

Complaint Regarding Apparent Violations of
Regulation FD and the Sarbanes-Oxley Act
by Walgreen Co.

I. Introduction

The CtW Investment Group believes that Walgreen Co. executives and Board members may have committed violations of Regulation FD and the Sarbanes-Oxley Act. This complaint outlines the potential violations of federal securities laws and regulations and requests an investigation by the U.S. Securities & Exchange Commission.

Walgreen Co. (“Walgreen” or “the Company”) executives and Board members may have met privately with investors throughout late spring and summer 2014 and discussed material nonpublic information, even as the Company was undertaking the final steps of a major, transformational transaction. The CtW Investment Group first alerted the U.S. Securities & Exchange Commission (“the Commission”) in July 2014 to private meetings between Walgreen officials and certain investors that appear to have taken place in Winter and Spring 2014 and appear to have violated Regulation FD. In October 2014, Walgreen’s ex-CFO Wade Miquelon filed a lawsuit, alleging that Company executives routinely met with investors privately and providing detailed descriptions of those meetings. The allegations in the Miquelon complaint raise new questions about whether the Company has continued to violate Regulation FD and whether the Company’s legal and compliance departments have sufficient controls and procedures in place to ensure compliance with Regulation FD.

Miquelon’s complaint also includes allegations that, if true, suggest that the Company has not fully complied with the Sarbanes-Oxley Act. Miquelon alleges that Company representatives stated that the company had lax financial reporting controls in private meetings with investors and in conversations with a journalist. These statements, if true, may contradict the CEO and CFO certifications in quarterly filings, as well as the Company’s disclosures regarding its financial reporting controls.

The CtW Investment Group urges the U.S. Securities & Exchange Commission to investigate whether the Company violated Regulation FD and the Sarbanes-Oxley Act and, if it determines that violations occurred, to require that the Company issue corrective disclosures, institute stronger compliance mechanisms, and pay any fines or damages that the Commission determines are just and proper.

II. CtW Investment Group

The CtW Investment Group works with pension funds sponsored by affiliates of Change to Win – a federation of unions representing over five million members – to enhance long-term shareholder value through active ownership. These funds invest over \$250 billion in the global capital markets and are substantial investors in Walgreen.

III. Background Facts: Transformational Transaction, Inversion Discussion, FY2016 Earnings

The potential violations of Regulation FD and the Sarbanes-Oxley Act that are the subject of this complaint occurred between the first and second steps of the acquisition of Alliance Boots GmbH (“Alliance Boots”). The transaction has an unusual two-step structure: Walgreen purchased 45% of Alliance Boots and had an option to purchase the remainder of Alliance Boots after two and a half

years.¹ Shareholders did not vote on the first step of the transaction. The only required shareholder vote for the transaction is a vote to approve issuance of the shares necessary for the second step consideration.² The Company has filed a preliminary Form S-4 for that vote, but the date of the extraordinary shareholder meeting has not yet been set.³

In early 2014, executives from Walgreen and Alliance Boots appear to have begun discussing, with select groups of investors, the possibility of undertaking a corporate tax inversion.⁴ In early February, before the rumors of these inversion discussions leaked, Walgreen stock was trading at \$55 to \$60. By mid-July, at the height of the inversion rumors, the Company's stock was trading at \$71 to \$73. Ultimately, the Company determined not to undertake an inversion, in part because of the significant risks to the public reputation of the Company but also because counsel to the Company advised that there was a risk that the transaction would not pass muster with the IRS.⁵

During the same period that these internal discussions were underway, the Company determined that it needed to withdraw its FY2016 earnings goals, because they were no longer reasonable.⁶ The FY2016 EBIT numbers were of great interest to long-term investors in Walgreen, as they are the Company's own predictions for earnings in the first full reporting year of the newly combined Walgreen-Alliance Boots entity. Even as the Company was preparing its downward revision of the FY2016 earnings goals, the allegations in the Miquelon complaint, discussed below, suggest intense pressure from activist investors to increase the Company's earnings projections. Ultimately, the Company announced FY2016 EBIT projections that were roughly \$2 billion lower than previous projections.⁷ One month after that announcement, the Company entered an agreement with hedge fund JANA Partners LLC ("JANA") to

¹ Walgreen Co., Form 8-K (Aug. 2, 2012), available at

<https://www.sec.gov/Archives/edgar/data/104207/000119312512337951/d390831d8k.htm>.

² Purchase and Option Agreement By and Among Alliance Boots GmbH, AB Acquisitions Holdings Limited, and Walgreen Co., attached as Ex. 2.1 to Walgreen Co., Form 8-K (June 19, 2012), available at

<https://www.sec.gov/Archives/edgar/data/104207/000119312512275340/d369427dex21.htm>.

³ Walgreens Boots Alliance, Inc., Form S-4/A (Oct. 29, 2014), available at

<https://www.sec.gov/Archives/edgar/data/1618921/000119312514387439/d810278ds4a.htm>.

⁴ These discussions, occurring in February and April 2014, were the subject of an earlier complaint submitted to the Commission by the CtW Investment Group. In that complaint, we wrote: "An inversion would have the effect of re-domiciling Walgreen in a foreign country so that the group's worldwide effective tax rate is significantly lower. . . . An inversion would require a major revision to the original transaction because of the significant changes required to meet legal requirements for an inversion. Walgreen shareholders must hold less than 80% of the combined entity to qualify for the tax benefit. . . . Analysts have estimated that an inversion would result in significant savings for the company. Barclays has published the most complete models of potential savings. It estimates that, beginning in FY16, the inversion will result in annual tax savings of \$783 million."

⁵ Transcript of Walgreen Co. August 6, 2014 conference call, attached as Ex. 99.2 to Walgreen Co., Form 8-K (Aug. 5, 2012), available at <https://www.sec.gov/Archives/edgar/data/104207/000119312514298537/0001193125-14-298537-index.htm>.

⁶ Transcript of Walgreen Co. June 24, 2014 conference call, available at <http://seekingalpha.com/article/2284463-walgreens-wag-ceo-greg-wasson-on-q3-2014-results-earnings-call-transcript>.

⁷ Cantor Fitzgerald, Walgreen Co.: Upgrading to Hold Following Reaction to Merger Developments - Revised PT of \$56 (Aug. 7, 2014). Attached hereto as Exhibit A.

place two of its representatives on the Walgreen board, in exchange for JANA's agreement not to engage in a proxy fight.⁸

In this context, the Company may have favored short term "activist" investors with material nonpublic information, rather than fully and fairly disclosing the information to all investors, as required by Regulation FD. Additionally, the Company may have made statements attributing the earnings projection errors to Miquelon's "lack of attention to detail" and his department's "lax" financial controls, potentially contradicting certifications made by Company executives under the Sarbanes-Oxley Act. Shareholders are faced with an incomplete story about the influence of certain favored activist investors and about the facts leading up to the \$2 billion downward revision in FY2016 earnings.

IV. Previous Filing by the CtW Investment Group

On July 17, 2014, the CtW Investment Group filed a complaint ("the July Complaint") with the Commission alleging apparent violations of Regulation FD by Walgreen. The July Complaint alleged that, in February 2014 and April 2014, the Company had met with analysts and investors in private meetings and, based on subsequent news articles and analysts reports, appeared to have told investors that the Company was seriously considering undertaking a corporate tax inversion.

In the July Complaint, the CtW Investment Group requested that the Commission investigate the selective disclosures made by Walgreen senior officials to analysts and activist investors and enforce Regulation FD, including by requiring immediate corrective disclosures.

The July Complaint is attached as Exhibit B, and all allegations therein are incorporated into this complaint.

V. Allegations in the Miquelon Complaint Suggest Frequent Private Meetings with Activist Investors.

Walgreen Co.'s former CFO, Wade Miquelon, filed a lawsuit against the Company, alleging defamation and breach of the terms of his separation agreement with the Company, on October 16, 2014.⁹ The complaint revolves around Miquelon's role in preparing financial projections for FY2016, the first full reporting year for the combined Walgreen - Alliance Boots entity. The complaint also includes information about internal Company discussions regarding the possibility of an inversion, as well as meetings with certain investors in which these investors pressured Walgreen executives to undertake an inversion and increase earnings guidance. Miquelon also describes growing pressure and involvement in internal Company affairs by "activist hedge fund investors," who are unnamed in his complaint.

⁸ Walgreen Co., Form 8-K (Sep. 8, 2014), available at <https://www.sec.gov/Archives/edgar/data/104207/000119312514334404/d785422d8k.htm>.

⁹ Complaint, Miquelon v. Walgreen Co. (Ill. Circ. Ct., Oct. 16, 2014). The Miquelon Complaint and appended exhibits is attached as Exhibit C.

On August 6, the Company published new guidance for FY2016 that was below analysts' projections and prompted a negative market reaction.¹⁰ A *Wall Street Journal* article published later in August reported that Miquelon had "bungled" the forecast and indicated that the Board of Directors had been shocked when Miquelon had reported the scope of the necessary markdown.¹¹ The article quoted unnamed investors who said "Walgreen directors told them that forecasts given to directors in April were 'inadequate' and that the company's finance and pharmacy units weren't 'talking to each other.'"

Miquelon alleges that, as internal discussions were ongoing about both the inversion and the FY2016 forecasts, Walgreen executives met privately with certain activist hedge fund investors. In particular, the Miquelon complaint references four incidents that may have resulted in violations of Regulation FD: (1) a confrontation between activist investors and Investor Relations personnel at the April 2014 meeting of the Walgreen Board; (2) a telephonic conference call on June 24, 2014 between Miquelon, Walgreen CEO Greg Wasson, an Investor Relations representative, and an unnamed activist investor; (3) a private meeting between Wasson, Alliance Boots' Executive Chairman and Walgreen Director Stefano Pessina, and an activist investor on August 5, 2014; and (4) a series of "road show" meetings that Wasson and Pessina held with investors from August 5 through 8, 2014.

During the time period in question, Miquelon alleges facts suggesting that certain activist investors had extensive influence within the Company, raising questions about whether there may have been other private conversations with these investors that are not referenced in the complaint. For example, Miquelon alleges:

In May 2014, Wasson told Miquelon, in substance, that Wasson was convinced that Walgreens must proceed with a tax inversion and that, if it did not, Wasson would be unable to keep his job because the activist investors would force him out.

By June 2014, Wasson had told Miquelon and others that he believed that an inversion was in the best interests of the Company because it was the only way he could keep his job and he was the best person to be the Company's CEO.¹²

These allegations raise the specter of other meetings that may not have been described in the Miquelon complaint. They also indicate that executives may have sought ways to gain favor with investors who were unhappy with Walgreen and Alliance Boots' lackluster performance, disappointing earnings projections, and management's perceived reluctance to undertake the inversion that activist investors were aggressively encouraging.

¹⁰ Cantor Fitzgerald, Walgreen Co.: Upgrading to Hold Following Reaction to Merger Developments - Revised PT of \$56 (Aug. 7, 2014) ("We think the most negative and worrisome read-through related to the merger announcement is that the adjusted operating income guidance for FY:16 of \$7.2 billion is \$2 billion below what management communicated when the original merger agreement was announced in June 2012 (a range of \$9.0-\$9.5 billion on adjusted basis)."). Attached hereto as Exhibit A.

¹¹ Michael Siconolfi, "Walgreen Shakeup Followed Bad Projection: CFO, Pharmacy Chief Leave After Bungled Forecast Related to Medicare Prescription-Drug Business," *Wall Street Journal* (Aug. 19, 2014).

¹² Miquelon Compl. ¶¶ 97-98.

VI. Walgreen Co. and Its Representatives May Have Violated Regulation FD.

Regulation FD requires issuers who disclose material nonpublic information to certain shareholders to make simultaneous public disclosure (in the case of an intentional disclosure) or prompt public disclosure (in the case of a non-intentional disclosure).¹³ To establish a violation of Regulation FD, four elements must be present: (1) a statement is made by an issuer or a person acting on behalf of an issuer; (2) the statement was made to a holder of the company's securities, a broker dealer, an investment adviser, an investment company or a hedge fund; (3) the statement contained material nonpublic information; and (4) the issuer did not cure the selective disclosure with prompt or simultaneous public disclosure.

A. "An issuer, or any person acting on its behalf"

Regulation FD governs statements made by an issuer or by a person acting on behalf of the issuer.¹⁴ Walgreen Co. is an issuer, as that term is defined by federal securities law. The regulations defines "a person acting on behalf of an issuer" to include senior officials, such as directors and executive officers, as well as employees or agents who regularly communicate with investors or analysts.¹⁵ Thus, statements made by Walgreen CEO Wasson, CFO Miquelon and Director Pessina are all covered by Regulation FD.

B. Statements Made to Covered Investors

The allegations referenced above involved private conversations with "activist investors" or "activist hedge fund investors," and other select groups of investors. Regulation FD covers statements made to investment companies, including hedge funds,¹⁶ and to "holder[s] of the issuer's securities, under circumstances in which it is reasonably foreseeable that the person will purchase or sell the issuer's securities on the basis of the information."¹⁷ The investors referred to in Miquelon's complaint are, in all likelihood, covered investors and statements made to them are subject to Regulation FD.

Indeed, the possibility that corporate executives and directors would provide access and information to a select group of activist investors and hedge funds in order to prevent a proxy battle is precisely the sort of behavior that the Commission sought to prevent in promulgating Regulation FD. In the Final Rule, the Commission noted that "Regulation FD is also designed to address another threat to the integrity of our markets: the potential for corporate management to treat material information as a commodity to be used to gain or maintain favor with particular analysts or investors."¹⁸

C. Material Nonpublic Information That Was Not Cured by Public Disclosure

¹³ 17 C.F.R. § 243.100(a).

¹⁴ *Id.*

¹⁵ 17 C.F.R. § 243.101(c).

¹⁶ 17 C.F.R. § 243.100(b)(1)(iii).

¹⁷ 17 C.F.R. § 243.100(b)(1)(iv).

¹⁸ Final Rule: Selective Disclosure and Insider Trading, Securities Act Release No. 33-7881 Exchange Act Release No. 34-43154 (Aug. 15, 2000).

The Commission relies upon “existing definitions of [‘material’ and ‘nonpublic’] established in the case law” in its interpretations and enforcement of Regulation FD.¹⁹ Thus, material information is information about which “there is a substantial likelihood that a reasonable shareholder would consider it important in making an investment decision.”²⁰ Under this standard, the disclosures that are the subject of this complaint are material: they involved projections of earnings for the first full reporting year of the merged company and decisions about the structure of the combined company. The latter decision also impacted the earnings of the combined company, insomuch as it had the potential to significantly reduce taxes and thus increase company profit. As demonstrated below and in our July Complaint, the market reacted strongly and swiftly whenever the Company made an announcement about either the FY2016 earnings or the possibility of an inversion.

The April Board Meeting

At the April 2014 Board meeting, members of the Board of Directors are alleged to have discussed material nonpublic information, including information relating to the likelihood of the Company meeting its FY2016 projections. Miquelon alleges that, at the meeting, the Walgreen Board was informed by management that the FY2016 outlook faced a risk in excess of \$1 billion and was provided information about the Company’s progress in meeting its “Long Range Plan” goals, third party reimbursement trends, and inflation and pricing trends for generic drugs.²¹ The last two items were later cited by the Company as the key reasons for the significant reduction in the FY2016 EBIT projections.²²

In the midst of these discussions at the April 2014 Board meeting, Miquelon alleges that, “activist investors confronted Walgreens’ Investor Relations personnel and demanded that the Company proceed with the tax inversion.”²³ The presence of these investors at the Board meeting raises questions about whether they were present for any segments of the Board meeting where material nonpublic information was discussed. The Company did not cure its disclosure promptly or simultaneously. Two months passed before it disclosed that it was withdrawing its FY2016 guidance, in large part due to the reasons apparently discussed at the Board meeting – pressure from third party payors and trends in generic drug pricing.

The market reaction to the Company’s withdrawal of its FY2016 guidance and later announcement of its new FY2016 earnings supports a finding of materiality of this information. On June 24, 2014 – the day the Company announced it was withdrawing its guidance – trading volume was higher than normal and sell-side analyst commentary emphasized the importance of both the withdrawn figures and the

¹⁹ *Id.*

¹⁹ Final Rule: Selective Disclosure and Insider Trading, Securities Act Release No. 33-7881 Exchange Act Release No. 34-43154 (Aug. 15, 2000).

²⁰ *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976).

²¹ Miquelon Compl. ¶¶ 74-75.

²² Transcript of Walgreen Co. August 6, 2014 conference call, attached as Ex. 99.2 to Walgreen Co., Form 8-K (Aug. 5, 2012), available at <https://www.sec.gov/Archives/edgar/data/104207/000119312514298537/0001193125-14-298537-index.htm>.

²³ Miquelon Compl. ¶ 96.

underlying reasons given.²⁴

The reaction to the new earnings guidance on August 6 was even stronger. Walgreen published a press release on August 6 at 6 a.m. and held an investor call at 8 a.m. (EDT).²⁵ In its press release, Walgreen bundled together several pieces of information, including 1) revised FY2016 guidance, 2) news that the Board had voted to move forward with the Alliance Boots transaction on an accelerated timeframe, and 3) confirmation that Walgreen would not undertake an inversion as part of the transaction. The news of an inversion had been leaked the day before in a Sky News article at 2:34 p.m. (EDT) on August 5.²⁶ That day, the stock price ended the day 4% lower than it opened and trading volume for the day was five times the 60-day average. The August 6 announcement also had immediate and dramatic impact, with the stock price opening 16% below the previous day's close. For the day, trading volume spiked to 15 times its 60-day average and at the close on August 6, the stock remained 14% below the August 5 close. In total, the stock price dropped 18% over two days. Analyst commentary following the August 6 call noted both the inversion decision and the new guidance as significant developments for investors and some analysts changed their ratings of the stock and price targets soon after.²⁷

The June Conference Call

In his complaint, Miquelon describes a conference call that occurred on June 24, 2014, in which Miquelon, Wasson, and a member of Walgreens' Investor Relations department spoke with an "activist hedge fund investor."²⁸ The conference call followed a Company earnings call, earlier that day, "during which the Company withdrew its previously announced FY2016 EBIT goal."²⁹ Miquelon alleges that, on this phone call, Company officials and the activist investor discussed the Company's decision to withdraw its FY2016 EBIT projection and the possibility of an inversion.³⁰ Miquelon attached to the complaint his contemporaneous notes from the conversation.³¹

The June 24 conference call with an activist investor is alleged to have touched upon material nonpublic topics: the likelihood that the Company would undertake a corporate tax inversion and the FY2016 earnings projections. While Miquelon's notes from the call do not indicate that he or Wasson provided a selective disclosure of material nonpublic information, the length of the call and the sensitivity of the topics discussed raise red flags. The SEC should investigate whether any material nonpublic was disclosed during the course of this conference call.

²⁴ Barclays, Walgreen Co.: Facing Reality, Making Changes (June 25, 2014). Attached hereto as Exhibit D.

²⁵ Exhibits 99.2 and 99.2 to Walgreen Co., Form 8-K (Aug. 6, 2014), available at <https://www.sec.gov/Archives/edgar/data/104207/000119312514298536/0001193125-14-298536-index.htm>.

²⁶ Mark Kleinman, "Walgreens Shuns Inversion In £5bn Boots Deal," *Sky News* (Aug. 6, 2014), available at <http://news.sky.com/story/1313635/walgreens-shuns-inversion-in-5bn-boots-deal>.

²⁷ E.g. Credit Suisse, Walgreen Co.: Updated Guidance a Major Disappointment as Management Overpromises and Underdelivers (Aug. 6, 2014). Attached hereto as Exhibit E.

²⁸ Miquelon Compl. at ¶ 107.

²⁹ *Id.*

³⁰ *Id.*

³¹ Ex. 15 to Miquelon Compl.

Additionally, Miquelon’s notes from the conference call suggest that the unnamed activist investor may have had previous private conversations with representatives from Alliance Boots in which the earnings potential for the combined companies was discussed – information that may well have been material and nonpublic:

[Redacted Investor]: If you want to save your job you need to be articulating the tremendous earnings power of the company that others see. We see it, Alliance Boots sees it and as you know they have great bravado about articulating that as you know.³²

This language suggests that the activist investor may have also had private conversations with Alliance Boots’ leadership; if the conversations were with Stefano Pessina, who also sits on the Walgreen Board, they may also give rise to Regulation FD violations.

Published reports indicate Pessina has previously met privately with Walgreen investors to discuss sensitive Company matters. According to the *Washington Post*:

At a July 2013 lunch with about 20 investors at the St. Regis hotel in midtown Manhattan, Pessina criticized Walgreen’s operations, saying they didn’t compare favorably with what Alliance Boots was doing in its London stores, according to one investor who attended. . . . Soon after that July lunch, the company began providing investor relations employees to accompany Pessina as he continued to meet with investors, said a shareholder who talked with him later.³³

The pattern of private meetings with small groups of select and favored investors is concerning, particularly during periods when the Company was weighing major decisions related to its future structure and earnings potential. We urge the Commission to investigate whether Pessina, or another representative of Alliance Boots acting on his behalf or as his agent, met with activist investors to discuss the projected FY2016 earnings.

The Private Meeting on August 5

In his complaint, Miquelon alleges that on the evening of August 5, 2014, Wasson and Pessina “met privately with one of the activist investors.”³⁴ Miquelon alleges that the meeting was arranged “[i]n contravention of Company policy, which is designed, in part, to ensure that the Company remains in compliance with Regulation FD (Fair Disclosure), no member of the Investor Relations team was in attendance.”³⁵

As noted above, Walgreen published a press release on August 6 at 6 a.m. and held an investor call at 8 a.m., in which the Company revealed major news: its new earnings projections for FY2016 were roughly

³² *Id.*

³³ Cynthia Coons, “Power Struggle at Walgreen as Top Shareholder’s Influence Rises,” *Washington Post* (Sep. 10, 2014), available at <http://washpost.bloomberg.com/Story?docId=1376-NAXOOT6TTDSB01-0AG6M8CJEJLSFI917NPMR667OL>.

³⁴ Miquelon Compl. ¶122.

³⁵ *Id.*

\$2 billion below the withdrawn projections, and the companies had decided not to undertake an inversion.³⁶ The information about the inversion decision was leaked on August 5, and published reports about the decision not to invert were available by early afternoon on the fifth. The market reaction was swift and negative:

Date	Open	High	Low	Close	Volume
8-Aug-14	61.04	62.56	60.67	60.7	26,909,936
7-Aug-14	60.62	61.18	58.93	60.87	33,620,834
6-Aug-14	57.98	61.5	57.75	59.21	84,138,863
5-Aug-14	71.9	72.76	66.5	69.12	31,358,221
4-Aug-14	71.03	72.91	70.95	72.11	8,936,352
1-Aug-14	68	70.94	68	70.53	8,120,698

While the trading volume was unusually high on August 5 (the date of the leak of the inversion decision), trading volume spiked to a much higher level on August 6, after investors learned the extent of the markdown on FY2016 EBIT, and the share price plummeted. The Commission should investigate whether Wasson and Pessina held a private meeting with an investor as alleged in the Miquelon complaint, without Investor Relations personnel present, the night before making a series of major announcements about the Company’s post-transaction structure and earnings, and whether at that meeting they selectively disclosed material nonpublic information to the investor in advance of the public announcement.

The “Road Show” Meetings on August 5-8

Miquelon alleges that “Wasson and Pessina went on a ‘road show,’ meeting with approximately twelve major investment groups” from August 5 through August 8.³⁷ Miquelon further alleges that during these meetings Wasson and Pessina made disparaging comments about Miquelon’s tenure and his department’s “lax controls” and “divulged other sensitive and confidential information.”³⁸ Following the road show, Miquelon alleges that the Investor Relations director who attended the August 5-8 road show meetings circulated a memo with his notes from these meetings and that “two of the Company’s most senior officers” determined that Wasson and Pessina “had improperly disclosed confidential information” at the meeting.³⁹ Miquelon further alleges that Company officers “specifically requested that Thomas Sabatino, Walgreen’s General Counsel, forward the notes to the entire Board of Directors. On information and belief, the road show meeting notes were not provided to the Board of Directors.”⁴⁰

As is apparent from the chart above, the road show occurred during a period when the stock price was volatile and when trading volume was high. If the confidential information that Wasson and Pessina are

³⁶ Transcript of Walgreen Co. August 6, 2014 conference call, attached as Ex. 99.2 to Walgreen Co., Form 8-K (Aug. 5, 2012), available at <https://www.sec.gov/Archives/edgar/data/104207/000119312514298537/0001193125-14-298537-index.htm>.

³⁷ Miquelon Compl. ¶121.

³⁸ *Id.*

³⁹ *Id.* at ¶ 124.

⁴⁰ *Id.* at ¶ 125.

alleged to have disclosed was material, these disclosures would have violated Regulation FD. There is no indication that the Company cured the disclosures from these meetings by simultaneous or even prompt public disclosure.

Additionally, Miquelon's allegations about the Company response to these concerns raise questions about the Company's compliance regime. If Sabatino was aware of the selective disclosure of nonpublic information to certain investors, including hedge funds, he should have investigated whether the disclosures were material and, if so, the Company should have "self reported" these violations to the Commission. If Sabatino did not undertake these steps and did not notify the Board of the potential Regulation FD violations, the Commission should investigate whether Walgreen has sufficient compliance measures in place to ensure that the Company responds effectively when it is notified of potential violations of federal securities laws.

Each of the above-described incidents occurred at times when trading volume was high and when Walgreen's stock price was volatile. To the extent that the Commission determines that the Company or its officials violated Regulation FD, it may wish to investigate whether any investors traded on the selectively disclosed information.

VII. Allegations in the Miquelon Complaint and Public Statements by the Company Raise Questions about Financial Controls at Walgreen.

Miquelon alleges that he was told by a reporter from the *Wall Street Journal* that "senior Walgreen executives stated that Miquelon's finance unit was weak and had lax controls."⁴¹ This allegation is supported by an e-mail from the *Wall Street Journal* reporter to Miquelon in which the reporter requests that Miquelon:

-- please address the contention by some senior Walgreen executives that there were lax financial controls in your group, that the April forecast was "inadequate" and reflected a "weak" unit, and that your group and the pharmacy unit "weren't talking to one another."⁴²

Miquelon alleges that the same statements – that his department was weak and had lax controls – were made during the August 5-8 road show to investors.⁴³ The *Wall Street Journal* published statements supporting these allegations on August 19: "In recent meetings, investors say, Walgreen directors told them that forecasts given to directors in April were 'inadequate' and that the company's finance and pharmacy units weren't 'talking to each other.'"⁴⁴

⁴¹ *Id.* at ¶ 10 (internal quotation marks omitted).

⁴² Ex. 25 to Miquelon compl.

⁴³ Miquelon Compl. ¶ 121.

⁴⁴ Michael Siconolfi, "Walgreen Shakeup Followed Bad Projection: CFO, Pharmacy Chief Leave After Bungled Forecast Related to Medicare Prescription-Drug Business," *Wall Street Journal* (Aug. 19, 2014).

In its motion to seal Miquelon’s complaint, the Company alleges that Miquelon was significantly responsible for the downward guidance revision and that he lacked “attention to financial details” and displayed “erratic behavior.”⁴⁵

VIII. Walgreen Co. May Have Violated the Sarbanes-Oxley Act.

The Sarbanes-Oxley Act requires executives of public companies to regularly certify to the accuracy of their public financial statements and to certify that the signing officers “have designed such internal controls to ensure that material information relating to the issuer and its consolidated subsidiaries is made known to such officers by others within those entities, particularly during the period in which the periodic reports are being prepared.”⁴⁶ They are also required to certify that “all significant deficiencies in the design or operation of internal controls which could adversely affect the issuer’s ability to record, process, summarize, and report financial data and have identified for the issuer’s auditors any material weaknesses in internal controls.”⁴⁷

Under Section 404 of the Sarbanes-Oxley Act, issuers are required, in their annual reports, to “state the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and contain an assessment, as of the end of the most recent fiscal year of the issuer, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting.”⁴⁸

In March and July 2014, Wasson and Miquelon both certified, as required by the Sarbanes-Oxley Act, that they had “[d]esigned such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared” and that they had disclosed to the Audit Committee “[a]ll significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information.”⁴⁹

If, in August, Company executives were telling investors and news reporters that the finance unit had “lax controls” and communications problems, as Miquelon alleges, this calls into question whether Walgreen’s CEO and CFO properly certified in July and in previous quarters that they had designed and implemented controls and procedures that ensured that all material information was made known to the CEO and CFO.

⁴⁵ Defendant Walgreen Co.’s Emergency Motion for Protective Order and to Partially Seal Plaintiff’s Complaint (Oct. 20, 2014). Attached hereto as Exhibit F.

⁴⁶ 15 U.S.C. § 7241(a)(4)(B).

⁴⁷ 15 U.S.C. § 7241(a)(5)(A).

⁴⁸ 15 U.S.C. § 7262(a).

⁴⁹ Exhibits 31.1 and 31.2 to Walgreen Co., Form 10-Q (July 1, 2014), available at <https://www.sec.gov/Archives/edgar/data/104207/000010420714000050/0000104207-14-000050-index.htm>; Exhibits 31.1 and 3.12 to Walgreen Co., Form 10-Q (Mar. 27, 2014), available at <https://www.sec.gov/Archives/edgar/data/104207/000010420714000027/0000104207-14-000027-index.htm>.

On October 20, 2014, the Company filed its Form 10-K, with attached certifications regarding the sufficiency of the Company's financial controls and disclosures, as required by Section 404 of the Sarbanes-Oxley Act. In Form 10-K discussion of Controls and Procedures, the Company stated: "Based upon the controls evaluation, our CEO and CFO have concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective to provide reasonable assurance that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified by the SEC, and that such information is accumulated and communicated to management, including the CEO and CFO, as appropriate to allow timely decisions regarding required disclosure."⁵⁰ The Company also stated, "no changes during the quarter ended August 31, 2014 were identified that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting."⁵¹ Taken together, these statements stand in contrast to the Miquelon's allegations and Company statements that the finance unit had "lax controls" under Miquelon, that Miquelon was not detail oriented, and that Miquelon's finance unit did not communicate with other departments. The Commission should investigate whether the Company's executives made false or misleading statements when they certified that the financial controls in place were effective, and whether the Company's Section 404 disclosures were fully accurate.

IX. Conclusion

While we cannot independently verify the allegations in the Miquelon complaint, they are very troubling, coming as they do from a high-level executive in a sworn court filing. For the reasons outlined above, the CtW Investment Group requests that the Commission investigate the selective disclosures made by Walgreen senior officials to hedge fund investors and take appropriate action to the extent warranted under Regulation FD. We also request that the Commission investigate whether the certifications and statements made by Company officials were made in violation of the Sarbanes-Oxley Act and take such enforcement action as may be appropriate. We believe shareholders should receive a full accounting of the issues discussed herein before they are asked to make a decision on the transformative transaction underway at Walgreen, and thus there is urgency for the Commission to act.

⁵⁰ Walgreen Co., Form 10-K (Oct. 20, 2014), available at <https://www.sec.gov/Archives/edgar/data/104207/000010420714000104/form10k08312014.htm>.

⁵¹ *Id.*