



DIVISION OF  
CORPORATION FINANCE

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

April 10, 2023

Vicki S. Vasser  
Walmart Inc.

Re: Walmart Inc. (the "Company")  
Incoming letter dated January 30, 2023

Dear Vicki S. Vasser:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Organization United for Respect and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests the Company conduct a third-party, independent racial equity audit analyzing the Company's adverse impacts on Black, Indigenous and People of Color communities, and to provide recommendations for improving the Company's racial equity impact.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(12)(i). In our view, the Proposal does not address substantially the same subject matter as the proposal previously included in the Company's 2022 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/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Bianca Agustin  
Organization United for Respect

Vicki S. Vasser  
Lead Counsel

702 SW 8th Street  
Bentonville, AR 72716-0215  
Phone 479.204.8684  
Fax 479.277.5991  
vicki.vasserjenkins@walmartlegal.com

January 30, 2023

VIA E-MAIL

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 Organization United for Respect et al.*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that Walmart Inc. (the “Company”), intends to omit from its proxy statement and form of proxy for its 2023 Annual Shareholders’ Meeting (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Proposal”) and statement in support thereof (the “Supporting Statement”) received from the Organization United for Respect, Daughters of Charity, Province of St. Louise, Providence St. Joseph Health, Portico Benefit Services and Sisters of the Holy Cross (collectively, the “Proponents”).

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 2023 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponents.

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 Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect

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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.

## **THE PROPOSAL**

The Proposal states:

RESOLVED: Shareholders request Walmart Inc. (“Walmart” or the “Company”) conduct a third-party, independent racial equity audit analyzing Walmart’s adverse impacts on Black, Indigenous and People of Color (BIPOC) communities, and to provide recommendations for improving the company’s racial equity impact. Input from employees, customers, and racial justice, labor, and civil rights organizations should be considered in determining specific matters to be analyzed. A report on the audit, prepared at reasonable cost and omitting confidential and proprietary information, should be published on Walmart’s website.

A copy of the Proposal and the Supporting Statement, as well as related correspondence with the Proponents, is attached to this letter as Exhibit A.

## **BASIS FOR EXCLUSION**

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(12)(i) because the Proposal addresses substantially the same subject matter as a previously submitted shareholder proposal that was included in the Company’s 2022 proxy materials, and the previous proposal did not receive the support necessary for resubmission.

## **ANALYSIS**

**The Proposal May Be Excluded Under Rule 14a-8(i)(12)(i) Because It Addresses Substantially The Same Subject Matter As A Previously Submitted Proposal, And The Previous Proposal Did Not Receive The Support Necessary For Resubmission.**

Under Rule 14a-8(i)(12)(i), a shareholder proposal that “addresses substantially the same subject matter as a proposal, or proposals, previously included in the company’s proxy materials within the preceding five calendar years” may be excluded from the proxy materials “if the most recent

vote occurred within the preceding three calendar years and the most recent vote was . . . [I]ess than 5 percent of the votes cast if previously voted on once.”

*A. Overview Of Rule 14a-8(i)(12).*

The Commission has indicated that the condition in Rule 14a-8(i)(12) that the shareholder proposals deal with or address “substantially the same subject matter” does not mean that the previous proposal(s) and the current proposal must be exactly the same. Although the predecessor to Rule 14a-8(i)(12) required a proposal to be “substantially the same proposal” as prior proposals, the Commission amended this rule in 1983 to permit exclusion of a proposal that “deals with substantially the same subject matter.” The Commission explained that this revision to the standard applied under the rule responded to commenters who viewed it as:

[A]n appropriate response to counter the abuse of the security holder proposal process by certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the fact that other shareholders have indicated by their votes that they are not interested in that issue.

Exchange Act Release No. 20091 (Aug. 16, 1983) (the “1983 Release”). *See also* Exchange Act Release No. 19135 (Oct. 14, 1982), in which the Commission stated that Rule 14a-8 “was not designed to burden the proxy solicitation process by requiring the inclusion of such proposals.” In the release adopting this change, the Commission explained the application of the standard, stating:

The Commission believes that this change is necessary to signal a clean break from the strict interpretive position applied to the existing provision. The Commission is aware that the interpretation of the new provision will continue to involve difficult subjective judgments, but anticipates that those judgments will be based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns.

In Exchange Act Release No. 89964 (Sept. 23, 2020), the Commission amended Rule 14a-8(i)(12) to adjust the resubmission percentage thresholds, and it also altered the provision’s lead-in language to state that a company may exclude from its proxy materials a shareholder proposal that “*addresses* substantially the same subject matter” (emphasis added), rather than one that “*deals with* substantially the same subject matter” (emphasis added). In the release adopting this change, the Commission provided no indication that it intended a different substantive interpretation to apply under Rule 14a-8(i)(12) as a result of updating the language from “deals with” to “addresses.” On the contrary, the Commission stated that it “did not propose changes to the ‘substantially the same subject matter’ test.” *See* Exchange Act Release No. 89964 (Sept. 23, 2020).

The Staff has confirmed numerous times that Rule 14a-8(i)(12) does not require that the shareholder proposals or their requested actions be identical in order for a company to exclude the later submitted proposal. Instead, pursuant to the Commission’s statement in the 1983 Release, when considering whether proposals deal with or address substantially the same subject matter, the Staff has focused on the “substantive concerns.” Consistent with this approach, the Staff has concurred with the exclusion of a proposal under Rule 14a-8(i)(12) when it shares the same substantive concerns even if the proposal differs in scope from a prior proposal. *See, e.g., Apple Inc.* (avail. Nov. 20, 2018) (concurring with the exclusion of a proposal requesting that the company review its policies related to human rights to assess whether it needed to adopt and implement additional policies because it dealt with substantially the same subject matter as one prior proposal requesting that the company establish a board committee on human rights and a second prior proposal requesting that the board amend the company’s bylaws to require a board committee on human rights); *Apple Inc. (Eli Plenk)* (avail. Dec. 15, 2017) (concurring with the exclusion of a proposal requesting that the company prepare a report assessing the feasibility of integrating sustainability metrics, including metrics regarding diversity among senior executives, into performance measures of the CEO because it dealt with substantially the same subject matter as two earlier proposals requesting that the company adopt an accelerated recruitment policy requiring the company to increase the diversity of senior management and its board of directors); *The Coca Cola Co.* (avail. Jan. 18, 2017) (concurring with the exclusion of a proposal requesting a report identifying the number of Israel/Palestine employees who were Arab and non-Arab because it dealt with substantially the same subject matter as a prior proposal requesting that the company implement a set of “Holy Land” equal employment principles); *Exxon Mobil Corp.* (avail. Mar. 7, 2013) (concurring with the exclusion of a proposal requesting that the company review its facilities’ exposure to climate risk and issue a report to shareholders because it dealt with substantially the same subject matter as three prior proposals requesting that the company establish a committee or a task force to address issues relating to global climate change); *Pfizer Inc. (AFSCME Employees Pension Plan et al.)* (avail. Jan. 9, 2013) (concurring with the exclusion of a proposal seeking disclosure of the company’s lobbying policies and expenditures because it dealt with substantially the same subject matter as two prior proposals seeking disclosure of contributions to political campaigns, political parties, and attempts to influence legislation); *Saks Inc.* (avail. Mar. 1, 2004) (concurring with the exclusion of a proposal requesting that the board of directors implement a code of conduct based on International Labor Organization standards, establish an independent monitoring process, and annually report on adherence to such code because it dealt with substantially the same subject matter as one prior proposal that was nearly identical to the proposal at issue and a second prior proposal requesting a report on the company’s vendor labor standards and compliance mechanism).

*B. The Proposal Addresses Substantially The Same Subject Matter As A Proposal That Was Previously Included In The Company’s Proxy Materials Within The Preceding Five Calendar Years.*

The Company has, within the past five years, included in its proxy materials a shareholder proposal requesting that the Company’s Board of Directors (the “Board”) commission and report an audit examining the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The Company included such proposal in its 2022 proxy materials, filed with the Commission on April 21, 2022 (the “Previous Proposal”), which is attached to this letter as Exhibit B. The Proposal addresses substantially the same subject matter as the Previous Proposal, as demonstrated by the language used in each proposal (emphases added):

<i>Proposal</i>	<i>Previous Proposal</i>
<i>Each of the Proposals asks the Board to commission an audit examining the Company’s impacts on civil rights and non-discrimination.</i>	
“[C]onduct a third-party, independent <b>racial equity audit</b> analyzing [the Company’s] adverse <b>impacts on Black, Indigenous and People of Color (BIPOC) communities</b> , and to provide recommendations for improving the company’s racial equity impact.”	“[C]ommission an <b>audit</b> analyzing the Company’s <b>impacts on civil rights and non-discrimination</b> , and the impacts of those issues on the Company’s business.”
<i>Each of the Proposals asks that a third party conduct the audit using input from various external groups.</i>	
“[C]onduct a <b>third-party, independent racial equity audit</b> .... <b>Input from employees, customers, and racial justice, labor, and civil rights organizations</b> should be considered in determining the specific matters to be analyzed.”	“[C]ommission an audit.... The audit may, in the Board’s discretion, be <b>conducted by an independent and unbiased third party</b> with <b>input from civil rights organizations, public-interest litigation groups, employees and other stakeholders</b> – of a wide spectrum of viewpoints and perspectives.”

<i>Proposal</i>	<i>Previous Proposal</i>
<i>Each of the Proposals asks that the Board publish a report on the audit that is publicly available.</i>	
<i>“A report on the audit, prepared at reasonable cost and omitting confidential and proprietary information, <b>should be published on [the Company’s] website.</b>”</i>	<i>“A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, <b>should be publicly disclosed on the Company’s website.</b>”</i>

The minor wording differences between the Proposal and the Previous Proposal (collectively, the “Proposals”) are non-substantive and demonstrate that the Proposals share the same substantive concerns and address substantially the same subject matter. For example, the party to perform the audit as requested by the Proposals is effectively the same. The Proposal calls for the Company to “conduct a third party . . . audit,” while the Previous Proposal’s request that the Board “*commission* an audit” (emphasis added) is a more subtle reference to the use of a third party to conduct the audit (*i.e.*, the Board would not have to “commission” the Company to perform an internal audit). Even if the Previous Proposal’s reference to the Board having discretion to use “an *independent . . . third party*” (emphasis added) (which is included in a sentence about seeking input from third parties) is viewed as giving the Board discretion in the selection of a third party, the Proposal’s requirement of a “third-party” (whether or not independent) is clearly subsumed within the process contemplated by the Previous Proposal. Moreover, the concept of an “audit” presupposes the use of a third party, as the plain understanding of an audit is the use of independent oversight. Further, it is well understood that the use of a third party to conduct the audit is inherent in the concept of a racial equity or civil rights audit. For example, a Q&A posted by the CtW Investment Group and SEIU (the “Racial Equity Audit Q&A”) states, “[a] racial equity audit is an *independent analysis* of a company’s business practices . . . .” (emphasis added).<sup>1</sup>

In addition, the subject matter of the audits under the Proposals are duplicative. Despite the fact that the Proposal calls for a “racial equity audit,” while the Previous Proposal calls for an “audit analyzing the Company’s impacts on civil rights and non-discrimination”, the subject matter is substantially the same. Both racial equity and civil rights address the fair treatment of all races in order to produce equitable opportunities and outcomes for all. The Leadership Conference on

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<sup>1</sup> *Racial Equity Audit Proposal: Q&A*, (in response to the question, “What is a racial equity audit?”), available at [https://www.socinvestmentgroup.com/s/Racial-Equity-Audit-QA\\_CtW\\_SEIU-002.pdf](https://www.socinvestmentgroup.com/s/Racial-Equity-Audit-QA_CtW_SEIU-002.pdf). The Q&A further addresses this point in response to the question, “Why bring in a third party if others (board, management, outside stakeholders) have done their job properly?”

Civil and Human Rights, states, “[a] civil rights audit is an independent, systematic examination of *significant civil rights and racial equity issues*” (emphasis added)<sup>2</sup> and further explains that “stakeholders use[] the terms ‘racial equity audit,’ ‘civil rights audit’ and ‘civil rights assessment’ interchangeably.”<sup>3</sup> Thus, whether explicitly referenced or not, it is well understood that an audit analyzing the Company’s impacts on civil rights and non-discrimination, as called for by the Previous Proposal, would include an analysis of racial equity.

Furthermore, the Proposals both contemplate a review of internal and external impacts of the Company’s business and operations. The Previous Proposal specifically states that the audit should analyze “the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business.” The Proposal’s Supporting Statement demonstrates that the racial equity audit the Proposal requests likewise should encompass the Company’s employment practices, as well as be used to “help mitigate reputational, regulatory, legal, and human capital risk.” Thus, it is clear that both Proposals focus on concerns over the impact of the Company’s practices on its business and operations.

Despite the overwhelming similarity in the subject matter of the Previous Proposal and the Proposal, the supporting statements to the Proposals suggest that the respective proponents hold differing perspectives on how racial equity and civil rights concerns may be implicated by the Company’s business and operations. However, these differing views do not change the conclusion that both Proposals share the same substantive concern and address substantially the same subject matter. Notwithstanding the differences in the supporting statements and the proponents’ perspectives, the actions the Company would take to complete either requested audit would be the same. In this regard, directors in the exercise of their fiduciary duties must examine the benefits and risks of various actions and understand and weigh alternatives.

The Staff has previously concurred that proposals can share the same substantive concern and address substantially the same subject matter within the meaning of Rule 14a-8(i)(12), notwithstanding differing perspectives of the proponents in the supporting statements. For example, in *Pfizer Inc.* (avail. Jan. 19, 2016), the Staff concurred with the exclusion under Rule 14a-8(i)(12) of a proposal requesting the company review its membership in and support of organizations that engaged in lobbying activities as dealing with substantially the same subject matter as two prior proposals the company included in its proxy materials within the previous five years. The two previous proposals also requested that the company review its membership in and support of organizations that engaged in lobbying activities. Whereas the supporting statements

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<sup>2</sup> See The Leadership Conference on Civil and Human Rights, *The Rationale for and Key Elements of a Business Civil Rights Audit*, at 5 (in response to the question, “What is a Civil Rights Audit?”) (2021), available at <http://www.civilrightsdocs.info/pdf/reports/Civil-Rights-Audit-Report-2021.pdf>.

<sup>3</sup> *Supra*, note 2, at 11.



of the two previous proposals were concerned with and driven by the company's support of an organization "associated with contentious anti-immigration, voter identification and 'Stand Your Ground' legislation" as well as initiatives that "opposed climate change policies and campaigns to end state renewable energy standards," the supporting statement of the subsequent, excluded proposal noted that the company's support of the same organization aligned with the company's "commitment to integrity" and that the organization promoted "policies and ideals that advance free-market values that benefit the [c]ompany and its shareholders." Similarly, in *Johnson & Johnson* (avail. Feb. 5, 2016), the Staff concurred with the exclusion under Rule 14a-8(i)(12) of a proposal requesting a congruency analysis between the company's corporate values and its lobbying and political activities as dealing with substantially the same subject matter as two prior proposals the company had included in its proxy materials within the previous five years. The two previous proposals also requested that the company analyze its corporate political contributions against the company's stated corporate values. Whereas the supporting statements of the two previous proposals were concerned with the company's support of organizations that did not align with the company's stated actions to address its greenhouse gas emissions, equal employment opportunity policy and nondiscrimination policy, the supporting statement of the subsequent, excluded proposal noted that the company's support of Planned Parenthood and organizations promoting the Affordable Care Act were antithetical to the company's belief in policies promoting "[f]ree-market economic principles."

We acknowledge that the Staff was recently unable to concur with the exclusion of a proposal requesting a company "oversee a third-party audit . . . which assesses and produces recommendations for improving the racial impacts of its policies, practices and products" under Rule 14a-8(i)(11) as substantially duplicative of a proposal submitted to the company requesting that the board "commission a racial equity audit analyzing the Company's impacts on civil rights, equity, diversity and inclusion and impacts of those issues on the [c]ompany's business." See *Johnson & Johnson* (avail. Feb. 11, 2022) ("*Johnson & Johnson 2022*"). However, as demonstrated by well-established precedent since the 1983 Release and as acknowledged by the Commission in its July 2022 release proposing amendments to Rule 14a-8, the standard under Rule 14a-8(i)(11) is separate and distinct from the standard applicable under Rule 14a-8(i)(12). While Rule 14a-8(i)(12) provides that a proposal which addresses "*substantially the same subject matter* as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years" (emphasis added) may be excluded from a company's proxy materials, Rule 14a-8(i)(11) provides a separate standard 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." (emphasis added).

Following the Staff's decision in *Johnson & Johnson 2022*, the Commission issued the 2022 Proposing Release, which proposed, among other changes to Rule 14a-8, amendments to Rule

14a-8(i)(11) and Rule 14a-8(i)(12) that would both align the analysis under each rule and align the current distinct standards used to analyze proposals under Rule 14a-8(i)(11) and Rule 14a-8(i)(12) (the “Proposed Amendments”). In doing so, the Commission necessarily acknowledges that the current standards are distinct and therefore are subject to discrete analysis under the applicable standard. Applying the realigned standard for Rule 14a-8(i)(12) proposed by the Commission under the Proposed Amendments to the Proposal is inappropriate under the Administrative Procedure Act because those changes are not yet effective. Accordingly, because the Proposed Amendments are not yet effective, the Staff must apply the current standard of Rule 14a-8(i)(12) here when analyzing the Proposal.<sup>4</sup>

Under Rule 14a-8(i)(12), the proposals at issue need not be identical in terms and scope in order to merit relief. Although the specific language in the resolved clauses of the Proposal and the Previous Proposal may differ, the Proposals call for the same action—that the Board commission and report an audit examining the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. As such, the Proposal is excludable under Rule 14a-8(i)(12)(i) because it addresses substantially the same subject matter as the Previous Proposal, and, as documented below, the Previous Proposal did not receive the shareholder support necessary to permit resubmission.

*C. The Shareholder Proposal Included In The Company’s 2022 Proxy Materials Did Not Receive The Shareholder Support Necessary To Permit Resubmission.*

In addition to requiring that the proposals address the same substantive concerns, Rule 14a-8(i)(12) sets thresholds with respect to the percentage of shareholder votes cast in favor of the last proposal submitted and included in the Company’s proxy materials. As evidenced in the Company’s Form 8-K filed on June 3, 2022, which states the voting results for the Company’s 2022 Annual Shareholders’ Meeting and is attached to this letter as Exhibit C, the Previous Proposal received 0.56% of the votes cast at the 2022 Annual Shareholders’ Meeting.<sup>5</sup> Thus, the vote on the Previous

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<sup>4</sup> We note that Proposed Amendments to Rule 14a-8(i)(12) provide that a proposal constitutes a resubmission if it “substantially duplicates” another proposal that was previously submitted for the same company’s prior stockholder meetings and “that a proposal ‘substantially duplicates’ another proposal if it ‘addresses the same subject matter and seeks the same objective by the same means.’” We believe that the Proposal satisfies this standard as well for the reasons noted above, specifically that each of the Proposal and Previous Proposal seeks that the Board commission and report an audit examining the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business.

<sup>5</sup> The 2022 Proposal received 2,221,006,254 “against” votes and 12,566,817 “for” votes. Abstentions and broker non-votes were not included for purposes of this calculation. The total shareholder votes cast is calculated using a fraction for which the numerator is “for” votes and the denominator is “for + against” votes. See Staff Legal Bulletin No. 14, part F.4 (July 13, 2001).

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Proposal failed to achieve the 5% threshold specified in Rule 14a-8(i)(12)(i) at the Company's 2022 Annual Shareholders' Meeting.

For the foregoing reasons, the Company may exclude the Proposal from its 2023 Proxy Materials under Rule 14a-8(i)(12)(i).

### CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal from its 2023 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 [Vicki.Vasserjenkins@walmartlegal.com](mailto:Vicki.Vasserjenkins@walmartlegal.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (479) 204-9965, or Elizabeth A. Ising of Gibson, Dunn & Crutcher LLP at (202) 955-8287.

Sincerely,



Vicki S. Vasser  
Lead Counsel  
Walmart Inc.

Enclosures

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP  
Bianca Agustin, Organization United for Respect  
Caroline Boden, Mercy Service Investments  
Judy Byron, Providence St. Joseph Health  
Erin Ripperger, Portico Benefit Services  
Rob Fohr, The Presbyterian Church USA  
Sister Florence Deacon, Sisters of the Holy Cross

**EXHIBIT A**

**From:** Bianca Agustin [REDACTED]  
**Sent:** Friday, December 16, 2022 2:45 PM  
**To:** Rachel Brand [REDACTED]  
**Subject:** EXT: Shareholder proposal for 2023 Annual Shareholder Meeting

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

Ms. Brand:

Today Organization United for Respect [“OUR”] sent by certified mail the attached proposal (the “Proposal”) to your attention pursuant to the Securities and Exchange Commission’s Rule 14a-8 to be included in the proxy statement of Wal-Mart Stores, Inc. (“Walmart” or the “Company”) for its 2023 annual meeting of shareholders.

As of December 16, 2022, OUR had continuously held shares of the Company’s common stock with a value of at least \$2,000 for at least three years, which confers eligibility to submit a proposal under Rule 14a-8(b)(3).

The record holder of the stock will provide the appropriate verification of OUR’s beneficial ownership by separate letter.

Thank you,

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Bianca Agustin  
Corporate Accountability Director  
United for Respect  
[www.united4respect.org](http://www.united4respect.org)

December 16, 2022

**Via email and Certified Mail:** [REDACTED]

Rachel Brand  
Executive Vice President of Global Governance, Chief Legal Officer and Corporate Secretary  
Walmart Inc.

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Ms. Brand:

I am the Corporate Accountability Director of Organization United for Respect ("OUR"), and on on behalf of OUR, am submitting the enclosed proposal (the "Proposal") pursuant to Rule 14(a)-8 (Proposals of Security Holders) of the U.S. Securities and Exchange Commission's proxy regulations to be included in the proxy statement of Wal-Mart Stores, Inc. ("Walmart" or the "Company") for its 2023 annual meeting of shareholders. OUR is the lead filer of the Proposal and may be joined by other shareholders as co-filers.

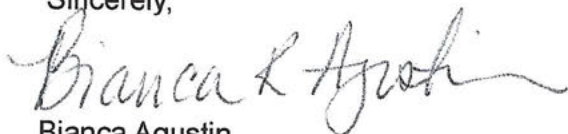
As of December 16, 2022, OUR has continuously held shares of the Company's common stock with a value of at least \$2,000 for at least three years (the "Shares"), which confers eligibility to submit a proposal under Rule 14a-8(b)(3)." OUR intends to continue to hold the Shares through the date of the Company's 2023 annual meeting of shareholders.

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

I am available to meet with the Company in person or via teleconference on a time to be determined before January 20, 2023. Any co-filers have authorized OUR to conduct the initial engagement meeting but may participate subject to their availability.

If you have any questions or wish to discuss the proposal, I can be reached at [REDACTED] or by email at [REDACTED]. Copies of correspondence or a request for no-action relief should be forwarded to Bianca Agustin c/o Leonard Carder, Attn: Eleanor Morton; [REDACTED]

Sincerely,



Bianca Agustin  
Corporate Accountability Director  
Organization United for Respect

Cc: Amalgamated Bank  
Enclosure: Shareholder Resolution

## Racial Equity Audit

**RESOLVED:** Shareholders request Walmart Inc. (“Walmart” or the “Company”) conduct a third-party, independent racial equity audit analyzing Walmart’s adverse impacts on Black, Indigenous and People of Color (BIPOC) communities, and to provide recommendations for improving the company’s racial equity impact. Input from employees, customers, and racial justice, labor, and civil rights organizations should be considered in determining specific matters to be analyzed. A report on the audit, prepared at reasonable cost and omitting confidential and proprietary information, should be published on Walmart’s website.

### SUPPORTING STATEMENT:

The harmful impacts of systemic racism on BIPOC communities are a major focus of policymakers, media, and the public. While Walmart has made charitable contributions<sup>1</sup> and statements of solidarity with communities of color, it must do more to address significant adverse impacts of its policies and practices on those communities.

Several aspects of Walmart’s business suggest a racial equity audit would help mitigate reputational, regulatory, legal, and human capital risk. In recent years, Walmart has faced negative media coverage related to claims of discrimination including racial profiling<sup>2</sup> and discriminatory hiring, recruitment<sup>3</sup> and promotion practices.<sup>4</sup> Walmart is also subject to criticism for poor working conditions<sup>5</sup> and paying low wages<sup>6</sup>. The Company does not disclose median or adjusted racial pay gaps.

By Walmart’s own disclosures, it is clear more can be done to address racial inequality in its workforce. The Company reports that people of color comprise 49% of its U.S. workforce but make up only 27% of its U.S. Officers and 18% of its Board of Directors.<sup>7</sup> As the largest private employer in the United States, it is imperative that Walmart ensure its policies and practices do not have adverse impacts on its BIPOC employees.

Political spending and lobbying may have adverse racial impacts. Between 2021 and 2022, the National Retail Federation (NRF), the industry trade association to which Walmart belongs, spent over \$14 million on lobbying<sup>8</sup>, and Walmart spent \$11.4 million over the same period.<sup>9</sup> NRF’s policy priorities include weakening the SEC’s CEO pay

<sup>1</sup> <https://corporate.walmart.com/esgreport/esg-issues/diversity-equality-inclusion>

<sup>2</sup> <https://www.npr.org/2022/08/25/1119385178/walmart-oregon-settlement-racial-profiling>

<sup>3</sup> <https://www.npr.org/local/309/2019/04/22/716144085/complaints-allege-racist-hiring-practices-at-walmart-warehouse>

<sup>4</sup> <https://www.forbes.com/sites/edwardsegal/2022/02/11/walmart-is-sued-for-gender-and-race-discrimination-by-eeoc/>

<sup>5</sup> <https://www.msn.com/en-us/money/companies/employees-expose-dangerous-walmart-working-conditions/ar-AAZS4X8>

<sup>6</sup> <https://www.theguardian.com/business/2021/oct/28/walmart-pay-hourly-low-wages-working-conditions>

<sup>7</sup> <https://corporate.walmart.com/esgreport/esg-issues/diversity-equality-inclusion>

<sup>8</sup> <https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2021&id=D000000741> and

<https://www.opensecrets.org/federal-lobbying/clients/summary?cycle=2022&id=D000000741>

<sup>9</sup> <https://www.opensecrets.org/Lobby/clientsum.php?id=D000000367&year=2021> and

<https://www.opensecrets.org/Lobby/clientsum.php?id=D000000367&year=2022>

ratio disclosure requirement<sup>10</sup> and repeal of the employer mandate requiring large companies to provide health coverage to full-time workers,<sup>11</sup> which may disproportionately affect BIPOC workers and stakeholders.

Given the demographics of Walmart's hourly workforce, shareholders want to ensure Walmart is not contributing to or exacerbating broader racial inequities. Failure to effectively address racial inequities in its operations exposes stakeholders, including employees, to unacceptable abuses and exposes Walmart to risks that may ultimately affect shareholder long-term value.

A racial equity audit would help Walmart identify, prioritize, remedy and avoid adverse impacts on nonwhite stakeholders and communities of color. We urge Walmart to assess its behavior through a racial equity lens in order to obtain a complete picture of how it contributes to, and could help dismantle, social and economic inequality.

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<sup>10</sup> <https://nrf.com/sec-pay-ratio>

<sup>11</sup> <https://nrf.com/hill/policy-issues/health-care-reform>



**EXHIBIT B**

## PROPOSAL NO. 8

# Civil Rights and Non-Discrimination Audit

The National Center for Public Policy Research has advised us that it or an appointed representative will present the following proposal for consideration during the 2022 Annual Shareholders' Meeting.

**Resolved:** Shareholders of Walmart Inc. ("the Company") request that the Board of Directors commission an audit analyzing the Company's impacts on civil rights and non-discrimination, and the impacts of those issues on the Company's business. The audit may, in the Board's discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees and other stakeholders – of a wide spectrum of viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company's website.

**Supporting Statement:** Tremendous public attention has focused recently on workplace and employment practices. All agree that employee success should be fostered and that no employees should face discrimination, but there is much disagreement about what non-discrimination means.

Concern stretches across the ideological spectrum. Some have pressured companies to adopt "anti-racism" programs that seek to establish "racial/social equity," which appears to mean the distribution of pay and authority on the basis of race, sex, orientation and ethnic categories rather than by merit.<sup>1</sup> Where adopted, however, such programs raise significant objection, including concern that, e.g., anti-racist programs are themselves deeply racist and otherwise discriminatory.<sup>2</sup>

Many companies have been found to be sponsoring and promoting overtly and implicitly discriminatory employee-training and other employment and advancement programs, including Bank of America, American Express, Verizon, Pfizer, CVS and Walmart itself.<sup>3</sup>

This disagreement and controversy create massive reputational, legal and financial risk. If the Company is, in the name of equity, diversity and inclusion, committing illegal or unconscionable discrimination against employees deemed "non-diverse," then the Company will suffer in myriad ways – all of them both unforgivable and avoidable.

In developing the audit and report, the Company should consult civil-rights and public-interest law groups – but it must not compound error with bias by relying only on left-leaning organizations. Rather, it must consult groups across the spectrum of viewpoints. This includes right-leaning civil-rights groups representing people of color, such as the Woodson Center<sup>4</sup> and Project 21,<sup>5</sup> and groups that defend the rights and liberties of *all* Americans, not merely the ones that many companies label "diverse." All Americans have civil rights; to behave otherwise is to invite disaster.

Similarly, when including employees in its audit, the Company must allow employees to speak freely without fear of reprisal or disfavor, and in confidential ways. Too many employers have established company stances that themselves chill contributions from employees who disagree with the company's asserted positions, and then have pretended that the employees who have been empowered by the companies' partisan positioning represent the true and only voice of all employees. This by itself creates a deeply hostile workplace for some groups of employees, and is both immoral and likely illegal.

<sup>1</sup> <https://www.sec.gov/Archives/edgar/data/1048911/000120677421002182/fox3894361-def14a.htm#StockholderProposals88>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/asyousownike051421-14a8-incoming.pdf>; <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2021/nyscrfamazon012521-14a8-incoming.pdf>; [https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785\\_58](https://www.sec.gov/Archives/edgar/data/1666700/000119312521079533/d108785ddef14a.htm#rom108785_58)

<sup>2</sup> <https://www.americanexperiment.org/survey-says-americans-oppose-critical-race-theory/>; <https://www.newsweek.com/majority-americans-hold-negative-view-critical-race-theory-amid-controversy-1601337>; <https://www.newsweek.com/coca-cola-facing-backlash-says-less-white-learning-plan-was-about-workplace-inclusion-1570875>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.city-journal.org/verizon-critical-race-theory-training>

<sup>3</sup> <https://www.city-journal.org/bank-of-america-racial-reeducation-program>; <https://www.city-journal.org/verizon-critical-race-theory-training>; <https://nypost.com/2021/08/11/american-express-tells-its-workers-capitalism-is-racist/>; <https://www.foxbusiness.com/politics/cvs-inclusion-training-critical-race-theory>; <https://www.msn.com/en-us/money/other/pfizer-sets-race-based-hiring-goals-in-the-name-of-fighting-systemic-racism-gender-equity-challenges/ar-AAOISwJ>; <https://www.levistrauss.com/sustainability-report/community/diversity-equity-inclusion/>; <https://www.levistrauss.com/sustainability-report/community/employee-support-and-development/>; <https://www.levistrauss.com/work-with-us/life-at-lsco/diversity-inclusion/>; <https://www.city-journal.org/walmart-critical-race-theory-training-program>

<sup>4</sup> <https://woodsoncenter.org/>

<sup>5</sup> <https://nationalcenter.org/project-21/>

## Walmart's Statement in Opposition to Proposal No. 8

At Walmart, living our value of Respect for the Individual starts with valuing diversity and inclusion, and we are focused on creating an inclusive culture and diverse associate base where all associates believe they belong and are empowered to be themselves. We believe having a workforce of associates from diverse backgrounds makes us better and promotes creativity, innovation, and achievement.

The Board believes the adoption of this proposal is unnecessary because Walmart has already reviewed its business and identified primary areas where we can make a difference; because Walmart is considering a broad range of stakeholder inputs as it pursues its equity objectives; because Walmart policies strictly forbid discrimination based on an individual's race, ethnicity, or other protected categories; and in light of Board committee oversight of the company's equity and inclusion strategies.

### We have examined our business and identified equity focus areas

For Walmart, equity is when people of every gender, race, ability, and orientation have what they need to thrive, and diverse identity is no longer a determining factor in shaping an individual's life outcomes. Walmart has extensively examined its business practices through an equity lens and identified four primary arenas in which it can make a positive impact from an equity perspective. In mid-2020, we established four shared-value networks ("SVNs") in these arenas. Each SVN is charged with studying national systems and pursuing business strategies that draw on Walmart's capabilities to contribute to positive and lasting change:

- Our Criminal Justice SVN is focused on matters such as, for example, evaluating programs and partnerships to provide retail and community-based implicit bias training; assessing alternative justice programs that help retailers minimize or eliminate negative individual interactions with law enforcement; creating pathways to employment for re-entrants and evolving hiring practices so non-violent, formerly incarcerated persons are appropriately considered, onboarded, and integrated.
- Our Education SVN is focused on equitable advancement with training and reskilling, including leveraging Walmart Academy to deliver high-quality, low-cost training in the communities where we operate while advocating for laws that provide access to educational programming and job training.
- Our Financial SVN is focused on empowering associates to strengthen their financial capabilities, reduce stress and make choices that lead to a healthier financial future, with embedded and intentional efforts to advance racial equity.
- Our Healthcare SVN is focused on exploring ways to improve food insecurity and nutrition education, infant and maternal health, and exploring ways to enable access to quality care and drive innovation that delivers improvements in the fight against diabetes, hypertension, and high cholesterol.

SVNs make recommendations to the SVN steering committee, led by our President and CEO, who assigns responsibility for implementing promising initiatives to relevant business units and oversees progress.

In addition, Walmart and Walmart Foundation committed up to \$100 million over five years to create the Center for Racial Equity (the "Center"), which seeks to complement and extend the societal impact of our business initiatives in the same four focus areas as our SVNs. The Center supports efforts such as research, advocacy, innovation of practices and tools, stakeholder convenings, and nonprofit capacity building.

### Walmart considers a broad range of stakeholder inputs

Walmart has been deliberate in considering a wide range of viewpoints in designing and executing programs focused on inclusion. Our global Culture, Diversity, Equity, and Inclusion ("CDEI") vision is "Everyone Included." As we strive for equity and inclusion within our people processes, we have sought out and incorporated feedback from a broad group of stakeholders. In 2018, we undertook an effort to assess the health of Walmart's talent lifecycle through a diversity and inclusion lens. We assessed our human resources and talent processes and diversity data, interviewed a broad group of associates to gather their perspectives and feedback, held focus group and listening sessions with associate resource groups, and held a workshop with senior leaders, including members of the President's Inclusion Council. This assessment has led to adjustments in our hiring, promotion, training, and development processes and has helped shape our Inclusive Leadership Expectations.

Additionally, the President's Inclusion Council advises our President and CEO and the broader organization on potential ways we can sharpen our culture and become more inclusive. The council features a representative from each business segment and corporate function, including people of different races, ethnicities, and genders.

## We pursue equity in conformity with our global anti-discrimination policies

Walmart is committed to a workplace that is free of discrimination, and our equity strategies are consistent with that commitment. Our Code of Conduct and our Global Discrimination and Harassment Prevention Policy prohibit any discriminatory action based on an individual's protected status in all aspects of our business, including termination, refusing to hire, denying training, failing to promote, discriminating in pay, or other terms, conditions, or privileges of employment. These policies protect associates of all races, genders, and ethnicities regardless of whether the individual is a member of a minority, plurality, or majority. Associates have access to a variety of resources to confidentially report concerns or grievances, and Walmart strictly forbids retaliation against any associate who reports a concern in good faith. We train our associates to be able to recognize and speak up about retaliation and other issues.

## Board committee oversight of our CDEI strategies

The CMDC, according to its charter, has responsibility for reviewing and advising management regarding our company's CDEI strategies, programs, and initiatives. Management provides regular CDEI updates to senior leadership, including our President and CEO, and the CMDC.

## Summary

Walmart is focused on supporting a workplace culture where every associate is included, regardless of gender, race, ethnicity, or other protected status. Our current CDEI strategies and initiatives are based on a deliberate examination of our business priorities and equity issues in society, accounting for the perspectives of a diverse group of associates against the backdrop of our global anti-discrimination policies, and they are subject to Board committee oversight. Therefore, the Board believes the audit and report requested by the proposal is largely duplicative of the work already undertaken by the company and would otherwise distract management from the implementation and execution of our many business and CDEI strategies and initiatives.

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**AGAINST**

For the above reasons, the Board recommends that the shareholders vote **AGAINST** this proposal, if properly presented at the meeting.

**EXHIBIT C**

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 or 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (date of earliest event reported)  
June 3, 2022 (June 1, 2022)

**Walmart Inc.**

(Exact name of registrant as specified in its charter)

DE  
(State or other jurisdiction of incorporation or  
organization)

001-06991  
(Commission File Number)

71-0415188  
(I.R.S. Employer Identification No.)

702 S.W. 8th Street  
Bentonville, AR 72716-0215  
(Address of Principal Executive Offices) (Zip code)

Registrant's telephone number, including area code  
(479) 273-4000

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.10 per share	WMT	NYSE
2.550% Notes Due 2026	WMT26	NYSE

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

**Item 5.07. Submission of Matters to a Vote of Security Holders**

On June 1, 2022, Walmart Inc. (the "Company") held its Annual Shareholders' Meeting (the "Meeting"). As of the close of business on April 8, 2022, the record date for the Meeting, there were 2,752,781,875 shares of the Company's common stock outstanding, with each share entitled to one vote. The holders of 2,449,959,751 shares of the Company's common stock were present in person or represented by proxy during the Meeting. During the Meeting, the Company's shareholders voted on the matters set forth below.

**Election of Directors**

The Company's shareholders elected for one-year terms all eleven persons nominated for election as directors as set forth in the Company's proxy statement dated April 21, 2022. The following table sets forth the vote of the shareholders at the meeting with respect to the election of directors:

Nominee	For	Against	Abstain	Broker Non-Votes
Cesar Conde	2,231,719,011	8,220,318	2,354,447	207,665,975
Timothy P. Flynn	2,221,925,931	17,872,973	2,494,872	207,665,975
Sarah J. Friar	2,153,154,606	86,736,533	2,402,637	207,665,975
Carla A. Harris	2,181,377,132	58,689,161	2,227,483	207,665,975
Thomas W. Horton	2,179,242,348	60,665,177	2,386,251	207,665,975
Marissa A. Mayer	2,205,938,793	34,157,596	2,197,387	207,665,975
C. Douglas McMillon	2,216,568,647	23,426,868	2,298,261	207,665,975
Gregory B. Penner	2,165,578,381	74,337,184	2,378,211	207,665,975
Randall L. Stephenson	2,190,319,172	49,558,867	2,415,737	207,665,975
S. Robson Walton	2,205,639,837	34,539,080	2,114,859	207,665,975
Steuart L. Walton	2,207,924,874	32,192,450	2,176,452	207,665,975

### Company Proposals

*Advisory Vote on Executive Compensation.* The Company's shareholders voted upon and approved, by nonbinding, advisory vote, the compensation of the Company's named executive officers, as described in the Company's proxy statement dated April 21, 2022. The votes on this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
2,040,550,348	196,914,972	4,828,456	207,665,975

*Ratification of Independent Accountants.* The Company's shareholders voted upon and approved the ratification of the appointment of Ernst & Young LLP to serve as the Company's independent registered accountants for the fiscal year ending January 31, 2023. The votes on this proposal were as follows:

For	Against	Abstain
2,405,439,776	42,016,928	2,503,047

There were no broker non-votes with respect to this proposal.

### Shareholder Proposals

The Company's shareholders voted upon and rejected a shareholder proposal requesting a report on animal welfare practices. The votes on this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
367,472,465	1,865,936,590	8,884,721	207,665,975

Next, the Company's shareholders voted upon and rejected a shareholder proposal requesting to create a pandemic workforce advisory council. The votes on this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
281,035,925	1,919,243,110	42,014,741	207,665,975

Then, the Company's shareholders voted upon and rejected a shareholder proposal requesting a report on the impacts to the Company of reproductive healthcare legislation. The votes on this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
286,649,229	1,931,160,185	24,484,362	207,665,975

The Company's shareholders then voted upon and rejected a shareholder proposal requesting a report on whether and how the Company's racial justice goals align with the starting pay for all classifications of Company associates. The votes on this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
295,823,596	1,905,285,172	41,185,008	207,665,975

Next, the Company's shareholders voted upon and rejected a shareholder proposal requesting to conduct a civil rights and non-discrimination audit. The votes on this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
12,566,817	2,221,006,254	8,720,705	207,665,975

The Company's shareholders then voted upon and rejected a shareholder proposal requesting a report on charitable donation disclosures. The votes on this proposal were as follows:

For	Against	Abstain	Broker Non-Votes
21,982,806	2,212,440,709	7,870,261	207,665,975

Finally, the Company's shareholders voted upon and rejected a shareholder proposal requesting a report on lobbying disclosures. The votes on

this proposal were as follows:

<b>For</b>	<b>Against</b>	<b>Abstain</b>	<b>Broker Non-Votes</b>
322,914,850	1,914,044,836	5,334,090	207,665,975



**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: June 3, 2022

WALMART INC.

By: /s/ Gordon Y. Allison  
Name: Gordon Y. Allison  
Title: Senior Vice President, Office of the Corporate  
Secretary, and Chief Counsel for Finance and  
Governance

March 17, 2023

Via e-mail at [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)  
Securities and Exchange Commission  
Office of the Chief Counsel  
Division of Corporation Finance  
100 F Street, NE  
Washington, DC 20549

Re: Request by Walmart Inc. to omit proposal submitted by Organization United for Respect and co-filers

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Organization United for Respect and several co-filers (the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Walmart Inc. (“Walmart” or the “Company”). The Proposal asks Walmart to commission a third-party, independent racial equity audit, with input from employees, customers, and racial justice, labor and civil rights organizations, analyzing Walmart’s impacts on Black, Indigenous and People of Color (“BIPOC”) communities and providing recommendations for improving the Company’s racial equity impact. A report on the audit should be made available on Walmart’s website.

In a letter to the Division dated January 30, 2023 (the “No-Action Request”), Walmart stated that it intends to omit the Proposal from its proxy materials to be distributed to shareholders in connection with the Company’s 2023 annual meeting of shareholders (“AGM”). Walmart argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(i)(12)(i), on the ground that the Proposal addresses substantially the same subject matter as a proposal that was voted on last year and failed to achieve 5% or more shareholder support. As discussed more fully below, Walmart has not met its burden of proving its entitlement to exclude the Proposal on that basis, and the Proponents respectfully request that the Company’s request for relief be denied.

### **The Proposal**

The Proposal states:

RESOLVED: Shareholders request Walmart Inc. (“Walmart” or the “Company”) conduct a third-party, independent racial equity audit analyzing Walmart’s adverse impacts on Black, Indigenous and People of Color (BIPOC) communities, and to provide recommendations for improving the company’s racial equity impact. Input from employees, customers, and racial justice, labor and civil rights organizations should be considered in determining specific matters to be analyzed. A report on the audit, prepared at reasonable cost and omitting confidential and proprietary information, should be published on Walmart’s website.

## **Resubmission Threshold**

Walmart claims that the Proposal can be omitted pursuant to Rule 14a-8(i)(12)(i) (the “Resubmission Exclusion”) because it deals with substantially the same subject matter as a proposal that was voted on once in the past three calendar years, at Walmart’s 2022 AGM, and did not receive support from 5% or more of shares voted. The proposal voted on at the 2022 AGM (the “2022 Proposal”) was submitted by the National Center for Public Policy Research (“NCPPR”) and provided:

Resolved: Shareholders of Walmart Inc. (“the Company”) request that the Board of Directors commission an audit analyzing the Company’s impacts on civil rights and non-discrimination, and the impacts of those issues on the Company’s business. The audit may, in the Board’s discretion, be conducted by an independent and unbiased third party with input from civil rights organizations, public-interest litigation groups, employees and other stakeholders—of a wide spectrum of viewpoints and perspectives. A report on the audit, prepared at reasonable cost and omitting confidential or proprietary information, should be publicly disclosed on the Company’s website.

Identifying when a proposal involves substantially the same subject matter as a previous one involves significant subjectivity. Neither Rule 14a-8 nor any Commission release defines the terms “substantially the same” or “subject matter.”

It seems intuitively obvious that the terms should not be defined so broadly that a poor showing on a proposal asking for a cap on senior executive compensation, for example, would preclude submission the following year of a proposal requesting that stock options vest only on the achievement of performance targets. One could argue that both proposals deal with the subject matter of senior executive compensation, but most participants in the shareholder proposal process would find that framing overbroad, given the complexity of the subject and the fact that both shareholders and companies view the absolute amount of compensation as separate from how compensation is set. If the second proposal instead suggested a reform to moderate the amount of compensation, such as a maximum ratio of executive to median worker pay, would they deal with the common subject matter of “excessive executive pay”? What if the second proposal asked the company to adopt a policy that there should be no maximum compensation amount for executives—in other words, repudiating the notion of a cap? Both proposals would seek policies affecting the amount of compensation, but their perspectives would be diametrically opposed.

As these examples show, there is no clear “right” answer. However, the history of the Resubmission Exclusion as well as the views of participants in the shareholder proposal process can provide some guidance as to the best way to resolve the conflict presented here between promoting shareholder communication and avoiding burdensome and pointless resolutions.

Commission statements make clear that the Resubmission Exclusion was adopted to avoid repeated consideration of proposals addressing an issue in which shareholders lack interest. A Commission release described a 1983 change to the Resubmission Exclusion as “an appropriate response to counter the abuse of the security holder proposal process by certain proponents who make minor changes in proposals each year so that they can keep raising the same issue despite the

fact that other shareholders have indicated by their votes that they are not interested in that issue.”<sup>1</sup> Similar language regarding shareholder interest was used nearly three decades earlier when the Resubmission Exclusion was adopted, with the release stating that the exclusion was intended “to relieve the management of the necessity of including proposals which have been previously submitted to security holders without evoking any substantial security holder interest therein.”<sup>2</sup> In other words, the Resubmission Exclusion seeks to avoid wasting shareholders’ time on topics they don’t care about.

The Commission has also indicated that interpretation of the Resubmission Exclusion should focus on the substantive concerns raised by proposals rather than the actions requested or specific language. The 1983 release adopting the “substantially the same subject matter” formulation stated: “The Commission is aware that the interpretation of the new provision will continue to involve difficult subjective judgements, but anticipates that those judgements will be based upon a consideration of the substantive concerns raised by a proposal rather than the specific language or actions proposed to deal with those concerns. The Commission believes that by focusing on substantive concerns addressed in a series of proposals, an improperly broad interpretation of the new rule will be avoided.”

Voting patterns make it clear that shareholders do not lack interest in the subject of racial equity audits undertaken for the purpose of addressing companies’ contributions to systemic racism. Proxy advisor Institutional Shareholder Services (“ISS”) describes proposals asking for such audits as seeking to “test” the extent to which corporate statements in support of racial justice made in the aftermath of the 2020 George Floyd murder “are reflected in company policy and governance.”<sup>3</sup>

These proposals, which are referred to herein as “Justice-Focused REA Proposals,” share several characteristics: They request an independent or third-party audit; their supporting statements describe ways in which companies’ policies, products or practices are or may be harming nonwhite stakeholders and communities of color; and they advocate for a racial equity audit as a tool for companies to use in reducing such adverse impacts and their contributions to systemic racism.

Justice-Focused REA Proposals that went to a vote last season received support from holders of 45% of shares voted, on average, and eight of them garnered majority support. Proxy advisors ISS and Glass Lewis recommended that their clients vote in favor of the bulk of Justice-Focused REA Proposals.

The resolved clauses of the Proposal—indeed of all Justice-Focused REA Proposals—and the 2022 Proposal are superficially similar, in that they both request audits of racial equity impacts (in the case of Justice-Focused REA Proposals) and civil rights (in the case of the 2022 Proposal). The Proponents do not disagree that both racial equity and civil rights “address the fair treatment of all races in order to produce equitable opportunities and outcomes for all.”<sup>5</sup> But the 2022 Proposal’s resolved clause also asked that the audit assess “non-discrimination,” which the supporting statement suggested referred to discrimination against white people. Thus, the scope of the audits differ.

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<sup>1</sup> Exchange Act Release No. 20091 (August 16, 1983).

<sup>2</sup> Notice of Proposal to Amend Proxy Rules, Exchange Act Release No. 4114 (July 6, 1948)

<sup>3</sup> <https://insights.issgovernance.com/posts/shareholder-resolutions-in-review-civil-rights-audit/>

<sup>4</sup> <https://www.publicchatter.com/2022/08/racial-equity-audit-shareholder-proposals-6-things/>

<sup>5</sup> No-Action Request, at 6.

As well, the supporting statements leave no doubt that the substantive concerns behind the proposals vary dramatically. The Justice-Focused REA Proposals proceed from the assumption that systemic racism, and its harmful and sometimes deadly effects on people of color, is a critically important social problem. They do not mention unfairness to or discrimination against white people.

The overriding substantive concern expressed in the 2022 Proposal, by contrast, was the potential harms to white people from efforts to combat racism, such as diversity, equity, and inclusion (“DE&I”) initiatives. In addition to featuring “non-discrimination” in the resolved clause, the 2022 Proposal claimed that workplace anti-racism efforts are themselves “deeply racist and otherwise discriminatory” against “non-diverse” employees. It used scare quotes around terms like “anti-racist,” “racial/social equity,” and “diverse” to convey skepticism about the need to counter systemic racism. It is worth noting that the 2022 Proposal’s focus was on workplace DE&I programs, while the Justice-Focused REA Proposals capture harms from companies’ products and services as well as from actions like contributing to police foundations and funding politicians who seek to restrict voting rights.

The substantive concern, then, of the Justice-Focused REA Proposals is eradicating systemic racism, while the 2022 Proposal’s substantive concern was countering discrimination against white people. It’s hard to imagine more divergence than that.

Walmart argues that implementing the Proposal and the 2022 Proposal involves the same actions,<sup>6</sup> but we disagree. The supporting statement of the 2022 Proposal implies that systemic racism does not exist, implicitly defines “civil rights” to include the rights of “non-diverse” Americans, and characterizes DE&I initiatives as discriminatory, racist (presumably against white people), and the cause of a “deeply hostile” and “likely illegal” workplace “for some groups of employees.” Justice-Focused REA Proposals like the Proposal reflect opposing views on all of those matters. An audit undertaken with the degree of skepticism expressed in the 2022 Proposal, and with its strong focus on the rights of white people, is unlikely to identify the same kinds of harms or propose the same types of solutions as the racial equity audit described in the Proposal.

Strong evidence that the Proposal and 2022 Proposal do not share substantive concerns or request the same action can be found in the fact that participants in the shareholder proposal process have seen through the surface similarities and treat Justice-Focused REA Proposals very differently from proposals like the 2022 Proposal. ISS characterizes the two groups of proposals as divergent: “In parallel with ‘racial and civil rights’ shareholder resolutions, a different set of ‘civil rights and non-discrimination audit’ proposals have appeared on ballots this year. These proposals seek to counterbalance the resolutions discussed above. Proponents of these resolutions argue that civil rights and racial audits may disadvantage ‘non-diverse’ employees through an overt focus on increasing opportunities for, for example, people of color. These resolutions are often filed at companies that have already conducted civil rights audits.”<sup>7</sup> A post on The Conference Board’s blog warned readers “not to conflate” Justice-Focused REA Proposals and conservative proposals with “different motives in the supporting statements.”<sup>8</sup> Proxy solicitor Georgeson commented on the larger number of conservatively-oriented proposals filed in the 2022 season, as well as the much

<sup>6</sup> No-Action Request, at 7.

<sup>7</sup> <https://insights.issgovernance.com/posts/shareholder-resolutions-in-review-civil-rights-audit/>

<sup>8</sup>

<https://www.conference-board.org/blog/environmental-social-governance/Spotlight-on-proxy-season-racial-equity-audit-proposals>

poorer voting results obtained by proposals like the 2022 Proposal.<sup>9</sup> Media coverage also distinguishes between them.<sup>10</sup>

Perhaps the most striking illustration that shareholders view Justice-Focused REA Proposals and proposals like the 2022 Proposal in starkly different ways can be seen in the voting results at Johnson & Johnson's 2022 AGM. Shareholders were asked to vote on both a Justice-Focused REA Proposal and a resolution similar to the 2022 Proposal, which, like the 2022 Proposal, was submitted by NCPPR.<sup>11</sup> NCPPR's proposal was supported by 2.7% of shares voted, while the Justice-Focused REA Proposal achieved 62.6% support.<sup>12</sup> If, as Walmart claims, there is no meaningful difference between the two types of proposals, such a wide variance in voting results would not have occurred.

Those disparate results extend beyond J&J's AGM. In contrast to Justice-Focused REA Proposals' 45% average support level, according to ISS, proposals like the 2022 Proposal "received very low levels of support. Among the 11 such proposals that went to a shareholder vote in 2022, support levels (FOR votes) averaged 2 percent of votes cast FOR and AGAINST, with no proposal exceeding support of more than 4 percent of votes cast."<sup>13</sup> Shareholders might refrain from supporting proposals like the 2022 Proposal, despite support for racial equity audits generally, because their votes in favor could be read as communicating agreement with the views expressed in the supporting statement.

The Proponents acknowledge that in the past, the Staff has found that proposals addressed substantially the same subject matter despite differences in sensibility or orientation. For example, in Pfizer,<sup>14</sup> cited by Walmart, the later and earlier proposals both requested disclosure of the company's political expenditures, with the earlier proposal criticizing Pfizer's relationship with the American Legislative Exchange Council in the supporting statement and the later proposal lauding it. The Staff allowed exclusion of the later proposal.

In considering Pfizer's no-action request, however, the Staff did not have in front of it evidence regarding the views of market participants on the differences between the proposals (if any). In fact, NCPPR did not respond at all to Pfizer's no-action request. Thus, the Staff also did not have the benefit of NCPPR's description of its substantive concern or any arguments about ways in which implementation of the two proposals would differ.

Here, by contrast, there is abundant evidence that participants in the shareholder proposal process do not view the Proposal and 2022 Proposal as interchangeable, despite some similarities in the resolved clauses. These two kinds of proposals receive vastly differing amounts of support from shareholders, even when they both appear on the same proxy card. The substantive concerns of the Proposal and 2022 Proposal are contradictory, with the Proposal decrying systemic racism and

<sup>9</sup> [https://corpgov.law.harvard.edu/wp-content/uploads/2022/06/Georgeson\\_EPS\\_whitepaper\\_2022\\_v6.pdf](https://corpgov.law.harvard.edu/wp-content/uploads/2022/06/Georgeson_EPS_whitepaper_2022_v6.pdf), at 7, 16.

<sup>10</sup> <https://news.bloomberglaw.com/securities-law/conservative-shareholder-proposals-rise-amid-anti-esg-rumbles>; <https://corpgov.law.harvard.edu/2022/10/07/dei-initiatives-under-attack-by-activists/>; <https://www.ft.com/content/827f1510-8494-4736-a0dc-e5cdcd0e9a64>; <https://www.bloomberglaw.com/news/newsletters/2022-06-02/racial-audits-are-changing-corporate-america-even-if-they-don-t-pass>;

<https://www.wsj.com/articles/investors-balk-at-tough-climate-proposals-2022-proxy-voting-roundup-11655892000>

<sup>11</sup> <https://www.sec.gov/Archives/edgar/data/200406/000020040622000026/a2022jniproxy.htm>, at 125

<sup>12</sup> <https://www.sec.gov/ix?doc=/Archives/edgar/data/0000200406/000020040622000047/jnj-20220428.htm>

<sup>13</sup> <https://insights.issgovernance.com/posts/shareholder-resolutions-in-review-civil-rights-audit/>

<sup>14</sup> Pfizer Inc. (Jan. 19, 2016).

calling for its abolition and the 2022 Proposal accusing companies with DE&I initiatives of discriminating against white people. Although both proposals call for a racially-focused audit, the differences are plain. Finally, calling back to the Commission's purpose in adopting and revising the Resubmission Exclusion, the subject of the 2022 Proposal is not one on which shareholders lack interest; they just disfavor NCPPR's perspective. All of these factors argue against allowing Walmart to exclude the Proposal.

\* \* \*

For the reasons set forth above, Walmart has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8 (i)(12). The Proponents thus respectfully request that Walmart's request for relief be denied.

We appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (718) 928-8350..

Sincerely,

Bianca Agustin  
Corporate Accountability  
Organization United for Respect

cc: Vicki S. Vasser, Lead Counsel  
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