

# **SANFORD J. LEWIS, ATTORNEY**

March 2, 2021  
Via electronic mail

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

Re: Shareholder Proposal to Walmart Inc. on Behalf of Julie Kalish

Ladies and Gentlemen:

Julie Kalish (“Proponent”) is beneficial owner of common stock of Walmart Inc. (the “Company”) and has submitted a shareholder proposal (the “Proposal”) to the Company on behalf of certain member funds. I have been asked by the Proponent to respond to the letter dated February 1, 2021 (“Company Letter”) sent to the Securities and Exchange Commission by Kristopher Isham. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2021 proxy statement. A copy of this letter is being emailed concurrently to Mr. Isham.

## **SUMMARY**

The Proposal requests that the Company issue a public report detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks. The Supporting Statement adds that shareholders recommend that the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contribution policies, and human resources or educational strategies. The full proposal text is appended.

The Company seeks exclusion of the Proposal on the basis of Rule 14a-8(i)(7), asserting that it does not address a significant policy issue and merely relates to the Company’s ordinary business operations — the Company’s assessment of the impact of the government regulation and management of its workforce.

However, the Proponent asserts that the Proposal is focused solely on the issue of reproductive rights, an issue of transcendent public concern and controversy, with a significant nexus to the Company. It does not inappropriately focus on government relations or workforce management, but rather inquires how the significant policy issue affects those matters. The Proposal follows the model of a proposal previously found by the Staff not to be excludable under the ordinary business rule. Therefore, it transcends ordinary business and is not excludable under Rule 14a-8(i)(7).

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## ANALYSIS

The legal framework for Rule 14a-8(i)(7) developed by the Commission, Staff and the courts, including under the Staff Legal Bulletin 14I, comprises a four-part test:

Question 1. **Ordinary Business.** Is the subject matter one of “ordinary business”? That is, is it a topic that is integral to the day-to-day management and operations of the company? Staff Legal Bulletin 14H published in 2015 described ordinary business in terms of the “nitty gritty” of corporate management: “a proposal may transcend a company's ordinary business operations even if the significant policy issue relates to the ‘nitty-gritty’ of its core business.”

Question 2. **Significant Policy Issue.** If the answer to Question 1 is yes, is the subject matter nevertheless a significant policy issue -- a subject of widespread public debate? In those cases in which a proposal's underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company. Staff Legal Bulletin No. 14E (October 27, 2009).

On what topics does a proposal address a significant policy issue that transcends ordinary business? Staff decisions have made it clear that this inquiry concerns whether the proposal addresses an issue of widespread public debate, including media coverage, legislative debate and public controversy. Examples recognized by the Commission and the Staff include such topics as environmental impact, human rights, climate change, discrimination, as well as virtually all issues of corporate governance. In this instance the issue of reproductive rights is such an issue - a highly contentious issue debated on a state by state level, in hotly contested political fights, and at the Supreme Court.

Question 3. **Nexus.** If the answer to Question 2 is yes, the next question is: Is there a nexus of the subject matter to the Company -- does the subject matter of widespread public debate relate significantly to the company's business or strategy? If there is a reasonable basis for concluding that a significant policy issue has a connection to a company, it transcends ordinary business at the Company. In this instance, the Company's employees and businesses are impacted by restrictive laws enacted in numerous states in which it does business.

Question 4. **Micromanagement.** Finally, if all of the above are true, does the form of the proposal micromanage? Even if the proposal's subject matter transcends ordinary business (number two) and has a connection to the company (number three), the proposal still may be excludable if the form of the proposal micromanages the company's business. The current Proposal does not micromanage.

The Company Letter asserts that the proposal relates to excludable ordinary business because it

relates to their assessment of the impact of government regulation and the Company's management of its workforce, and that it does not relate to a significant policy issue that transcends the Company's ordinary business operations.

Yet, reading the text of the proposal, to the extent that the Proposal requests discussion of those nitty-gritty matters, it is only in the context of a large, appropriately scoped proposal that asks questions about significant policy issues that are appropriate for a shareholder proposal.

**Reproductive rights issues are a significant policy issue transcending ordinary business operations not excludable under Rule 14a-8(i)(7)**

The Company Letter's argument is built around the idea that the Proposal does not focus on a significant policy issue, and merely addresses excludable ordinary business concerns such as management of the workforce and assessment of impact of government regulation.

While a proposal simply focused on these concerns would be considered to address "nitty-gritty" ordinary business, the Proposal is focused on the risks and costs to the company by policies affecting reproductive rights, an issue which is a significant policy issue of major concern and interest to investors<sup>1</sup> as well as the general public. There is more than sufficient basis to believe that investor engagement through a shareholder proposal is appropriate.

Reproductive rights are facing near constant challenges at both the state and federal level. As the Proposal notes, sweeping state legislation restricting contraception and abortion has occurred within the last decade, with state legislatures passing more than 500 restrictive laws since 2011, over 80 of them in the last two years. A potential reversal of *Roe v. Wade* has been a matter of nationwide discussion. Gretchen Borchelt, Vice President of Reproductive Rights and Health for the National Women's Law Center, has called this a "crisis moment" for abortion and reproductive freedom.<sup>2</sup> Currently, 21 states have laws that could be used to restrict the legal status of abortion, with 10 states having "trigger laws" that would automatically ban all or nearly all abortions if *Roe* were overturned.<sup>3</sup> The Guttmacher Institute reports that 58% of women in the U.S. ages 13-44 live in a state hostile or extremely hostile to abortion rights, and only 38% live in a state supportive of reproductive rights.<sup>4</sup> With statistics such as this, it is hard to imagine how reproductive rights, the focus of the Proposal, would not be a significant policy issue.

*Fortune* reported a poll conducted by NPR, PBS, and Marist, which "found that 77% of

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<sup>1</sup> See *Hidden Value: The Business Case for Reproductive Health*, Rhia Ventures, 2020.

<sup>2</sup> Chloe Atkins, "'A crisis moment': States, advocates brace for new fight over abortion rights", NBC News, Jan 11, 2021, <https://www.nbcnews.com/politics/politics-news/crisis-moment-states-advocates-brace-new-fight-over-abortion-rights-n1253665>

<sup>3</sup> Abortion Policy in the Absence of *Roe*, Guttmacher Institute, <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe#>

<sup>4</sup> United States, Guttmacher Institute, <https://www.guttmacher.org/geography/united-states>; see also United States Abortion, Guttmacher Institute, <https://www.guttmacher.org/united-states/abortion>

Americans supported a woman's right to an abortion under at least some circumstances.”<sup>5</sup> The same article reports that “about 63% of people buy from companies that reflect their personal beliefs, and 62% want companies to take a stand on cultural and political issues that they care about.”<sup>6</sup>

**A proposal directed to evaluating the risks to a company and its employees caused by policies affecting reproductive rights addresses a significant policy issue.**

**Procter & Gamble precedent is applicable to current proposal**

The Company argues that the Proposal is excludable because it does not focus on a significant policy issue, and instead focuses on the Company’s ordinary business operations. The Company attempts to distinguish the Staff’s decision in *The Procter & Gamble Co.* (Aug. 16, 2016), where the proposal was not allowed to be excluded on the basis of Rule 14a-8(i)(7) where it requested a report on the risks and costs to the company of certain “enacted or proposed state policies *supporting discrimination* against LGBT people.” There, the proponent noted the geographies in which the Company operated were enacting “pro-discrimination policies” that “legalize[d] discrimination against LGBT individuals.” The Company notes that although the proposal in that case touched on “negative effects on employee hiring and retention, the proposal’s focus was on the risks and costs to the company arising from its engagement with the issue of discrimination against LGBT persons.”

The Company cites the language from the Proposal to attempt to distinguish it from the language of the proposal in *Procter & Gamble*: noting the current Proposal is asking the Company to report on “any *known and any potential risks and costs to the Company caused by enacted or proposed state policies* affecting reproductive rights, and *detailing any strategies . . . to minimize or mitigate these risks*” and that this encompasses the Company’s ordinary business operations. However, the language from the current Proposal and the *Procter & Gamble* proposal is nearly identical, with the language in that proposal requesting a report on “*known and potential risks and costs to the Company caused by any enacted or proposed state policies* supporting discrimination against LGBT people, and *detailing strategies... that the Company may deploy to defend the Company's LGBT employees and their families against discrimination and harassment that is encouraged or enabled by the policies.*” Further, the supporting statements from the two policies are nearly identical, with the *Procter & Gamble* proposal asking “that the report evaluate risks and costs including, but not limited to, negative effects on employee hiring and retention... litigation risks to the Company... Strategies evaluated should include public policy advocacy, human resources and educational strategies....” The current Proposal asks “that the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies

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<sup>5</sup> Jess McHugh, “More Companies Are Openly Supporting Abortion Rights. That May Be Controversial, But It’s Also Good Business,” *Fortune*, November 8, 2019, <https://fortune.com/2019/11/08/companies-that-openly-support-abortion-access/>

<sup>6</sup> Jess McHugh, “More Companies Are Openly Supporting Abortion Rights. That May Be Controversial, But It’s Also Good Business,” *Fortune*, November 8, 2019, <https://fortune.com/2019/11/08/companies-that-openly-support-abortion-access/>

evaluated should include any public policy advocacy programs... human resources or educational strategies.” With almost identical language and asks, it is difficult to understand how the Company finds the two proposals distinguishable. Thus, we respectfully urge the Staff to follow its own precedent in *The Procter & Gamble Co.* and conclude that the Proposal is not excludable under Rule 14a-8(i)(7).

**Addressing government regulation related to a significant policy issue does not render a proposal excludable under Rule 14a-8(i)(7)**

The Company also argues that the Proposal is excludable because it relates to the Company’s assessment of the impact of a government regulation. The precedents cited by the Company Letter, ordinary business exclusions of proposals seeking assessment of impact of government regulation on a company generally either focused on an issue that was not found to address a significant policy issue, or otherwise emphasized day-to-day business considerations over the focus of the proposal. None of these issues apply to the present proposal. For example, the Company cites *General Electric Co.* (Jan. 30, 2007), where the proposal requested a report on legislative initiatives affecting the company, including the company’s plans to “reduc[e] the impact on the [c]ompany of: unmeritorious litigation (lawsuit/tort reform); unnecessarily burdensome laws and regulations (e.g., Sarbanes-Oxley reform); and taxes on the [c]ompany (i.e., tax reform).” The set of issues raised by the proposal collectively were not a recognized significant policy issue in the way that the issue of reproductive rights clearly is. The company additionally cites cases regarding the impact of a flat tax *General Electric Co.* (Jan. 17, 2006), government regulation of the Internet, *Yahoo! Inc.*, (Apr. 5, 2007), and pension-related issues being considered in federal regulatory and legislative proceedings, *Niagara Mohawk Holdings, Inc.*, (Mar. 5, 2001).

The examples cited by the Company in the cited cases did not, in the Staff’s assessment, address a significant policy issue. In contrast, the issue of reproductive rights is clearly a contentious and widely debated issue that qualifies as a significant policy issue. A proposal is not excludable simply because it relates to the Company’s assessment of the impact of government regulation of such an issue. The Staff has previously concurred on multiple occasions that a proposal of this nature is not excludable. In addition to *Procter & Gamble*, as discussed above, the Staff concluded in *AES Corporation* (Jan. 19, 2016) that a proposal assessing the impact of public policies regarding climate change may not be excluded under rule 14a-8(i)(7). The Staff similarly concluded in *General Electric* (Feb. 8, 2011) that a proposal requesting a report disclosing the business risk related to the developments in the scientific, political, legislative and regulatory landscape regarding climate change was not excludable.

The Company also argues that the Proposal is excludable because it relates to the Company’s management of its workforce and cites precedents demonstrating the applicability of an ordinary business exclusion to proposals relating to the Company’s management of its workforce. However, the cases cited by the company either don’t relate to a significant policy issue or focus on “nitty gritty” manners of ordinary business. The Company’s citation of *Intel Corp.* ( Mar. 18, 1999), where the Staff concurred with the exclusion of a proposal seeking adoption of an

“Employee Bill of Rights,” which would have established various “protections” for the company’s employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect, does not focus on a significant policy issue as the current Proposal does. They also cite cases focusing on workplace accident prevention, *Amazon, Inc.* (April 1, 2020), compensation principles (*Apple, Inc. (Zhao)*, (Nov. 16, 2015), training for foreign workers and citizenship documentation *Starwood Hotels & Resorts Worldwide, Inc.*, (Feb. 14, 2012), and improved visibility of educational status in a reduction-in-force review process, *Northrop Grumman Corp.* (Mar. 18, 2010). The one case the Company cites that relates to a significant policy issue (discrimination based on race, religion, donations, gender or sexual orientation) focuses on the very specific request of an anti-discrimination policy in hiring vendor contracts or customer relations. This kind of “nitty gritty” manner of ordinary business is not analogous to what is being asked of the Company in the current Proposal, where the Proposal is requesting a report evaluating risks and costs that state policies affecting reproductive rights may have to the company, and strategies the company *may* deploy to minimize these risks. The current Proposal does not ask for a specific change in company policy or ordinary business operation.

### **Reproductive rights issues are significantly related to the Company and transcend ordinary business operations**

The issue of reproductive rights has significant relation to the Company. Walmart has a total of 2,818 stores in 21 restrictive abortion law states, which amounts to ~53% of its total stores in the U.S. Walmart also has 267 stores in states with only 1 reported abortion clinic as of 2017.

The location of the Company’s headquarters, Arkansas, is classified as a “hostile” state according to the Center for Reproductive Rights and will likely try to prohibit abortion should *Roe* be weakened or overturned.<sup>7</sup> Arkansas enacted a trigger ban in 2019, and has numerous medically unnecessary abortion restrictions.

This hostility towards reproductive health has a direct impact on both employer costs and employee productivity and health. As the proposal notes, a 2016 study estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations, and increases employer costs associated with employee absenteeism, decreased productivity, and employee replacement. Women who cannot access abortion are three times more likely to leave the workforce than women who were able to access abortion when needed. With such a large base in restrictive states, many, if not a majority, of the Company’s employees may face these challenges and thus the Company may incur the costs.

Additionally, the Proposal notes that the Company’s brand and reputation could face consequences. If the Company continues its support of politicians that have led the charge on anti-abortion action in these hostile states, it may lose business from its customers in

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<sup>7</sup> <https://reproductiverights.org/what-if-roe-fell>

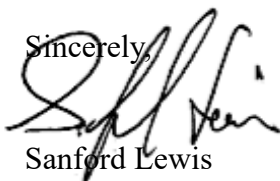
support of reproductive rights and women's health. In 2018, the Company was among the top 20 publicly traded corporate donors to the Republican State Leadership Committee (RSLC).<sup>8</sup> That year, more than \$1 million from the RSLC went to political efforts supporting Republicans and/or opposing Democrats in Georgia, where 36 House Republicans won in contested districts.<sup>9</sup> All of the 36 House Republicans voted for an extreme anti-abortion bill banning abortions as early as six weeks into pregnancy.<sup>10</sup> More than \$47,000 was channeled to the RSLC's state political action committee, which gave money for ads supporting Republicans in 37 House Districts in Missouri. Thirty-one of these candidates won, and 30 of them voted for the extreme anti-abortion measure in Missouri, criminalizing abortion after eight weeks of pregnancy.<sup>11</sup>

The direct connection between donations from the Company to politicians supporting anti-abortion laws further evidences how this issue is significantly related to the Company. The Company's financial support for anti-abortion policymakers may impact its customer base and reputation.

### CONCLUSION

For these reasons, we urge the Staff to conclude that the Proposal is not excludable on the basis of Rule 14a-8(i)(7). As such, we respectfully request that the Staff inform the company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or [sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,



Sanford Lewis

cc: Kristopher Isham

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<sup>8</sup> Conflicted Consequences, Center for Political Accountability, at 20, <https://politicalaccountability.net/hifi/files/Conflicted-Consequences.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

## Resolution for Walmart 2021 Shareholder Meeting

WHEREAS reproductive rights and access to contraception and abortion are being challenged at the state and federal level in the U.S. Since 2011, state legislatures have passed more than 500 restrictive laws, over 80 of them in the last two years. At the same time, other states enacted legislation that protects these rights, and advanced measures to increase access to contraception. Eleven states ban abortion coverage in all state-regulated private insurance plans, whereas six states require private insurance plans to cover abortion. Some states permit pharmacists to refuse to dispense contraceptives or allow health care institutions to refuse to provide services related to contraception and sterilization.

Walmart Inc. (“Walmart”) has operations in all fifty states, subject to this patchwork of laws. Should *Roe v. Wade* be weakened or overturned, as is widely anticipated, Walmart employees will be vulnerable; as of January 2020, 53% of Walmart’s 5,318 stores in the U.S. were in states that could immediately prohibit abortion entirely if *Roe v. Wade* were weakened or overturned.

A 2016 study estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations, and increases employer costs associated with employee absenteeism, decreased productivity, and employee replacement. Women who cannot access abortion are three times more likely to leave the workforce than women who were able to access abortion when needed.

According to a survey from Anthem Life Insurance Company, nearly one in three millennial workers has turned down a job offer due to insufficient health insurance. Walmart may find it difficult to recruit the highest quality employees within states viewed as inhospitable to women’s reproductive rights; this may harm its ability to meet diversity and inclusion goals, with negative consequences to brand and reputation. A number of Walmart brands rely on the trust and confidence of their female consumers for their success.

RESOLVED: Shareholders request that Walmart issue a public report prior to December 31, 2021, omitting confidential information and at a reasonable expense, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.



February 1, 2021

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

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

Re: *Walmart Inc.*  
*Shareholder Proposal of Julie Kalish*  
*Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

This letter is to inform you that Walmart Inc. (the “Company”) intends to omit from its proxy statement and form of proxy for its 2021 Annual Shareholders’ Meeting (collectively, the “2021 Proxy Materials”) a shareholder proposal and statements in support thereof (the “Proposal”) received from Clean Yield Asset Management on behalf of Julie Kalish (the “Proponent”).

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

- filed this letter with the Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and
- concurrently sent a copy of this correspondence to the Proponent.

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

## THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that Walmart issue a public report prior to December 31, 2021, omitting confidential information and at a reasonable expense, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

In addition, the statements in support “recommend that the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.”

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

## BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur with our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal deals with matters relating to the Company’s ordinary business operations and does not focus on a significant policy issue.

## ANALYSIS

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

The Proposal requests a report on “any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies . . . to minimize or mitigate these risks.” As discussed below, the Proposal relates to the Company’s ordinary business operations, including the Company’s assessment of the impact of government regulation and the Company’s management of its workforce, and does not focus on a significant policy issue that transcends the Company’s ordinary business operations. Therefore, consistent with the standards set forth in the 1998 Release, the Proposal is excludable under Rule 14a-8(i)(7).

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

Pursuant to Rule 14a-8(i)(7), a shareholder proposal may be excluded if it “deals with a matter relating to the company’s ordinary business operations.” According to the Commission’s release accompanying the 1998 amendments to Rule 14a-8, the term “ordinary business” refers to matters that are not necessarily “ordinary” in the common meaning of the word, but instead the term “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” Exchange Act Release No. 40018 (May 21, 1998) (the “1998 Release”). In the 1998 Release, the Commission stated that the underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting,” and identified two central considerations that underlie this policy. As relevant here, one of these considerations was that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” *Id.* Examples of tasks cited by the Commission include “management of the workforce.” *Id.*

Also relevant to the Proposal is the discussion in Staff Legal Bulletin No. 14E (Oct. 27, 2009) (“SLB 14E”) where the Staff explained how it evaluates proposals relating to risk:

[R]ather than focusing on whether a proposal and supporting statement relate to the company engaging in an evaluation of risk, we will instead focus on the subject matter to which the risk pertains or that gives rise to the risk . . . . [S]imilar to the way in which we analyze proposals asking for the preparation of a report, the formation of a committee or the inclusion of disclosure in a Commission-prescribed document—where we look to the underlying subject matter of the report, committee or disclosure to determine whether the proposal relates to ordinary business—we will consider whether the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.

The Staff has continued to concur with the exclusion of proposals seeking risk assessments when the subject matter concerns ordinary business operations. *See, e.g., Amazon.com, Inc. (Oxfam America, Inc.)* (avail. Apr. 3, 2019) (concurring with the exclusion of a proposal urging the company’s board of directors to conduct human rights impact assessments for certain food products that the company sells that present a high risk of adverse human rights impacts); *McDonald’s Corp.* (avail. Mar. 22, 2019) (concurring with the exclusion of a proposal asking the company to “disclose the economic risks” it faced from “campaigns targeting the [c]ompany over concerns about cruelty to chickens” because it “focuse[d] primarily on matters relating to the [c]ompany’s ordinary business operations”); *Exxon Mobil Corp.* (avail. Mar. 6, 2012) (concurring with the exclusion of a proposal asking the board to prepare a report on

“environmental, social, and economic challenges associated with the oil sands,” which involved ordinary business matters).

Finally, the 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving “significant social policy issues.” *Id.* (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). Note 4 of Staff Legal Bulletin No. 14E (Oct. 27, 2009) states that “[i]n those cases in which a proposal’s underlying subject matter transcends the day-to-day business matters of the company and raises policy issues so significant that it would be appropriate for a shareholder vote, the proposal generally will not be excludable under Rule 14a-8(i)(7) as long as a sufficient nexus exists between the nature of the proposal and the company.” In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

*B. The Proposal Is Excludable Because It Relates To The Company’s Assessment Of The Impact Of Government Regulation*

The Staff has repeatedly concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals seeking an assessment of the impact of proposed and current government regulation on a company’s ordinary business matters. For example, in *General Electric Co.* (avail. Jan. 30, 2007), the proposal requested a report on legislative initiatives affecting the company, including the company’s plans to “reduc[e] the impact on the [c]ompany of: unmeritorious litigation (lawsuit/tort reform); unnecessarily burdensome laws and regulations (e.g., Sarbanes-Oxley reform); and taxes on the [c]ompany (i.e., tax reform).” The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7) because it involved evaluating the impact of government regulation on the company. *See also Yahoo! Inc.* (avail. Apr. 5, 2007) (concurring with the exclusion of a proposal calling for an evaluation of the impact on the company of expanded government regulation of the Internet); *General Electric Co.* (avail. Jan. 17, 2006) (concurring with the exclusion of a proposal relating to a report on the impact of a flat tax); *Niagara Mohawk Holdings, Inc.* (avail. Mar. 5, 2001) (concurring with the exclusion of a proposal requesting that the company report on pension-related issues being considered in federal regulatory and legislative proceedings).

Similar to the proposals in the cited letters, the Proposal seeks an assessment of the impact of proposed and current government regulation on ordinary business matters. The requested report expressly targets the impact certain “enacted or proposed state policies” would have on “risks and costs to the Company,” as well as “any strategies . . . the Company may deploy to minimize or mitigate these risks” (emphasis added). The Proposal’s broad request for details on “any known and any potential risks and costs” would encompass a variety of ordinary business matters. Moreover, the Proposal specifically addresses matters related to management of the workforce as it recommends that the report address “effects on *employee hiring, retention, and productivity*” and

Company strategies related to “human resources or educational strategies.” In this regard, the Proposal notes that the Company “may find it difficult *to recruit the highest quality employees* within states viewed as inhospitable to women’s reproductive rights” and be unable to “to meet diversity and inclusion goals” (emphases added). The report would also address a number of other Company policies, practices, and programs that form a part of its day-to-day operations.

The Proposal’s request that the report regarding the impact of government regulation include details on “any known and any potential . . . costs to the Company” further demonstrates that the Proposal is excludable under Rule 14a-8(i)(7). In *McDonald’s Corp.*, discussed above, a request for a risk analysis involving “economic risks” of ordinary business matters similarly was excluded. Moreover, because the referenced legislation impacts the types of health benefits that the Company may offer to its employees, it also relates to the ordinary business matters of the Company’s decisions regarding general employee benefits. See, e.g., *International Business Machines Corp. (Jaracz)* (avail. Jan. 2, 2001) (concurring with the exclusion of a proposal requesting cost of living allowances to the company’s retiree pensions as ordinary business operations relating to employee benefits); *Capital Cities Communications, Inc.* (avail. Mar. 14, 1984) (concurring with the exclusion of a proposal requesting a written report of the company’s policies on, among other matters, wages, benefits, pensions, and sick leave, as “relating to the conduct of the [c]ompany’s ordinary business operations (i.e., employee compensation and employee relations)”).

The Company devotes significant time and resources to evaluating the potential impact of proposed laws and regulations on its complex business. This process involves the study of a number of concrete factors, including the dynamics of public policy formulation in the jurisdictions in which the Company operates, the evaluation of potential responses to such regulations by the Company and its competitors, and the anticipated effect of public policies on the Company’s financial position and shareholder value. Assessing the impact of such initiatives are matters more appropriately addressed by management. Accordingly, as with the precedent cited above, the Proposal seeks to subject to shareholder oversight ordinary business assessments that are within the scope of Rule 14a-8(i)(7).

*C. The Proposal Is Excludable Because It Relates To The Company’s Management Of Its Workforce*

The Commission and Staff have long held that a shareholder proposal may be excluded under Rule 14a-8(i)(7) if it, like the Proposal, relates to the company’s management of its workforce. As noted above, the Commission specifically recognized in the 1998 Release that “management of the workforce” is “fundamental to management’s ability to run a company on a day-to-day basis.” Similarly, in *United Technologies Corp.* (avail. Feb. 19, 1993), the Staff provided the following examples of topics that involve a company’s ordinary business and thus make a proposal excludable under Rule 14a-8(i)(7): “*employee health benefits*, general compensation issues not focused on

senior executives, *management of the workplace*, employee supervision, labor-management relations, *employee hiring* and firing, conditions of the employment and employee training and motivation” (emphases added).

Consistent with the 1998 Release, the Staff has recognized that a wide variety of proposals pertaining to the management of a company’s workforce are excludable under Rule 14a-8(i)(7). For example, in *Intel Corp.* (avail. Mar. 18, 1999), the Staff concurred with the exclusion of a proposal seeking adoption of an “Employee Bill of Rights,” which would have established various “protections” for the company’s employees, including limited work-hour requirements, relaxed starting times, and a requirement that employees treat one another with dignity and respect. The Staff noted that the foregoing was excludable as “relating, in part, to Intel’s ordinary business operations (i.e. management of the workforce).” *See also Amazon.com, Inc.* (avail. Apr. 1, 2020, *recon. denied* Apr. 9, 2020) (concurring with the exclusion of a proposal requesting a report on steps the company has taken to reduce the risk of accidents because “the [p]roposal focuses on workplace accident prevention, an ordinary business matter”); *Yum! Brands, Inc.* (avail. Mar. 6, 2019) (concurring with the exclusion of a proposal relating to adopting a policy not to “engage in any Inequitable Employment Practice” because it related “generally to the [c]ompany’s policies concerning its employees and does not focus on an issue that transcends ordinary business matters”); *PG&E Corp.* (avail. Mar. 7, 2016) (concurring with the exclusion of a proposal requesting that the board institute a policy banning discrimination based on race, religion, donations, gender, or sexual orientation in hiring vendor contracts or customer relations, as relating to the company’s ordinary business operations); *Apple, Inc. (Zhao)* (avail. Nov. 16, 2015) (concurring with the exclusion of a proposal asking the company’s compensation committee to adopt new compensation principles responsive to the U.S.’s “general economy, such as unemployment, working hour and wage inequality,” as relating to “compensation that may be paid to employees generally”); *Starwood Hotels & Resorts Worldwide, Inc.* (avail. Feb. 14, 2012) (concurring with the exclusion of a proposal requesting verification and documentation of U.S. citizenship for the company’s U.S. workforce and requiring training for foreign workers in the U.S. to be minimized because it “relates to procedures for hiring and training employees” and “[p]roposals concerning a company’s management of its workforce are generally excludable under Rule 14a-8(i)(7)”); *Northrop Grumman Corp.* (avail. Mar. 18, 2010) (concurring with the exclusion of a proposal requesting that the board identify and modify procedures to improve the visibility of educational status in the company’s reduction-in-force review process, noting that “[p]roposals concerning a company’s management of its workforce are generally excludable under [R]ule 14a-8(i)(7)”).

In accordance with SLB 14E, discussed above, in analyzing the Proposal under Rule 14a-8(i)(7) it is necessary to examine whether “the underlying subject matter of the risk evaluation involves a matter of ordinary business to the company.” As with the proposals in the foregoing precedents, the Proposal is directly concerned with the Company’s management of its workforce because it seeks a report relating to risks involving the

Company's employee policies and practices. Specifically, the Proposal asks for a report that evaluates risks related to "employee hiring, retention, and productivity" and an evaluation of strategies related to "human resources." Moreover, it asserts vulnerability of "Walmart employees" and potential recruits to existing and potential state policies affecting reproductive rights, but focuses on how such policies impact the Company as an employer, referring to "employer costs associated with [resulting] employee absenteeism, decreased productivity, and employee replacement," women who "leave the workforce," potential difficulty in recruiting "the highest quality employees," and meeting "diversity and inclusion goals." These are all matters that relate to the Company's policies and practices regarding the management of the more than 2.2 million associates that comprised the Company's workforce as of its fiscal year end 2020. Moreover, these decisions are multifaceted, complex, and based on a range of factors beyond the knowledge and expertise of shareholders.

The requested report also would require the Company to report on and consider its benefit-related actions, programs, policies, and issues related to employee health benefits. Policies and practices relating to employees' health benefits are ordinary business matters as they concern the Company's relationship with its employees. For these reasons, the Proposal therefore is excludable under Rule 14a-8(i)(7) as relating to the management of the Company's workforce.

*D. The Proposal Does Not Focus On A Significant Policy Issue That Transcends The Company's Ordinary Business Operations*

The well-established precedents set forth above demonstrate that the Proposal squarely addresses ordinary business matters such as the hiring and retention of employees and, therefore, is excludable under Rule 14a-8(i)(7). The 1998 Release distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." 1998 Release (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues . . . generally would not be considered to be excludable," the Staff has indicated that proposals relating to both ordinary business matters and significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. 1998 Release. Moreover, as Staff precedent has established, merely referencing topics in passing that might raise significant policy issues, but which do not define the scope of actions addressed in a proposal and which have only tangential implications for the issues that constitute the central focus of a proposal, does not transform an otherwise ordinary business proposal into one that transcends ordinary business.

Here, while the Proposal refers to government policies regarding "reproductive rights," "access to contraception," and "abortion," these references do not transcend or shift the focus of the Proposal from the Company's ordinary business operations. Instead, the Proposal seeks an analysis of a variety of ordinary business matters within the meaning of Rule 14a-8(i)(7), including management of the workforce and decisions related thereto,

and is therefore excludable. Specifically, the requested report would “detail[] *any* known and *any* potential risks and costs *to the Company*” from those policies, as well as “*any* strategies . . . that the Company may deploy to minimize or mitigate [such] risks” (emphases added). This broad scope includes the ordinary business matters that the supporting statements address—“effects on employee hiring, retention, and productivity” and “human resources or educational strategies,” among others— as well as the health benefits offered to Company employees. The Proposal focuses on how these government policies impact the participation of certain individuals in the workforce. For example, the recitals assert that “one in three millennial workers has *turned down a job offer* due to insufficient health insurance,” that “[w]omen who cannot access abortion are three times more likely *to leave the workforce*,” and that the Company “may find it difficult *to recruit the highest quality employees* within states viewed as inhospitable to women’s reproductive rights” (emphases added). Further, it references a study estimating that female employees denied “full coverage of contraceptives . . . increase[d] *employer costs* associated with *employee absenteeism, decreased productivity, and employee replacement*” (emphases added).

The Staff has frequently concurred that a proposal that touches, or may touch, upon significant policy issues is nonetheless excludable if the proposal does not focus on such issues. For example, in *Wells Fargo & Co. (Harrington Investments, Inc.)* (avail. Feb. 27, 2019), the proposal raised multiple issues that may arguably have been of significance to the company but it failed to focus on any of them. Instead, the “Resolved” clause focused on customer service, and the Staff concurred that the proposal was excludable under Rule 14a-8(i)(7). Similarly here, the Proposal is focused on any risks related to an array of policies “affecting reproductive rights” that could positively and negatively impact the Company’s general business operations. Likewise, in *Amazon.com, Inc. (Domini Impact Equity Fund)* (avail. Mar. 28, 2019), although the proposal might have touched on significant sustainability concerns, the proposal was so broadly worded that the Staff concurred that the proposal did not focus on any single issue that transcended the company’s ordinary business. Similar to *Amazon.com*, the Proposal relates generally to the Company’s operations (here, issues such as the impact of potential government regulations on the Company’s operations and the Company’s management of its workforce), thus remaining focused on the Company’s ordinary business operations.

Further, the Proposal is distinguishable from the proposal in *The Procter & Gamble Co.* (avail. Aug. 16, 2016). There, the proposal requested a report on the risks and costs to the company of certain “enacted or proposed state policies *supporting discrimination* against LGBT people” and “detailing strategies . . . the [c]ompany may *deploy to defend* [its] LGBT employees and their families *against discrimination and harassment* that is encouraged or enabled by the policies” (emphases added). The recitals described the company’s efforts to provide resources for and protect its LGBT employees from discrimination before noting that geographies in which it operated were enacting “pro-discrimination policies” that “legalize[d] discrimination against LGBT individuals.”



Despite touching on “negative effects on employee hiring and retention,” the proposal’s focus was on the risks and costs to the company arising from its engagement with the issue of discrimination against LGBT persons. The Staff did not concur that the proposal could be excluded under Rule 14a-8(i)(7) as relating to the company’s ordinary business operations. The Proposal, by contrast, does not focus on the Company’s role in addressing a significant policy issue that transcends the Company’s ordinary business operations for purposes of Rule 14a-8(i)(7). Instead, the requested report seeks “any” risks and costs to the Company that arise from “measures” and “legislation.” In addition, as discussed above, the Proposal seeks a report analyzing the risks of a variety of ordinary business matters, including related to “employee hiring, retention, and productivity.” Therefore, unlike the proposal in *The Procter & Gamble*, the Proposal does not focus on significant policy issues for purposes of Rule 14a-8(i)(7), but addresses ordinary business matters arising from the Company’s operations.

As discussed above, the Proposal, in asking the Company to report on “any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies . . . to minimize or mitigate these risks,” encompasses the Company’s ordinary business operations. The Proposal does not focus on a significant policy issue for purposes of Rule 14a-8(i)(7); rather, the subject matter of the Proposal directly relates to the Company’s ordinary business operations, including the Company’s assessment of the impact of government regulation on its operations and the Company’s management of its workforce. Accordingly, and consistent with the precedents cited above, the Company believes that the Proposal may be excluded from its 2021 Proxy Materials.


### **CONCLUSION**

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Proxy Materials.

Office of Chief Counsel  
Division of Corporation Finance  
February 1, 2021  
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We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [Kristopher.Isham@walmartlegal.com](mailto:Kristopher.Isham@walmartlegal.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (479) 204-8684, or Elizabeth A. Ising of Gibson, Dunn & Crutcher LLP at (202) 955-8287.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristopher A. Isham", followed by a horizontal line.

Kristopher A. Isham  
Senior Counsel  
Walmart Inc.

Enclosures

cc: Elizabeth A. Ising, Gibson, Dunn & Crutcher LLP  
Molly Betournay, Clean Yield Asset Management

**EXHIBIT A**



December 17, 2020

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

Via: USPS Priority Mail Express

Re: **2021 Shareholder Proposal on Reproductive Rights Risk**

Dear Mr. Allison:

Clean Yield Asset Management ("Clean Yield") is an investment firm based in Norwich, VT specializing in socially responsible asset management. Clean Yield has approximately \$450 million in assets under management with clients that are long-term shareholders in Walmart.

I am hereby authorized to notify you of our intention to file the enclosed shareholder resolution regarding reproductive rights risk with Walmart Inc. on behalf of our client, Julie Kalish. Specifically, the proposal requests that the Company provide a report detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

Clean Yield submits this shareholder proposal for inclusion in the 2021 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8). Per Rule 14a-8, Julie Kalish holds more than \$2,000 of Walmart Inc (WMT) common stock, acquired more than one year prior to today's date and held continuously for that time. Our client will remain invested in this position continuously through the date of the 2021 annual meeting. Enclosed is verification from our client's custodian, Wells Fargo, of the position, and a letter from Julie Kalish authorizing Clean Yield to undertake this filing on her behalf. We will send a representative to the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

We had hoped to explore these issues in dialogue with you, but never received a response to the October 28, 2020 letter sent to Julie Murphy which we'd co-signed with a number of institutional investors. We still hope this proposal opens the doors to discussion.

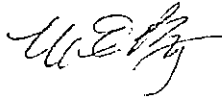
Please direct any written communications to me at the address below or to [molly@cleanyield.com](mailto:molly@cleanyield.com). Please also confirm receipt of this letter via email.

DEC 22 2020

*Principles and Profits Working Together*

16 Beaver Meadow Rd. • PO Box 874 • Norwich, VT 05055 • P: 802.526.2525 • F: 802.526.2528 • 800.809.6439 • [www.cleanyield.com](http://www.cleanyield.com)

Sincerely,

A handwritten signature in black ink, appearing to read 'Molly Betournay', written in a cursive style.

Molly Betournay

Cc: Shelley Alpern, Rhia Ventures (shelley@reprohealthinvestors.org)

Enclosures: Shareholder resolution, proof of ownership letter, client authorization letter

## Resolution for Walmart 2021 Shareholder Meeting

WHEREAS reproductive rights and access to contraception and abortion are being challenged at the state and federal level in the U.S. Since 2011, state legislatures have passed more than 500 restrictive laws, over 80 of them in the last two years. At the same time, other states enacted legislation that protects these rights, and advanced measures to increase access to contraception. Eleven states ban abortion coverage in all state-regulated private insurance plans, whereas six states require private insurance plans to cover abortion. Some states permit pharmacists to refuse to dispense contraceptives or allow health care institutions to refuse to provide services related to contraception and sterilization.

Walmart Inc. (“Walmart”) has operations in all fifty states, subject to this patchwork of laws. Should *Roe v. Wade* be weakened or overturned, as is widely anticipated, Walmart employees will be vulnerable; as of January 2020, 53% of Walmart’s 5,318 stores in the U.S. were in states that could immediately prohibit abortion entirely if *Roe v. Wade* were weakened or overturned.

A 2016 study estimated that denying female employees full coverage of contraceptives increases unexpected pregnancies and terminations, and increases employer costs associated with employee absenteeism, decreased productivity, and employee replacement. Women who cannot access abortion are three times more likely to leave the workforce than women who were able to access abortion when needed.

According to a survey from Anthem Life Insurance Company, nearly one in three millennial workers has turned down a job offer due to insufficient health insurance. Walmart may find it difficult to recruit the highest quality employees within states viewed as inhospitable to women’s reproductive rights; this may harm its ability to meet diversity and inclusion goals, with negative consequences to brand and reputation. A number of Walmart brands rely on the trust and confidence of their female consumers for their success.

RESOLVED: Shareholders request that Walmart issue a public report prior to December 31, 2021, omitting confidential information and at a reasonable expense, detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

SUPPORTING STATEMENT: Shareholders recommend that the report evaluate any risks and costs including, but not limited to: effects on employee hiring, retention, and productivity, and increases in litigation and brand risks. Strategies evaluated should include any public policy advocacy programs, political contributions policies, and human resources or educational strategies.

December 17, 2020

Ms. Molly Betournay  
Director of Research & Advocacy  
Clean Yield Asset Management  
16 Beaver Meadow Road  
P.O. Box 874  
Norwich, VT 05055

Dear Ms. Betournay:

I hereby authorize Clean Yield Asset Management to file a shareholder resolution on my behalf regarding reproductive rights at the Walmart (WMT) 2021 annual shareholder meeting. Specifically, the proposal requests a report detailing any known and any potential risks and costs to the Company caused by enacted or proposed state policies affecting reproductive rights, and detailing any strategies beyond litigation and legal compliance that the Company may deploy to minimize or mitigate these risks.

I am the beneficial owner of more than \$2,000 worth of common stock in Walmart (WMT) and have held this position continuously for more than a year. I will retain this position through the date of the company's annual meeting in 2021.

I specifically give Clean Yield Asset Management full authority to deal with any and all aspects of the aforementioned shareholder resolution. I understand that my name may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Kalish". The signature is fluid and cursive, with a large initial "J" and "K".

Julie Kalish



Wells Fargo Advisors  
30 South 17th Street  
Suite 2000  
Philadelphia, PA 19103  
Office: 215-564-8400  
Fax: 215-564-7379

December 17, 2020

Julie L. Kalish

\*\*\*  
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**RE: Verification of Assets**

Dear Julie Kalish,

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 an brokerage account with Wells Fargo Advisors, number ending in \*\*\* ("Account"), established on 12/13/2004;
- (ii) As of 12/17/2020, Julie L. Kalish owns shares of Walmart Inc. (WMT) valued in excess of \$2000.00 continuously for over 1-year up to and including today's date.

This letter is provided for informational purposes and does not represent future Account value, if your 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

Sincerely,

**Kenan Yamaner**

Branch Manager

