

# CtW Investment Group

Claudius B. Modesti, Director  
Division of Enforcement and Investigations  
Public Company Accounting Oversight Board  
1666 K Street, NW  
Washington, DC 20006-2803

May 21, 2015

Dear Mr. Modesti,

We are writing to request that the Public Company Accounting Oversight Board open an investigation into audits of the financial statements of Wal-Mart Stores, Inc. (“Wal-Mart” or “Company”) by the registered public accounting firm Ernst & Young LLP (“Ernst & Young” or “E&Y”), for multiple years, beginning with the period ending January 31, 2006. This request is motivated by publicly-available information indicating that E&Y’s conduct of these engagements may have violated PCAOB rules and auditing standards, as well as § 10A(b) of the Securities Exchange Act of 1934 and Section 10(b) of the Exchange Act and Commission Rule 10b-5 thereunder.

The information that forms the basis for this request derives primarily from three sources: a Pulitzer Prize-winning article in *The New York Times* published in April 2012;<sup>1</sup> internal Wal-Mart communications released by U.S. Representatives Henry Waxman and Elijah Cummings;<sup>2</sup> and additional internal communications released in the course of related shareholder litigation.<sup>3</sup> These sources detail Wal-Mart’s flawed handling of credible evidence that senior officials of the Company’s Mexican subsidiary had systematically violated the U.S. Foreign Corrupt Practices Act of 1977 (FCPA) during the early 2000s by bribing Mexican government officials to speed the opening of new stores.

We know from an internal Wal-Mart memo (the “Fung memo”) released in the course of shareholder litigation that Ernst & Young was informed by Wal-Mart’s Internal Audit Services (“IAS”) unit that a whistleblower had provided evidence of the Mexico bribery scheme to Wal-Mart and that E&Y was briefed by IAS over the course of the Company’s internal investigation from late 2005 through early 2006 (see Appendix I).<sup>4</sup> The central issue for the PCAOB to

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<sup>1</sup> David Barstow, “Wal-Mart Hushed Up a Vast Mexican Bribery Case,” *The New York Times* (April 21, 2012). <http://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html> (hereafter Barstow, 2012).

<sup>2</sup> “Reps. Cummings and Waxman Release Documents Showing that Wal-Mart’s CEO was Informed of Mexican Bribery Allegations in 2005,” Last accessed April 21, 2015, at: <http://democrats.energycommerce.house.gov/index.php?q=news/rep-cummings-and-waxman-release-documents-showing-that-wal-mart-s-ceo-was-informed-of-mexican-bribery-allegations-in-2005>

<sup>3</sup> The civil litigation includes: Wal-Mart Stores, Inc. v. Indiana Electrical Workers Pension Trust Fund IBEW, Case Number 614,2013, in the Supreme Court of the State of Delaware; and City of Pontiac General Employees’ Retirement System v. Wal-Mart Stores, Inc. et al, Case No. 5:12-cv-05162-SOH in the U. S. District Court Western District of Arkansas (Fayetteville) (originally filed in Tennessee Middle, as Case No. 3:12-cv-00457)

<sup>4</sup> A February 27, 2006 memo from Wal-Mart Senior Vice President for Internal Audit Services Michael Fung to the chairman of Wal-Mart’s audit committee (hereafter, referred to as the Fung Memo). See, Wal-Mart Stores, Inc. v.

consider, then, is whether E&Y responded appropriately after obtaining evidence of illegal acts and serious internal control deficiencies.

In light of the facts reported by the *Times*, as well as other red flags evident prior to and during the 2006 and 2007 audit engagements, there is a strong *prima facie* case that E&Y's conduct of these Wal-Mart engagements violated PCAOB auditing standards and rules, as well as the Exchange Act. Specifically, E&Y knew or should have known that, after a preliminary internal inquiry conducted by Wal-Mart found reasonable suspicion to believe that U.S. and Mexican laws were violated, Wal-Mart executives in the U.S. participated in a cover-up by transferring control of the investigation to Walmex General Counsel Jose Luis Rodriguezmacedo, who had been directly implicated in the alleged bribery scheme. Wal-Mart International General Counsel Martiza Munich voiced her opposition to placing the investigation under the control of a Walmex executive and resigned shortly thereafter.<sup>5</sup> Nonetheless, Wal-Mart executives in the U.S. ultimately accepted Mr. Rodriguezmacedo's report, which concluded that there had been no bribery scheme. Joseph Lewis, Wal-Mart's Director of Corporate Investigations, characterized Mr. Rodriguezmacedo's report as "truly lacking..."<sup>6</sup> E&Y issued unqualified opinions on Wal-Mart's financial statements for the years ending January 31, 2006 and 2007, even though the Company failed to disclose that it had obtained evidence of reasonably probable violations that were qualitatively material to the financial statements.

In our view, these facts, if true, suggest that E&Y's conduct of the Wal-Mart engagement for the relevant periods violated PCAOB rules and standards and U.S. securities laws, in at least five areas, as follows:

1. After obtaining evidence of reasonably probable illegal acts by senior officials, E&Y may have failed to apply audit procedures specifically directed to ascertaining whether an illegal act had occurred and to exercise sufficient professional skepticism with respect to Management's representations regarding the alleged violations.<sup>7</sup>
2. E&Y likely issued an unqualified opinion on the relevant financial statements despite the fact that it knew or should have known that the Company failed to disclose reasonably probable violations that were qualitatively material to the financial statements.<sup>8</sup>
3. E&Y may have failed to obtain sufficient evidence to support its unqualified opinion on Management's attestations with respect to the effectiveness of internal control over financial reporting ("ICFR") for the relevant periods.<sup>9</sup>
4. After obtaining evidence of reasonably probable illegal acts, E&Y may have failed to meet its obligations under Section 10A(b) of the Securities Exchange Act of 1934.

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Indiana Electrical Workers Pension Trust Fund IBEW, Case Number 614,2013, EFiled Jan 24 2014 04:52PM EST in the Supreme Court of the State of Delaware, Filing ID 54882057, Exhibit B1-B4

<sup>5</sup> Barstow, 2012

<sup>6</sup> Ibid

<sup>7</sup> AU Section 316, *Consideration of Fraud in a Financial Statement Audit*; AU Section 317, *Illegal Acts by Clients*

<sup>8</sup> AU Section 312, *Audit Risk and Materiality in Conducting an Audit*; AU Sections 317 and 333

<sup>9</sup> Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements* (With respect to the audit of internal controls over financial reporting we refer throughout this document to AS 2, the standard that was in effect as of January 31, 2006. We do not believe that the adoption of AS 5 to supersede AS 2 has a substantive effect on the analysis offered here.)

5. When viewed in their overall context these possible failures raise the question of whether E&Y violated Section 10(b) of the Exchange Act and Commission Rule 10b-5 thereunder by issuing reports representing that the Wal-Mart audits had been conducted in accordance with PCAOB standards, when E&Y knew, or was reckless in not knowing, that such representations were false.

## **A. General Background**

1. E&Y is, and at all relevant times was, a public accounting firm organized as a limited liability partnership under the laws of the state of Delaware and headquartered in New York, New York. E&Y is, and at all relevant times, was, registered with the Board pursuant to § 102 of the Act and PCAOB rules. E&Y has been Wal-Mart's independent auditor since prior to the Company's initial public offering in 1970.<sup>10</sup> E&Y or its predecessor, Arthur Young & Company, has audited every annual consolidated financial statement issued by Wal-Mart, including for all years from 2003 through 2014. In all of these audit reports, E&Y expressed an unqualified opinion on the financial statements and on management's assessment of the effectiveness of internal control over financial reporting ("ICFR"), and stated that the audits were conducted in accordance with PCAOB standards.

2. Since 1998, Mancera, S.C. ("Mancera") has been the external auditor for Wal-Mart's majority-owned Mexican subsidiary, now formally known as Wal-Mart de Mexico, S.A.B. de C.V. ("Walmex"). Mancera has audited the financial statements of Walmex for every year from 1998 through 2013. E&Y does not mention the use of other auditors in its audit opinions of Wal-Mart for any of the periods impacted. Therefore, following AU § 543.03-.05, E&Y assumed responsibility for the work performed by Mancera, which is an affiliate of the same parent firm, Ernst and Young Global Limited.

3. Wal-Mart Stores, Inc. is a Delaware corporation with principal executive offices located in Bentonville, Arkansas. The Company's common stock is registered pursuant to § 12(b) of the Securities Exchange Act of 1934 and is listed on the New York Stock Exchange (ticker symbol "WMT"). At all relevant times, Wal-Mart was an "issuer" as that term is defined by § 2(a)(7) of the Act and PCAOB Rule 1001(i)(iii). It has, and had for the relevant period, three divisions: Wal-Mart U.S., Sam's Club, and Wal-Mart International.

4. In 1991, Wal-Mart entered the Mexican market by means of a joint venture with the Mexican retailer Cifra. By 1992, Wal-Mart had taken a 50% stake in the company. On September 1, 1997, Wal-Mart acquired majority control of Cifra. Since that date, the Mexican subsidiary's results have been included in Wal-Mart's consolidated financial statements. By 2000, Cifra had become Wal-Mart's largest and fastest growing overseas

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<sup>10</sup> Wal-Mart Stores, Inc., SEC Form DEF 14A (Filed April 22, 2013) p. 39.  
[http://www.sec.gov/Archives/edgar/data/104169/000130817913000238/lwalmart\\_def14a.htm](http://www.sec.gov/Archives/edgar/data/104169/000130817913000238/lwalmart_def14a.htm)

subsidiary, changed its name to Wal-Mart de México (“Walmex”), and become part of Wal-Mart’s International division. Today, Wal-Mart owns 70 percent of Walmex shares.<sup>11</sup>

5. We estimate that, from 2000 to 2005, Walmex accounted for, on average, 4% of Wal-Mart’s consolidated assets, 2.9% of consolidated revenues, and 4.2% of consolidated net income.<sup>12</sup>

## **B. Factual Background: Wal-Mart’s Response to Whistleblower Allegations**

6. According to the Pulitzer Prize-winning exposé published on April 21, 2012 by *The New York Times*,<sup>13</sup> and a follow-up story published December 17, 2012,<sup>14</sup> Walmex’s growth during the early 2000s was fueled partly by an extensive bribery scheme overseen by senior officials of the subsidiary, including the CEO and general counsel. Specifically, Walmex officials accelerated new store openings by systematically bribing Mexican government officials.

7. The *Times* described Walmex as “an aggressive and creative corrupter” that used large bribes to “subvert democratic governance...circumvent regulatory safeguards that protect Mexican citizens from unsafe construction...[and] outflank rivals.”<sup>15</sup> The *Times* further reported that senior officials of Wal-Mart in the United States found out about the bribery in September 2005 from a whistleblower and confirmed the allegations during a brief internal investigation, but subsequently covered up the evidence. As indicated above, internal Wal-Mart documents indicate that the Company informed E&Y about the bribery allegations shortly after the whistleblower came forward.<sup>16</sup>

### **A Timeline of Key Events**

8. This section summarizes key events relevant to an evaluation of E&Y’s conduct of the Wal-Mart audit engagement.<sup>17</sup>

9. *September 2005.* Walmex whistleblower Sergio Cicero (a former attorney in Walmex’s real estate unit) contacts Wal-Mart International General Counsel Maritza Munich with allegations that senior Walmex executives, including the CEO, chief auditor and general

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<sup>11</sup> Wal-Mart Stores, Inc. SEC Form 10-K for the year ending January 31, 1998.

<http://www.sec.gov/Archives/edgar/data/104169/0000104169-98-000003.txt>; Walmex, “Estructura Corporativa,” accessed March 20, 2015, at <http://www.walmex.mx/es/accion-walmex/estructura-corporativa.html>

<sup>12</sup> Wal-Mart does not separately report Walmex results within its consolidated statements. We calculated these estimates using Wal-Mart de México annual reports for the years ending December 31, 2000 through 2005 and Wal-Mart Stores, Inc. annual reports for the years ending January 31, 2001 through 2006. Walmex \$M results were translated into \$US using OANDA rates as of the period end date and adjusted to reflect Wal-Mart’s partial ownership stake in Walmex as of the end of period date.

<sup>13</sup> Barstow, 2012

<sup>14</sup> David Barstow and Alejandra Xanic von Bertrab, “The Bribery Aisle: How Wal-Mart Got Its Way in Mexico,” *The New York Times* (December 17, 2012). <http://www.nytimes.com/2012/12/18/business/walmart-bribes-teotihuacan.html> (hereafter Barstow and Xanic von Bertrab, 2012)

<sup>15</sup> Barstow and Xanic von Bertrab, 2012

<sup>16</sup> Fung Memo, February 27, 2006

<sup>17</sup> Except where otherwise noted this timeline is based on Barstow, 2012 and Barstow and Xanic von Bertrab, 2012.

counsel, had overseen a large-scale program of bribery of Mexican government officials. The alleged bribes were intended to speed up the pace of new store openings by allowing the Company to evade various legal and regulatory requirements. The alleged bribery had gone on for years, according to Mr. Cicero, but accelerated dramatically after Eduardo Castro-Wright's promotion to the position of Walmex CEO in 2002.

10. *October 2005.* In or around October 2005, Wal-Mart hires a law firm, Willkie Farr & Gallagher, to advise it about the bribery allegations. The law firm recommends a four-month "independent, spare-no-expense investigation [similar to the type] major corporations routinely undertake when confronted with allegations of serious wrongdoing by top executives," according to the *Times* article. Senior Wal-Mart managers reject this recommendation and instead decide to conduct a far more limited two-week preliminary investigation with in-house investigators.

11. *November 2005.* The preliminary inquiry conducted by Wal-Mart's Corporate Investigations and Internal Audit Services units finds evidence corroborating Cicero's allegations. During the course of the investigation, a second whistleblower, a former Walmex auditor who had been fired in 2004 after flagging possible FCPA violations, confirms that senior Walmex officials, including the CEO and General Counsel, had overseen an extensive bribery scheme. The second whistleblower directs Wal-Mart's investigators to documentary evidence in the Walmex accounts. Acting on this information, the investigators quickly identify 441 improperly recorded payments totaling \$24 million between 2003 and 2005 alone.

12. *December 2005.* Wal-Mart's investigators advise senior executives in the United States that, "There is reasonable suspicion to believe that Mexican and USA laws have been violated."<sup>18</sup>

13. *January 2006.* Wal-Mart International General Counsel Maritza Munich, the original recipient of Mr. Cicero's allegations, announces her intention to resign as of February 1. One of Munich's final acts is to draft a memo in which she argues for expanding the Mexico investigation and against allowing the implicated executives to interfere in the investigation. She notes that "the bribery of government officials is a criminal offense in Mexico." Munich further suggests, on the basis of Sergio Cicero's early statements, that there could be additional transactions that merit investigation. Recipients of the Munich memo include Wal-Mart SVP for Internal Audit Services Michael Fung and General Counsel Tom Mars.

14. *February 3, 2006.* Responding to complaints from Walmex CEO Eduardo Solorzano (who succeeded Mr. Castro-Wright in February 2005) that Wal-Mart's investigators had overstepped their bounds, Wal-Mart CEO H. Lee Scott criticizes Wal-Mart's investigators for being "overly aggressive." Mr. Scott directs General Counsel Tom Mars and Vice President for Global Security, Aviation and Travel Kenneth Senser, to revise the protocol governing internal investigations. The next day, Messrs. Senser and Mars deliver a revised protocol and begin the process of turning over the bribery investigation to Walmex General Counsel Jose Luis Rodriguezmacedo – who had been directly implicated in the bribery by both whistleblowers.

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<sup>18</sup> Barstow, 2012

15. *February 27, 2006.* In a memo to Roland Hernandez, the chair of Wal-Mart's Audit Committee, Michael Fung, Senior Vice President for Internal Audit Services, states that Ernst & Young had been kept informed about the Walmex investigation for months.<sup>19</sup> Mr. Fung also asserts that the improper payments identified by the Company's investigators did not reflect a bribery scheme, as alleged by two whistleblowers. He offers an alternative explanation for the payment records – writing that whistleblower Sergio Cicero had been terminated after it was discovered that he was diverting Walmex funds to an outside firm with which his wife was associated. It should be noted, here, that the *Times* account flatly contradicts Mr. Fung's claims. According to the *Times*, Cicero was allowed to resign in 2004 with severance benefits and a \$25,000 bonus.<sup>20</sup> Further, Wal-Mart Corporate was aware of this because at the time of Mr. Cicero's separation from the company, Walmex General Counsel Rodriguezmacedo emailed Wal-Mart International General Counsel Maritza Munich to assure her that there was no financial wrongdoing on Mr. Cicero's part, but rather what Mr. Rodriguezmacedo characterized "merely as an undisclosed conflict of interest."

16. *March 2006.* Walmex General Counsel Rodriguezmacedo submits a draft report on the investigation to Wal-Mart. The report exonerates Walmex officials of wrongdoing and disputes the whistleblowers' bribery allegations. Rodriguezmacedo's findings closely track the assertions in the February 27, 2006 communication from Wal-Mart SVP Michael Fung to Audit Committee Chair Roland Hernandez. Thus, Mr. Rodriguezmacedo repeats the claim, disputed by *The New York Times*, that the first whistleblower, Mr. Cicero, had been terminated in 2004 for theft, and that the improperly recorded payments could be explained by Mr. Cicero's embezzlement.

17. *March 25, 2006.* Upon reading the draft report submitted by Mr. Rodriguezmacedo, Wal-Mart Director of Corporate Investigations Joseph Lewis, who had overseen the preliminary inquiry into the Walmex bribery allegations, emails Wal-Mart International General Counsel Alberto Mora and VP for Global Security Kenneth Senger to express his dissatisfaction. Lewis writes, "I have reviewed this report and find it lacking as a result of the lack of knowledge about the work conducted in support of their conclusions... More importantly, if one agrees that Sergio defrauded the company and I am one of them,"<sup>21</sup> the question becomes, how was he able to get away with almost ten million dollars and why was nothing done after it was discovered?"<sup>22</sup>

18. *May 10, 2006.* After Walmex General Counsel Rodriguezmacedo submits his final report on the bribery allegations, Wal-Mart Director of Corporate Investigations Joseph Lewis emails his boss, VP for Global Security Ken Senger. Lewis writes, "At the risk of being cynical, that report is exactly the same as the previous which I indicated was truly lacking..."<sup>23</sup>

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<sup>19</sup> Wal-Mart Stores, Inc. v. Indiana Electrical Workers Pension Trust Fund IBEW, Case Number 614,2013, EFiled Jan 24 2014 04:52PM EST in the Supreme Court of the State of Delaware, Filing ID 54882057, Exhibit B1-B4

<sup>20</sup> Barstow, 2012

<sup>21</sup> Note that it is possible to believe that Sergio Cicero defrauded Wal-Mex and was also a participant in an illegal bribery scheme authorized by Wal-Mex officials.

<sup>22</sup> City of Pontiac General Employees' Retirement System v. Wal-Mart Stores, Inc. et al, Case No. 5:12-cv-05162-SOH in the U. S. District Court Western District of Arkansas (Fayetteville) (originally filed in Tennessee Middle, as Case No. 3:12-cv-00457) Document 40-17 Filed 07/17/12

<sup>23</sup> Barstow, 2012

19. *June 2006.* Wal-Mart officials in the U.S. accept Walmex General Counsel Rodriguezmacedo's final report and close out the investigation of the bribery allegations. The report exonerates Walmex officials of any wrongdoing and accuses whistleblower Sergio Cicero of defrauding the Company.<sup>24</sup>

### **Wal-Mart's Delayed and Involuntary Disclosures**

20. Wal-Mart failed to disclose to the Securities and Exchange Commission and the Department of Justice that the Company's investigators had found probable violations of the U.S. Foreign Corrupt Practices Act of 1977 until six years later, after the *Times* confronted the Company with its findings in late 2011 (See Appendix II, for a summary of key Wal-Mart disclosures related to the Walmex allegations). Wal-Mart did not specifically disclose the Walmex allegations to investors until May 17, 2012,<sup>25</sup> after the publication of the first *New York Times* story on the subject. On November 15, 2012, the Company disclosed that it had broadened its internal inquiry to additional overseas markets where there had been allegations of FCPA violations, including Brazil, India and China.<sup>26</sup>

21. Wal-Mart's response to the bribery allegations arguably violated its own ethics policies as well as U.S. laws, including the Foreign Corrupt Practices Act of 1977 and the Exchange Act of 1934. These possible violations are the subject of ongoing investigations by the Department of Justice and the Securities and Exchange Commission, as well as private litigation. However, many of the possible violations could not have occurred without the acquiescence of the Company's external auditor, Ernst & Young. In the following sections, we review the key auditing standards and laws that E&Y may have violated in its conduct of the Wal-Mart engagement.

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<sup>24</sup> To our knowledge neither Wal-Mart nor Walmex ever sought to prosecute Mr. Cicero or to recover the purportedly stolen funds.

<sup>25</sup> Wal-Mart Stores, Inc., SEC Form 8-K, Filed May 17, 2012.

<http://www.sec.gov/Archives/edgar/data/104169/000119312512237308/d354306d8k.htm>

<sup>26</sup> Wal-Mart Stores, Inc., SEC Form 8-K, Filed November 15, 2012.

<http://www.sec.gov/Archives/edgar/data/104169/000119312512471604/d440140d8k.htm>

### C. The Auditor's Obligations with Respect to Evidence of Illegal Acts

22. We know from the Fung memo that E&Y was informed by Wal-Mart about the allegations of illegal bribery at Walmex. Under AU Section 317, auditors have certain obligations when confronted with evidence of an illegal act that may have a material indirect effect on the financial statements. In the first place, "the auditor should apply audit procedures specifically directed to ascertaining whether an illegal act has occurred."<sup>27</sup> Further, "If the auditor concludes that an illegal act has a material effect on the financial statements, and the act has not been properly accounted for or disclosed, the auditor should express a qualified opinion or an adverse opinion on the financial statements taken as a whole, depending on the materiality of the effect on the financial statements."<sup>28</sup>

23. As reported by *The New York Times*, Wal-Mart's own investigators reported to senior executives that there was "reasonable suspicion to believe that Mexican and USA laws have been violated" by an illegal bribery scheme. Although the dollar amount of the improperly recorded payments that the Company's investigators discovered in their brief engagement was not quantitatively material to Wal-Mart's financial statements,<sup>29</sup> the relevant authorities are clear that materiality cannot be determined by quantitative factors alone. Rather, the appropriate test of materiality is whether a fact, given the surrounding circumstances, would be significant to a reasonable person relying upon the financial statements.<sup>30</sup>

24. Further, the auditor's responsibility to consider the qualitative aspect of materiality is especially relevant when the auditor has obtained evidence of illegal acts. An illegal payment of an otherwise immaterial amount could be material if there is a reasonable possibility that it could lead to a material contingent liability or a material loss of revenue.<sup>31</sup> Even a small misstatement that involves concealment of an unlawful transaction may render material a quantitatively small misstatement of a financial statement.<sup>32</sup>

25. Given the nature of the probable violations that Wal-Mart's own investigators had found, Wal-Mart and E&Y should have determined that the improper recording of millions of dollars in payments was material to the financial statements.

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<sup>27</sup> AU § 317.07, *The Auditor's Consideration of the Possibility of Illegal Acts*

<sup>28</sup> AU § 317.18, *Effect on the Auditor's Report*

<sup>29</sup> Since the Walmex matter came to light, Wal-Mart has disclosed that it is investigating allegations of FCPA violations in additional foreign markets, including but not limited to Brazil, India, and China (see Appendix). At this time there is not sufficient public information to estimate the full extent of possible illegal bribery at Wal-Mart's overseas subsidiaries, or the impact of the alleged bribery on the Company's finances.

<sup>30</sup> The Supreme Court of the United States has defined materiality as "a substantial likelihood that the ...fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available." SEC Staff Accounting Bulletin No. 99 expresses the view that, "A matter is 'material' if there is a substantial likelihood that a reasonable person would consider it important."

<sup>31</sup> AU § 312.11

<sup>32</sup> SEC Staff Accounting Bulletin No. 99, *Materiality*



### **Assessing Materiality: FCPA Violations and Contingent Liabilities**

26. In our view, the alleged violations were qualitatively material, due to the indirect effects of the illegal acts.<sup>33</sup> The FCPA prohibits payments to government officials *of any value*, if those payments are made with a corrupt purpose. Even if the alleged bribes were quantitatively immaterial to Wal-Mart as a consolidated entity, the Company still had an obligation to disclose reasonably probable violations to the DOJ and SEC and to take appropriate remedial actions, including disciplinary action against the responsible individuals. Due to the pervasiveness of the alleged bribery and the involvement of high-level officials, Wal-Mart and E&Y had good reason to believe that the Company would face significant contingent liabilities related to potential criminal and civil enforcement actions under the Foreign Corrupt Practices Act. In addition to significant financial costs, Wal-Mart could have been forced to terminate the entire executive team at Walmex or to take other actions that would have impacted the Company's ability to meet shareholder expectations. Thus, credible evidence of violations would have been significant to a reasonable user of the financial statements.

### **Assessing Materiality: The Significance of Walmex's Growth**

27. In our view, the alleged FCPA violations were material to the financial statements because knowledge that Walmex's success was more than likely sustained through illegal bribery would clearly have mattered to a reasonable reader of the financial statements. For instance, Wal-Mex's revenue growth comprised 14.5% of Wal-Mart's overall revenue growth from 2003 to 2006.<sup>34</sup>

28. In April 2012, The New York Times reported whistleblower Sergio Cicero's allegation that, "In its rush to build stores... the company had paid bribes to obtain permits in virtually every corner of the country."<sup>35</sup> Further, according to the Times, "Mr. Cicero described how Wal-Mart de Mexico's leaders had set 'very aggressive growth goals' that required opening new stores 'in record times.' Wal-Mart de Mexico executives, he said, were under pressure to do 'whatever was necessary' to obtain permits."

29. Analysts and the business press took notice of Walmex's growth during this period, as evidenced by the following:

- a. In October 2004, Bear Stearns analyst Daniel Parker told Bloomberg that Walmex was "gaining market share as it opens new stores faster than its competitors."<sup>36</sup>
- b. Analysts at Santander routinely cited Walmex's pace of expansion in their reports on the company. In June 2005, for example, Santander analyst Joaquin Ley wrote that "A

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<sup>33</sup> AU § 317.06

<sup>34</sup> Author's calculations based on data from Capital IQ. Wal-Mex 2003 revenue (year ending December 31, 2003; historical currency conversion) \$11.3 B, Wal-Mex 2006 revenue \$19B. Wal-Mart 2003 revenue (year ending January 31, 2003) \$259B, Wal-Mart 2006 revenue \$312 B. Wal-Mex 2003-2006 revenue growth:  $\$19 - \$11.3 = \$7.7$ . Wal-Mart 2003-2006:  $\$312 - \$259 = \$53$ .  $\$7.7 / \$53 = 14.5\%$ .

<sup>35</sup> Barstow, 2012

<sup>36</sup> Intil Landauro, "Mexico's Soriana to Spend \$300 Million to Expand (Update 1)," *Bloomberg* (November 29, 2004). [http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aNZh5btJrO0Y&refer=latin\\_america](http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aNZh5btJrO0Y&refer=latin_america)

significant portion of the future EBITDA growth we forecast should come from sales-floor expansion. If that expansion were to be moderated, our estimates could be negatively affected.”<sup>37</sup>

- c. In May 2006, *Barron's* wrote that, “Success did not come immediately [with Wal-Mart’s entrance into Mexico]. But with former chief executive Eduardo Castro-Wright at the helm between 2003 and 2005, Walmex added 200 new stores and sales jumped almost 38%.”<sup>38</sup>
- d. J.P. Morgan analyst Andrea Teixeira told *Barron's* that, with Walmex, “You are not buying value. You are buying growth.”<sup>39</sup>

30. Walmex’s expansion-fueled success came at the expense of other Mexican and global retailers, as the company “gobbled up everything in its path,” to become Mexico’s number one retailer, in the process driving the French company Carrefour out of the market, and forcing other competitors to spend more and adjust their strategies to the new competitive reality.<sup>40</sup>

40. When former Walmex CEO Eduardo Castro-Wright was promoted to CEO of Wal-Mart’s U.S. operations in September 2005, his predecessor in that job (and future Wal-Mart CEO), Mike Duke said, “In his role as president and CEO of Wal-Mart Mexico, Eduardo led the team to high standards of performance and growth.”<sup>41</sup>

41. Investors in Walmex and Wal-Mart appeared to take the view that the bribery allegations mattered to their assessment of both companies. Walmex shares fell 12% percent on record volume in the first day of trading after *The Times* story broke.<sup>42</sup> Wal-Mart shares dropped 4.7 percent.<sup>43</sup>

42. More recently, the company’s growth has slowed from about 10% per year before the bribery allegations surfaced to 3.9% in fiscal year 2015, a drop that even Wal-Mart executives attribute to “strengthening of internal oversight.”<sup>44</sup> The fact that tightened internal

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<sup>37</sup> Joaguin Lay, “Aim Higher; Raising Estimates and Target,” *Santander Investment Walmex Company Report* (June 7, 2005). <http://www.santander.com.mx/PDF/canalfin/documentos/walmex070605i.pdf>

<sup>38</sup> Johanna Bennett, “Is Walmex a Better Play Than Wal-Mart?,” *Barron's* (May 23, 2006). <http://online.barrons.com/articles/SB114838807093760557?tesla=y>

<sup>39</sup> Ibid

<sup>40</sup> Ken Bensinger, “Like the US, Mexico feels Wal-Mart era,” *Christian Science Monitor* (March 15, 2005). <http://www.csmonitor.com/2005/0315/p01s03-woam.html>

<sup>41</sup> Wal-Mart Stores, Inc. “Wal-Mart Announces Management Changes and Organization Realignment,” (September 30, 2005). [http://www.sec.gov/Archives/edgar/data/104169/000116923205004808/d65522\\_ex99-1.htm](http://www.sec.gov/Archives/edgar/data/104169/000116923205004808/d65522_ex99-1.htm); Note that two weeks later, on October 16, 2005, Mr. Duke, who had just been made CEO of Wal-Mart International, received an email detailing Mr. Cicero’s allegations against Castro-Wright and other Walmex executives (Barstow, 2012).

<sup>42</sup> Carla Mozee, “Walmex tumbles in Mexico City after bribery report,” *MarketWatch* (April 23, 2012). <http://www.marketwatch.com/story/walmex-tumbles-in-mexico-city-after-bribery-report-2012-04-23>

<sup>43</sup> Jessica Wohl and Elinor Comlay, “Wal-Mart shaken by bribery probe, shares plunge,” *Reuters* (April 23, 2015). <http://www.reuters.com/article/2012/04/24/us-walmart-idUSBRE83LOC820120424>

<sup>44</sup> Amy Guthrie, “Wal-Mart Faced Tough 2014 in Mexico, a Key Market,” *The Wall Street Journal* (Jan. 7, 2015). <http://www.wsj.com/articles/wal-mart-faced-tough-2014-in-mexico-a-key-market-1420672240>

oversight would cause growth to slow suggests that corruption may have been spurring Walmex's growth, even after Mr. Castro-Wright's departure.

### **Assessing Materiality: Flawed Investigation Creates Additional Contingent Liabilities**

43. E&Y should have known that Wal-Mart's mishandling of the bribery allegations exposed the Company to loss contingencies through potential enforcement action by the SEC and DOJ. The DOJ's Principles of Federal Prosecution of Business Organizations, the SEC's Seaboard Report, and the 2012 DOJ/SEC Resource Guide on the FCPA identify the factors these agencies use to determine the appropriate level of enforcement action, including criminal and civil penalties, in the case of FCPA (and other relevant) violations. The guidance makes clear that companies may be able to mitigate enforcement action and penalties through voluntary and timely self-disclosure and remediation, including disciplinary action against responsible individuals. Wal-Mart's failure to self-disclose and to take remedial action in a voluntary and timely manner unnecessarily exposed shareholders to additional risks.

44. Additionally, willful blindness by senior executives and directors of Wal-Mart to FCPA violations is itself a violation under the law. To the extent that senior executives' and directors' handling of the internal investigation could be seen to demonstrate "willful blindness," their actions have generated additional undisclosed violations that were also qualitatively material to the financial statements.

### **The Auditor's Obligation to Communicate with the Audit Committee**

45. PCAOB standards require auditors to assure themselves that an audit committee or others with equivalent authority at an issuer client, up to the board of directors, are adequately informed with respect to the occurrence of an illegal act.<sup>45</sup>

46. Ernst & Young should have been aware that an illegal act was more-likely-than-not to have occurred. However, it is unclear whether the full Audit Committee and Board of Directors were fully informed.

47. The PCAOB should investigate whether E&Y fulfilled its obligations to communicate with the Audit Committee.

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<sup>45</sup> See AU § 317.17

### **The Auditor's Obligations Under Section 10A(b) of the Exchange Act**

48. Section 10A(b) of the Exchange Act requires auditors who become aware of illegal acts to report such acts to appropriate personnel within the company and, if the company fails to take appropriate action, to notify the SEC.<sup>46</sup>

49. Given Wal-Mart's untimely and involuntary disclosure and remediation efforts, the PCAOB should investigate whether Ernst & Young took appropriate steps to comply with these obligations.

### **D. The Audit of Internal Control over Financial Reporting**

50. The auditor's objective in an audit of internal control over financial reporting is to express an opinion on management's assessment of the effectiveness of the company's internal control over financial reporting. Internal control over financial reporting includes all controls that could materially affect financial reporting, including controls that focus primarily on the effectiveness and efficiency of operations or compliance with laws and regulations or that are intended to address the risks of fraud.<sup>47</sup>

51. To form a basis for expressing an unqualified opinion on management's assessment of ICFR, the auditor must plan and perform the audit to obtain reasonable assurance that no material weaknesses exist, i.e. that there is a remote likelihood that material misstatements will not be prevented or detected on a timely basis.<sup>48</sup>

52. When planning the audit of ICFR, the auditor should take into account relevant factors, including their own prior knowledge of the company's ICFR from previous audit engagements; preliminary judgments about materiality, risk, and other factors; control deficiencies previously communicated to the audit committee or management; and legal or regulatory matters of which the company is aware.<sup>49</sup>

53. The information the auditor obtains during a financial statement audit for the same period is relevant to the auditor's conclusion about the effectiveness of the company's internal control over financial reporting.<sup>50</sup>

### **Ernst & Young's Obligation to Appropriately Assess Internal Control Deficiencies**

54. The PCAOB should investigate whether E&Y obtained sufficient evidence to conclude with reasonable assurance that Wal-Mart's ICFR was free of material weaknesses, in

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<sup>46</sup> U.S. Department of Justice (Criminal Division) and U.S. Securities and Exchange Commission (Enforcement Division), "FCPA: A Resource Guide to the U.S. Foreign Corrupt Practices Act" (November 14, 2014), p.22. Available at: <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf>

<sup>47</sup> See paragraphs 4, 15, 17, and 24 of Auditing Standard No. 2 (superseded by AS No. 5, effective for fiscal years on or after November 15, 2007). We refer to AS No. 2 throughout because this is the standard in place at the time of the audit for the period ending January 31, 2006. We believe that the supersession of AS No. 2 by AS No. 5 does not alter the substantive analysis herein.

<sup>48</sup> See paragraph 4 of Auditing Standard No. 2

<sup>49</sup> See paragraphs 15, 17, and 39 of Auditing Standard No. 2

<sup>50</sup> See paragraph 4 of Auditing Standard No. 2

spite of the apparent internal control deficiencies outlined below. In our view, the publicly available information provides evidence of internal control deficiencies, including significant control deficiencies, at both the Company-level and the Walmex business unit, during the year ending January 31, 2006, and certain subsequent years.

55. As detailed further below, E&Y either knew or should have known about these apparent deficiencies. Further, under Auditing Standard 2 (“AS 2”), at least some of the apparent deficiencies should have been perceived by E&Y as strongly indicating a material weakness in internal control over financial reporting.<sup>51</sup> In light of these deficiencies, E&Y had an obligation to “alter the nature, timing, or extent of procedures to be performed during the financial statement audit to be responsive to such deficiencies...”<sup>52</sup>

56. E&Y had a further obligation to directly perform the audit work necessary to support their opinion as to the significance of these deficiencies.<sup>53</sup> In forming an opinion on the identified control deficiencies, E&Y had an obligation to exercise professional skepticism and, specifically, to “not be satisfied with less-than-persuasive evidence because of a belief that management is honest.”<sup>54</sup>

### **Evidence of Deficiencies in Company-Level Controls**

57. Company-level controls are especially critical to the audit of ICFR because they “often have a pervasive impact on controls at the process, transaction, or application level.”<sup>55</sup> Company-level controls include “controls within the control environment”<sup>56</sup> such as: tone at the top; consistent policies and procedures, and company-wide programs, such as codes of conduct and fraud prevention; the assignment of authority and responsibility;<sup>57</sup> the effectiveness of the Board of Directors;<sup>58</sup> the activities of the internal audit function and the audit committee;<sup>59</sup> integrity and ethical values; and human resources policies and procedures.<sup>60</sup>

58. The role of management and boards of directors is especially critical to company-level controls. AS 2 states that, “Management, along with those who have responsibility for oversight of the financial reporting process (such as the audit committee), should set the proper tone; create and maintain a culture of honesty and high ethical standards; and establish appropriate controls to prevent, deter, and detect fraud.”<sup>61</sup>

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<sup>51</sup> See paragraph 140 of Auditing Standard No. 2

<sup>52</sup> See paragraph 26 of Auditing Standard No. 2

<sup>53</sup> See paragraph 110 of Auditing Standard No. 2

<sup>54</sup> See paragraph 106 of Auditing Standard No. 2

<sup>55</sup> See paragraph 52 of Auditing Standard No. 2

<sup>56</sup> See paragraphs 113–114 of Auditing Standard No. 2

<sup>57</sup> See paragraph 53 of Auditing Standard No. 2

<sup>58</sup> See paragraph 114 of Auditing Standard No. 2

<sup>59</sup> See paragraphs 53, 55, and 59 of Auditing Standard No. 2

<sup>60</sup> See paragraph 114 of Auditing Standard No. 2

<sup>61</sup> See paragraph 25 of Auditing Standard No. 2

59. E&Y arguably should have identified multiple apparent deficiencies in company-level internal controls during its audit of Wal-Mart's ICFR for the period ending January 31, 2006, and certain subsequent years:

- a. Ernst & Young knew, or should have known, that Wal-Mart Management placed the internal investigation into the Walmex bribery allegations under the authority of an executive who had been directly implicated in the wrongdoing (see Appendix X, Jose Luis Rodriguezmacedo). This suggests deficiencies in controls within the control environment, including but not limited to: assignment of authority and responsibility; tone at the top; integrity and ethical values; and policies and procedures, and company-wide programs, such as codes of conduct and fraud prevention.
- b. Ernst & Young knew, or should have known, that Wal-Mart retained and even promoted certain Walmex executives despite credible evidence that the executives were involved in directing an illegal bribery scheme that violated the Company's Code of Ethics. (See Appendix X for a partial list). This suggests deficiencies in controls within the control environment, including but not limited to: tone at the top; integrity and ethical values; human resources policies and procedures; policies and procedures, and company-wide programs, such as codes of conduct and fraud prevention; and assignment of authority and responsibility.
- c. Ernst & Young knew, or should have known, that Wal-Mart executives who likely violated the law and the Company's Code of Ethics by suppressing credible evidence of the Walmex bribery, or by acquiescing in its suppression, continued to serve at the highest levels of the Company, including as CEO (H. Lee Scott). (See Appendix X for a partial list). These individuals include former CEO Michael Duke, who remains a member of the Wal-Mart board, and the current SVP for Global Security, Kenneth Senger, who retains authority over whistleblower investigations. This suggests deficiencies in controls within the control environment, including but not limited to: tone at the top; integrity and ethical values; human resources policies and procedures; policies and procedures, and company-wide programs, such as codes of conduct and fraud prevention; and assignment of authority and responsibility.
- d. Ernst & Young knew, or should have known, that Wal-Mart's internal audit function was ineffective. After Wal-Mart Internal Audit Services personnel found probable suspicion to believe laws had been broken, senior executives were able to suppress these findings and place the investigation under the control of an executive implicated in wrong-doing. AS 2 specifically identifies an ineffective internal audit function as a "strong indicator that a material weakness in internal control over financial reporting exists." (AS 2, Paragraph 140)
- e. Ernst & Young knew, or should have known, that Wal-Mart's audit committee was ineffective. The chair of Wal-Mart's Audit Committee, Roland Hernandez, was made aware of the Walmex bribery allegations but failed to prevent the investigation from being turned over to an executive who had been implicated in the bribery. This suggests deficiencies with respect to company-level controls, including but not

limited to: the effectiveness of the Board of Directors, the internal audit function, and the audit committee. AS 2 states that, “Ineffective oversight by the audit committee of the company's external financial reporting and internal control over financial reporting should be regarded as at least a significant deficiency and is a strong indicator that a material weakness in internal control over financial reporting exists.” (AS 2, paragraph 59)

60. Taken as a whole, these apparent deficiencies in company-level controls suggest that senior executives, directors, the internal auditors, and the audit committee all lacked the will and the capacity to ensure that Company officials refrained from violating the law and the Company's own ethics policies as they pursued Wal-Mart's business objectives. Further, senior executives and directors evidently rewarded executives whom they had reasonable suspicion to believe had committed violations in order to advance the Company's interests. The apparently deficient controls are all controls within the control environment. According to AS 2, a deficiency in controls within the control environment should have been viewed by E&Y as a “strong indicator that a material weakness in internal control over financial reporting exists.”<sup>62</sup>

### **Evidence of Internal Control Deficiencies at Walmex**

61. Prior to and during its audit of Wal-Mart's ICFR for the period ending January 31, 2006, E&Y should have identified evidence of deficiencies in internal control over financial reporting at Wal-Mart's Mexican subsidiary, as outlined below. Even where past deficiencies may have been corrected, E&Y's knowledge of those deficiencies should have caused E&Y to appropriately alter the audit of ICFR, in order to obtain reasonable assurance that there were no outstanding material weaknesses as of the financial statement date.

- a. Paragraph 140 of AS 2 states that “fraud of any magnitude on the part of senior management” is a “strong indicator that a material weakness in internal control over financial reporting exists.” Ernst & Young knew, or should have known, that Wal-Mart's own investigators had found reasonable suspicion to believe that Walmex executives, including the CEO, had violated U.S. and Mexican laws by bribing government officials to speed up new store openings in Mexico for multiple years up to and including calendar year 2005.<sup>63</sup>
- b. Ernst & Young knew, or should have known, about the widespread inaccurate recording of millions of dollars in payments in the Walmex books. This information should have raised significant doubt to E&Y that the internal controls in place at Walmex were designed and operating effectively. The design of the control allowed these payments to be processed without notice and the operating effectiveness of detective controls failed by allowing the payments to be paid without raising red flags. The volume of cases (441 payments from 2003 to 2005) would lead a reasonable auditor to conclude that there is substantial doubt that the controls in place were capable of preventing or detecting a material misstatement of the financial statements.

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<sup>62</sup> See paragraph 140 of Auditing Standard No. 2

<sup>63</sup> As indicated above, E&Y was informed of the allegations by Wal-Mart Internal Audit Services.

- c. Ernst & Young knew, or should have known, that in 2004 Mexican citizens had publicly accused Walmex of corrupt practices in conjunction with the approval process for a Wal-Mart store located at an archaeologically sensitive site.<sup>64</sup>
- d. Ernst & Young knew, or should have known, about the 2003 report commissioned by Wal-Mart from Kroll, Inc. The report identified internal control deficiencies at Walmex, including executives who “failed to enforce their own anticorruption policies, ignored internal audits that raised red flags and even disregarded local press accounts asserting that Wal-Mart de Mexico was ‘carrying out a tax fraud.’”<sup>65</sup> Kroll evaluated internal audit and antifraud units at Walmex and found them to be “ineffective.”
- e. Ernst & Young knew or should have known that in connection with the matter investigated by Kroll, Inc. in 2003, Walmex was forced to pay \$34.3 million in back taxes to the Mexican government. Walmex made this payment after it was found that the company had systematically increased sales by helping favored high-volume customers evade sales taxes.<sup>66</sup> The payment of back taxes was disclosed in Wal-Mart’s quarterly financial statement for the period ending July 31, 2003, but with little detail regarding the circumstances.<sup>67</sup>

#### **E. The Auditor’s Obligations under Section 10(b) of the Exchange Act and Commission Rule 10b-5 thereunder**

62. Section 10(b) of the Exchange Act and Commission Rule 10b-5 thereunder are antifraud provisions that prohibit a person, in connection with the purchase or sale of a security, from making an untrue statement of a material fact or from omitting to state a material fact necessary to make statements made, in light of the circumstances under which they were made, not misleading.

63. The PCAOB should investigate whether Ernst & Young violated the antifraud provisions of § 10(b) of the Exchange Act and Rule 10b-5 by issuing audit reports representing that the Wal-Mart audits had been conducted in accordance with PCAOB standards, when the auditors knew, or were reckless in not knowing, that such representations were false.

64. In particular, the Board should investigate whether E&Y violated § 10(b) and Rule 10b-5 by issuing an unqualified audit opinion despite Wal-Mart’s failure to disclose criminal violations that the Company should reasonably have known were more likely than not

<sup>64</sup> These allegations were reported in September, 2004. See, James C. McKinley, Jr., “No, the Conquistadors Are Not Back. It’s Just Wal-Mart,” *The New York Times* (September 28, 2004). <http://www.nytimes.com/2004/09/28/international/americas/28mexico.html>; See also Barstow and Xanic von Bertrab, 2012

<sup>65</sup> Barstow, 2012

<sup>66</sup> Barstow, 2012

<sup>67</sup> Wal-Mart Stores, Inc., SEC Form 10-Q for the period ending July 31, 2003 (Filed September 10, 2003). <http://www.sec.gov/Archives/edgar/data/104169/00001041903000017/final10q.htm>



to have occurred, *or* by failing to obtain sufficient competent evidential matter to support senior executives' assertions regarding the bribery allegations, in light of substantial evidence contradicting those assertions.

## **F. Conclusion: The Need for a PCAOB Investigation**

The evidence assembled in this document adds up to a strong *prima facie* case that E&Y failed to exercise due professional care or to adopt an appropriate degree of professional skepticism in understanding the Walmex bribery allegations and related internal control deficiencies.

E&Y knew by late 2005 that a whistleblower had brought forward allegations of illegal bribery by senior company officials at Walmex. As Wal-Mart's long-time auditor, E&Y should already have been aware at that time of prior red flags regarding internal controls at the Walmex business unit (including those identified in the 2003 in the Kroll Report) and of public allegations by Mexican nationals that bribery had facilitated Wal-Mart's expansion in the country. Further, if E&Y exercised the most basic level of due diligence in responding to the whistleblower allegations, it would have known that Wal-Mart had placed a Walmex executive who had allegedly played a central role in directing the bribery scheme in charge of resolving the investigation.

Especially given the broader context in which the bribery allegations emerged, E&Y should have brought a high degree of professional skepticism to the task of assessing the significance of the allegations and management's response to them. Instead, the evidence strongly suggests that E&Y relied excessively upon erroneous and less-than-persuasive representations from management to support its audit opinions. The fact that Wal-Mart's own lead investigator (Joseph Lewis) expressed dissatisfaction with management's evidently self-serving explanation for the hundreds of improperly recorded payments that been identified indicates that management's explanation lacked credibility.

According to SEC Chairwoman Mary Jo White, "Auditors serve as critical gatekeepers – experts charged with making sure that the processes that companies use to prepare and report financial information are ones that are built on strength and integrity."<sup>68</sup> And, when gatekeepers fail to perform their duties and responsibilities, "the risk of investor harm from fraud, control failures and other misconduct goes up significantly."<sup>69</sup>

Wal-Mart is the largest retailer in the world, with a market capitalization of \$270 billion,<sup>70</sup> revenues of \$485 billion, operations in 27 countries, and 2.2 million employees.<sup>71</sup> When a company like Wal-Mart breaks the rules, the potential negative consequences for

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<sup>68</sup> Mary Jo White, "Remarks at the Securities Enforcement Forum," (October 9, 2013).

[http://www.sec.gov/News/Speech/Detail/Speech/1370539872100#.VRGOVvnF\\_LE](http://www.sec.gov/News/Speech/Detail/Speech/1370539872100#.VRGOVvnF_LE)

<sup>69</sup> Mary Jo White, "Perspectives on Strengthening Enforcement," (March 24, 2014).

[http://www.sec.gov/News/Speech/Detail/Speech/1370541253621#.VRGO6vnF\\_LE](http://www.sec.gov/News/Speech/Detail/Speech/1370541253621#.VRGO6vnF_LE)

<sup>70</sup> Yahoo Finance, "Wal-Mart Stores, Inc." Accessed March 24, 2015, from <http://finance.yahoo.com/q?s=WMT>

<sup>71</sup> Wal-Mart Stores, Inc. "Wal-Mart will Hold Annual Shareholders Meeting on June 5," (March 17, 2015).

<http://news.walmart.com/news-archive/2015/03/17/walmart-will-hold-annual-shareholders-meeting-on-june-5>

investors and distortions of the competitive landscape are severe. As Wal-Mart's external auditor for more than 40 years, Ernst & Young has accepted the responsibility of helping to ensure that Wal-Mart and its officials do not break the law and the rules. The PCAOB, of course, has a critical role to play in making sure that E&Y fulfills that responsibility.

We believe a full PCAOB investigation is warranted in this case to determine whether E&Y did in fact fail to fulfill its obligations under PCAOB rules and standards, the Exchange Act of 1934, and other applicable rules, standards and laws.<sup>72</sup>

Thank you for your consideration.

Respectfully,

A handwritten signature in blue ink, appearing to read "Dieter Waizenegger", with a stylized flourish at the end.

Dieter Waizenegger  
Executive Director

CC: James R. Doty, Chair, PCAOB  
Mary Jo White, Chair, SEC  
Andrew Ceresney, Director, SEC Division of Enforcement

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<sup>72</sup> See AU § 333.04.