul style="list-style-type: none"> • social and • political matters 	<p>Shareholders request the Directors create a study panel under an appropriate Board committee to scrutinize the risks and consequences of</p> <ul style="list-style-type: none"> • the Company’s associations with external organizations

Seen in this light, it is obvious that the NLPC proposal does not substantially duplicate our Proposal.

³ <https://law.ucla.edu/news/elephants-jungle-stephen-bainbridge-his-new-book-about-corporate-purpose>

IV. Issuing relief to the Company would raise serious constitutional and administrative law concerns.

For the reasons discussed above, our Proposal’s merits under Commission and Staff rules, interpretations, guidance, and precedent require that Staff deny the Company’s request for relief. If the Staff elects to issue relief to the Company despite its clear merits, the Staff’s decision would raise a host of constitutional and administrative law issues.

A. The Company is asking the Staff to take arbitrary and capricious action under the Administrative Procedure Act.

If the Staff grants no-action relief to the Company for our proposal, it must explain how our proposal is distinct from prior sustainability proposals that it has blessed.⁴

Under the Administrative Procedure Act (APA), agency action that is “arbitrary and capricious” may be set aside.⁵ The Supreme Court has succinctly explained that “[t]he APA’s arbitrary and capricious standard requires that agency action be reasonable and reasonably explained.”⁶ Under this precedent, in order for action to be reasonable and reasonably explained, the agency must at least consider the record before it and rationally explain its decision.⁷

Additionally, where an agency seeks to change its position from a prior regime, it must “display awareness that it is changing position,” “show that there are good reasons for the new policy” and provide an even “more detailed justification” when the “new policy rests upon factual findings that contradict those which underlay its prior policy,” and “take[] into account” “reliance interests” on the prior policy.⁸

Given the Staff’s prior precedent on sustainability, issuing relief to the Company would undoubtedly be a change in its position. At a bare minimum, the Staff—or the Commission—would have to explain its reasoning for the reversal in position to comply with the APA.

B. The Company is requesting relief the Staff lacks statutory authority to issue.

Regardless, the Staff lacks statutory authority to grant the Company no-action relief. The Company has notice that we intend to submit our proposal, which is valid under state law, for consideration at the annual meeting. The Staff may not give the company its blessing to exclude an otherwise valid proposal from its proxy statement.

Section 14(a) of the Exchange Act prohibits anyone from “solicit[ing] any proxy” “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.”⁹ While this authority might be read “broadly,” “it is not

⁴ See generally, *Alphabet, Inc.* (avail. April 11, 2022) (upholding proposal seeking to “create a board committee on environmental sustainability to oversee and review policies and provide guidance on matters relating to environmental sustainability”).

⁵ 5 U.S.C. § 706(2)(A).

⁶ *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1158 (2021); see also *Motor Vehicle Mfs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983).

⁷ See *FCC*, 141 S. Ct. at 1160.

⁸ *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

⁹ 15 U.S.C. § 78n(a)(1).

seriously disputed that Congress’s central concern [in enacting § 14(a)] was with disclosure.”¹⁰ The purpose of Section 14(a) was to ensure that investors had “adequate knowledge” about the “financial condition of the corporation . . . [and] the major questions of policy, which are decided at stockholders’ meetings.”¹¹

While Section 14(a) gave the Commission authority to compel investor-useful disclosures, the substantive regulation of stockholder meetings was left to the “firmly established” state-law jurisdiction over corporate governance.¹² Recognizing that state law provides the “confining principle” to Section 14(a)’s otherwise “vague ‘public interest’ standard,” the D.C. Circuit has held that “the Exchange Act cannot be understood to include regulation of” “the substantive allocation” of corporate governance that is “traditionally left to the states.”¹³ Under Section 14(a), then, the SEC may compel the disclosure in a company’s proxy materials of items that will be before shareholders at the annual meeting.

Under state law, a shareholder proposal may be presented for consideration at the corporation’s annual meeting if the proposal is a proper subject for action by the corporation’s stockholders.¹⁴ A proposal is a proper subject for action by stockholders if it is within the scope or reach of the stockholders’ power to adopt.¹⁵

Our proposal is valid under state law. Under Section 14(a), the SEC only has power to compel that the Company disclose our proposal in its proxy materials. The Staff therefore may not then give the Company no-action relief to exclude it.

III. Conclusion

First, Proponent has submitted proper documentation of requisite ownership. Second, Proponent’s Proposal has not been substantially implemented by the Company, nor is it substantially duplicated by any other pending proposal. Finally, issuing relief to the Company would raise serious constitutional and administrative law concerns.

Accordingly, the Company has failed to meet its Rule 14a-8(g) burden to exclude our Proposal. Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company’s request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at [REDACTED] and at [REDACTED].

Sincerely,

¹⁰ Bus. Roundtable v. SEC, 905 F.2d 406, 410 (D.C. Cir. 1990).

¹¹ S. Rep. No. 792 at 12 (1934).

¹² Bus. Roundtable, 905 F.2d at 413 (internal citation omitted).

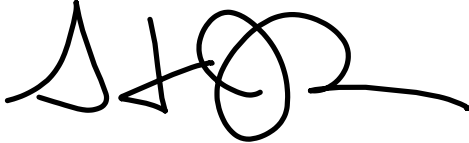
¹³ Id.

¹⁴ See CA, Inc. v. AFSCME Emps. Pension Plan, 953 A.2d 227 (Del. 2008).

¹⁵ Id. at 232.



Scott Shepard
FEP Director
National Center for Public Policy Research



Stefan Padfield
FEP Deputy Director
National Center for Public Policy Research

cc: Elizabeth A. Ising ([REDACTED])