

Securities Regulation and Compliance Alert

Contacts

Brian V. Breheny

Washington, D.C.
202.371.7180
brian.breheny@skadden.com

Ted Yu

Washington, D.C.
202.371.7592
ted.yu@skadden.com

Hagen J. Ganem

Washington, D.C.
202.371.7503
hagen.ganem@skadden.com

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Four Times Square
New York, NY 10036
212.735.3000

1440 New York Avenue, N.W.
Washington, D.C. 20005
202.371.7000

Appeals Court Ruling in *Wal-Mart* Broadens Ordinary Business Exception to Shareholder Proposal Rule

A recently published opinion by the U.S. Court of Appeals for the Third Circuit has presented an interesting option for companies to consider as they plan for the upcoming shareholder proposal season. In *Trinity Wall Street v. Wal-Mart Stores, Inc.*, the court ruled that a controversial shareholder proposal relating to the sale of high-capacity firearms could be excluded from Wal-Mart's proxy statement because the proposal dealt with the retailer's ordinary business operations. While the outcome aligned with the views expressed by the staff of the U.S. Securities and Exchange Commission (SEC) in a no-action letter to Wal-Mart, the rationale underpinning the court's decision departed from the SEC and its staff's longstanding interpretation of the shareholder proposal rule and broadened the exception available to companies.

We recently wrote an analysis of the court's decision and its potential impact on the SEC and its staff's approach to requests for no-action relief based on the ordinary business exception to the shareholder proposal rule. It is unclear what, if any, response the SEC and its staff will have to the decision in *Wal-Mart*. But in at least one other situation in which a federal circuit court disagreed with an SEC staff shareholder proposal position, the staff refused to issue no-action letters on the implicated topic, and the SEC eventually revised the rule.

A copy of our analysis with additional information about this development is available [here](#). As always, we are available to discuss and provide additional information.