

# Securities Regulation and Compliance Alert

**April 14, 2015**

If you have any questions regarding the matters discussed in this alert, please contact the following attorneys or your regular Skadden contact.

**Brian V. Breheny**

202.371.7180

brian.breheny@skadden.com

**Marc S. Gerber**

202.371.7233

marc.gerber@skadden.com

**Richard J. Grossman**

212.735.2116

richard.grossman@skadden.com

**Josh LaGrange**

650.470.4575

josh.lagrange@skadden.com

**Ted Yu**

202.371.7592

ted.yu@skadden.com

**Hagen J. Ganem**

202.371.7503

Hagen.Ganem@skadden.com

**Caroline S. Kim**

202.371.7555

caroline.kim@skadden.com

## Wal-Mart Wins Appeal of Shareholder Proposal Decision

The U.S. Court of Appeals for the Third Circuit issued a decision earlier today that reversed a U.S. District Court opinion and vacated a permanent injunction that would have required Wal-Mart Stores, Inc. to include a controversial shareholder proposal in its 2015 annual meeting proxy statement. The court's decision (a copy of which is available [here](#)) allows Wal-Mart to exclude the proposal from its proxy materials and appears to adhere to the SEC staff's longstanding interpretation of Exchange Act Rule 14a-8(i)(7), commonly referred to as the "ordinary business exception."

The shareholder proposal under consideration by the court requested that Wal-Mart's board of directors amend the charter of its Compensation, Nominating and Governance Committee to provide that the committee oversee "the formulation and implementation of, and the public reporting of the formulation and implementation of, policies and standards that determine whether or not [Wal-Mart] should sell a product that: 1) especially endangers public safety and well-being; 2) has the substantial potential to impair the reputation of [Wal-Mart]; and/or 3) would reasonably be considered by many offensive to the family and community values integral to [Wal-Mart]'s promotion of its brand." Wal-Mart excluded the proposal from its proxy materials in reliance on the written concurrence of the SEC staff with the company's view that the proposal interfered with its ordinary business operations by impacting the products and services for sale by the company. The shareholder proponent challenged these determinations in an action in the U.S. District Court for the District of Delaware. A copy of the district court's opinion in that matter is available [here](#).

The opinion of the Court of Appeals has not been released yet. When it is available, the court's views on the careful balance that the SEC and its staff have struck between the rights of shareholders under Rule 14a-8 and the authority granted to directors to manage the business and affairs of corporations under state corporate law will be closely analyzed. Members of the corporate governance community have closely monitored this legal action because of the concern that an unfavorable result could have encouraged shareholders to submit proposals that relate to ordinary business matters by framing them as requests for corporate governance reform. An expansion of Rule 14a-8 in this way would increase costs and expenses and disrupt management and board efforts to effectively manage the proxy process and corporations' day-to-day business affairs.