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## In WLF Victory, Third Circuit Rejects Activist Shareholder Proposal

*(Trinity Wall Street v. Wal-Mart Stores, Inc.)*

**“The Third Circuit’s decision provides a resounding victory for the business community, but also for common sense. It will provide much needed certainty to all publicly-traded companies.”—Cory Andrews, Senior Litigation Counsel**

WASHINGTON, DC—Today, the U.S. Court of Appeals for the Third Circuit overturned a lower court decision that would have required publicly-traded companies to include frivolous and inappropriate shareholder proposals in proxy statements at the company’s expense—and, therefore, at the expense of every other shareholder. Shortly before 3:00 pm EDT this afternoon, the appeals court issued a concise, two-page order in *Trinity Wall Street v. Wal-Mart*, vacating the district court’s order and explaining that “Wal-Mart may exclude Trinity’s Proposal from its 2015 proxy materials.”

WLF filed an *amicus curiae* brief in the case in January. The lawsuit centered on the proper scope of Rule 14a-8, which constitutes a narrowly-defined exception to the general rule that shareholders must prepare and distribute their own proxy materials, rather than utilize the company’s materials. Even where Rule 14a-8’s procedural requirements have been satisfied, a company may exclude a shareholder proposal if it falls within one of the Rule’s thirteen exclusions. In this case, an activist shareholder sought to include a proposal in Wal-Mart’s proxy materials that would have compelled the board’s governance committee to review the company’s policies concerning the sale of potentially dangerous or offensive products.

In its brief, WLF argued that, on its face, the subject matter of the proposal concerned the products the company sells and focused improperly on the company’s evaluation of specific risks and benefits, and was therefore excludable under SEC Rule 14a-8(i)(7)’s “ordinary business” exception. Not only did the proposal concern Wal-Mart’s ordinary business matters, WLF argued, but the proposal’s language was so deliberately vague and indefinite that neither the shareholders voting on the proposal, nor the company in implementing it (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal would require.

In response to the court’s ruling, WLF issued the following statement by Senior Litigation Counsel Cory Andrews:

“The Third Circuit’s decision provides a resounding victory for the business community, but also for common sense. It will provide much needed certainty to all publicly traded companies. Recognizing that there are no permanent victories in the battle against bad ideas, WLF will continue to oppose including frivolous and inappropriate shareholder proposals in proxy statements at company expense.”

*WLF is a national public interest law firm and policy center that regularly litigates to protect investors from activists’ excesses, such as unwarranted proxy proposals that drive up costs for all shareholders.*