

Trinity Responds in Wal-Mart Shareholder Proposal Case

February 5, 2015 | Client Update | 2-minute read

Trinity Wall Street (Trinity), the proponent of a shareholder proposal to Wal-Mart that is currently the subject of an appeal from a district court ruling in the U.S. Court of Appeals for the Third Circuit, has filed a response to the Appellant's briefs, which we previously discussed [here](#).

Trinity argues that the proposal is not subject to the ordinary business exclusion, because it is not directed at day-to-day management tasks that could not, as a practical matter, be subject to shareholder oversight. In any case, the proposal raises social policy issues.

Trinity states that the proposal does not request that the company cease selling any particular product or involves the company's general discretion regarding product selection, but instead focuses on corporate governance related to board oversight of decisions to sell dangerous products. Trinity indicates that Wal-Mart already has elected not to sell certain products, such as handguns, adult-rated movies and music marked with a parental advisory labels, due to concerns regarding unacceptable risk of social harm or reputational and brand identity damage. Trinity argues that the proposal focuses on the fact that no board committee at Wal-Mart is tasked with the responsibility of overseeing the formulation and implementation of standards and policies that determine how these decisions are made.

Trinity contends that the district court properly recognized that the proposal is focused on board oversight respecting matters of social concern - products that are dangerous to the public and a danger to the company's reputation from the sale of these products. Because the proposal is limited in its focus, Trinity believes that the decision "opens no floodgates" with respect to other shareholder proposals.

As to the SEC's prior no-action letter decisions, Trinity disputes the need to afford deference since no-action letters merely reflect staff member's informal views, and do not represent rulemaking or adjudication. At the same time, Trinity distinguished the numerous other no-action letters that Appellant cited to in their brief.

Finally, Trinity concludes that the proposal is not vague, because the proposal addresses family and community values integral to the brand, which the company would understand as to its meaning since it uses similar terms in other contexts.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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