

## In the Matter of Walmart Inc. (2019)

### Nature of the Business.

Walmart Inc. ("Walmart") is a Delaware corporation headquartered in Arkansas and is an international retailer. The company maintains securities registered with the SEC pursuant to Section 12(b) of the Securities Exchange Act which are publicly traded on the NYSE and are registered with the SEC pursuant to Section 12(b) of the Exchange Act.

Walmart majority-owns subsidiaries that operates stores in Mexico, China, and Brazil, and a joint venture in India that "operated wholesale stores and distribution centers" (the "Mexico Subsidiary," "Brazil Subsidiary," "China Subsidiary," and "India JV," respectively).

### Influence to be Obtained.

According to the SEC, from 2000 to 2011, Walmart lacked proper controls to identify violations of the FCPA that its international subsidiaries engaged in. The SEC alleged the following violations:

**Mexico:** A former lawyer with the Mexico Subsidiary informed Walmart that the subsidiary's accelerated expansion involved certain problematic actions. Walmart learned that in Mexico, its subsidiary would use third party intermediaries to send illicit payments to government officials in order to secure licenses and permits. While Walmart conducted an internal investigation, it did not ultimately follow recommendations the investigation team made despite the investigator identifying risks.

**China:** The China Subsidiary's audit team uncovered issues relating to the Subsidiary's internal accounting controls. Specifically, its anti-corruption policy did not align with Walmart's official policy and was weaker in certain respects, many of which were not revised until 2011. Additionally the China Subsidiary did not provide anti-corruption training to its staff and the audit reported that managers at the subsidiary were not adequately trained on FCPA compliance.

**India:** A Walmart real estate agent warned a Walmart executive prior to forming the India JV that the JV partner may not be fully compliant of FCPA mandates, but Walmart still formed the joint venture despite various red flags. The India Partner in the JV was responsible for securing licenses, permits, and handling real estate issues in India and Walmart "continued to rely on" the partner despite audit reviews indicating internal control weaknesses "which [were also] not immediately addressed" by Walmart. In 2011, Walmart was alerted through an anonymous tip that the India JV was "involved in a scheme [through third party intermediaries] to make improper payments to government officials to obtain store operating permits and licenses." Despite the email alerting Walmart of this scheme, Walmart did not conduct an investigation.

**Brazil:** The Brazil Subsidiary failed to conduct adequate due diligence into third party intermediaries and to apply recommendations of its internal audit team. As a result the subsidiary "continued to retain certain high-risk [third party intermediaries]," one of whom was alleged to have made improper payments to Brazilian government officials.

### Enforcement.

On June 20, 2019, the SEC settled its enforcement action against Walmart for violations of the FCPA's books-and-records and internal controls provisions. According to the cease-and-desist order, Walmart agreed to pay \$119,647,735 in disgorgement and \$25,043,437 in prejudgment interest—totaling \$144,691,172 in sanctions. The SEC recognized Walmart's cooperation with the SEC investigation, and remediation efforts, including self-disclosures of potential violations, hiring of global and regional ethics and compliance officers, improving "on-site global anti-corruption audits," training, and "terminating business relationships with third parties involved in the conduct at issue." As a result of the criminal fine imposed by the Department of Justice in a related

### Key Facts

**Citation.** *In the Matter of Walmart Inc.*, Admin. Proc. File No. 3-19207 (June 20, 2019).

**Date Filed.** June 20, 2019.

**Country.** Brazil, China, India, and Mexico.

**Date of Conduct.** 2000 – 2011.

**Amount of the Value.** Not stated.

**Amount of Business Related to the Payment.** Not stated.

**Intermediary.** Subsidiary; Third Party Intermediaries.

**Foreign Official.** Unnamed government officials in Mexico, China, India, and Brazil.

**FCPA Statutory Provision.** Books-and-Records; Internal Controls.

**Other Statutory Provision.** None.

**Disposition.** Cease-and-Desist Order.

**Defendant Jurisdictional Basis.** Issuer.

**Defendant's Citizenship.** United States.

**Total Sanction.** \$144,691,172.

**Compliance Monitor/Reporting Requirements.** Two-year reporting requirement, Compliance Monitor.

**Related Enforcement Actions.** *In re Walmart, Inc.; United States v. WMT Brasilia S.a.r.l.*

**Total Combined Sanction.** \$282,646,421.

action, the SEC acknowledged it would not impose a civil penalty in addition. Walmart also agreed to report its remediation efforts to the SEC for a two-year period.

In a related matter, the DOJ entered into a non-prosecution agreement with Walmart, citing the company's engagement and cooperation in the DOJ's investigation. Walmart agreed to pay a monetary fine of over \$137 million. Walmart's Brazilian subsidiary also pleaded guilty to one count of violation of the FCPA.

