

Securities Regulation Daily Wrap Up, TOP STORY—D. Del.: Wal-Mart shareholder sues for right to include proposal on sale of guns, (Apr. 4, 2014)

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By John Filar Atwood

A Wal-Mart shareholder has sued the company in Delaware District Court to compel the company to include a proposal in its proxy materials concerning whether Wal-Mart should continue to sell guns in its stores. Trinity Wall Street, whose full name is The Rector, Church-Wardens and Vestrymen of Trinity Church in the City of New York, believes the sale of guns could impair the company's reputation and would reasonably be considered offensive to the values integral to Wal-Mart's promotion of its brand (*Trinity Wall Street v. Wal-Mart Stores, Inc.*, April 1, 2014).

Trinity's proposal. The proposal specifically requests that the board amend the compensation, nominating and governance committee charter in order to provide for oversight of the formulation and implementation of policies that determine whether or not the company should sell products that: 1) are especially dangerous to the public; 2) pose a substantial risk to the company's reputation, and 3) would be considered offensive to the family and community values integral to Wal-Mart's brand. Trinity Wall Street said that the oversight is intended to cover policies applying to whether or not the company should sell guns equipped with magazines holding more than ten rounds of ammunition.

The proponent acknowledged that Wal-Mart respects family and community interests by choosing not to sell certain products, such as music that depicts violence or sex. However, it lacks policies and standards to ensure consistent merchandizing decisions across product categories, the proponent said, which results in the sale of products that facilitate mass killings, even as it prohibits sales of passive products such as music that merely depict such violent rampages.

No-action relief. Trinity Wall Street submitted the proposal in December, and Wal-Mart wrote to the SEC in late January seeking the staff's assurance that it could omit the proposal from its proxy materials. In the no-action letter, the staff stated that the proposal may be omitted from Wal-Mart's proxy materials under Rule 14a-8(i)(7) as relating to the company's ordinary business operations. The staff said that the proposal relates to the products and services offered for sale by the company, and that proposals concerning the sale of particular products and services are generally excludable under Rule 14a-8(i)(7).

In its complaint, Trinity Wall Street said that the claim that the ordinary business exclusion applies is contrary to the plain language of the proposal. The proposal deals with a corporate governance matter, it argued, and not to ordinary business operations.

The proponent also stated that exclusion of the proposal is inconsistent with the SEC's interpretation of Rule 14a-8(i)(7) requiring inclusion of proposals dealing with important issues of corporate or social policy that transcend everyday business decisions. Trinity Wall Street believes the SEC erred in allowing its proposal to be excluded under the ordinary business provision, and asked the court to compel Wal-Mart to include the proposal in the materials for its April 22, 2014 shareholders meeting.

The case is No. 1:14-cv-00405-LPS.

Attorneys: Joel E. Friedlander (Bouchard, Margules & Friedlander, PA) for Trinity Wall Street. Philip A. Rovner (Potter Anderson & Corroon, LLP) for Wal-Mart Stores, Inc.

Companies: Trinity Wall Street; Wal-Mart Stores, Inc.

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