UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

May 6, 2022

Xuehui Cassie Zhang
Tesla, Inc.

Re: Tesla, Inc. (the "Company")
Incoming letter dated January 24, 2022

Dear Xuehui Cassie Zhang:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Sumtris ehf for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company adopt a policy of immediate (within five business days) liquidation of newly-acquired cryptocurrency assets, and fully divest from existing cryptocurrency assets (including mining hardware) within one year, and specifies that if the Company continues to accept payments of high-impact cryptocurrencies (e.g., with a per-transaction energy or e-waste footprint more than 10x of Visa's), it should minimize their environmental impact (such as Level 2 processing).

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal micromanages the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7).

Copies of all of the correspondence on which this response is based will be made available on our website at https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action.

Sincerely,

Rule 14a-8 Review Team

cc: Karen Rós Róbertsdóttir
Sumtris ehf

13101 Tesla Road, Austin, Texas 78725
P 512-516-8177 F 650 681 5101

January 24, 2022

VIA E-Mail to shareholderproposals@sec.gov

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-7010

RE: Stockholder Proposal Submitted by Sumtris ehf

Ladies and Gentlemen:

Tesla, Inc. (the "Company") is submitting this letter to notify the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") of the Company's intention to exclude a shareholder proposal (the "Proposal") from its proxy statement and proxy to be filed and distributed in connection with its 2022 annual meeting of shareholders (the "Proxy Materials"). Sumtris ehf, a limited liability corporation domiciled in Iceland (the "Proponent"), submitted the Proposal. A copy of the Proposal is attached hereto as Exhibit A.

The Company respectfully requests that the Staff advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons discussed below. Pursuant to Rule 14a-8(j) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Staff Legal Bulletin No. 14D (November 7, 2008) ("SLB 14D"), the Company is submitting this letter electronically no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission. The Company is concurrently sending a copy of this letter to the Proponent.

The Proposal sets forth the following resolution:

> "RESOLVED, Tesla, Inc. ("Tesla" or "Company") shareholders request that the company adopt a policy of immediate (within five business days) liquidation of newly-acquired cryptocurrency assets, and fully divest from existing cryptocurrency assets (including mining hardware) within one year. If the company continues to accept payments of high-impact cryptocurrencies (eg., with a per-transaction energy or e-waste footprint more than 10x of Visa's), it should minimize their environmental impact (such as Level 2 processing)."

The Company intends to omit the Proposal from the Proxy Materials on the following basis:

Rule 14a(8)(i)(7) – Relates to Ordinary Business Operations

Rule 14a-8(i)(7) allows the omission of a shareholder proposal from a registrant's proxy statement if such proposal "deals with a matter relating to the company's ordinary business operations." As set out in Securities Exchange Act Release No 34-40018 (May 21, 1998) (the "1998 Release"), there are two "central considerations" underlying the ordinary business exclusion. One is that certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The other relates to the degree that a proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment. As discussed in Staff Legal Bulletin No. 14L (November 3, 2021), whether or not a proposal seeks to "micro-manage" depends to a significant degree on the level of granularity set forth in the proposal and whether and to what extent the proposal inappropriately limits discretion of the board or management.

In seeking to dictate the manner and timing of the liquidation of certain of the Company's assets, the Proposal implicates both of the central considerations identified in the 1998 Release. Determining where, how and when a company makes investments is fundamental to management's ability to oversee a company's financial condition. These decisions involve a wide array of business considerations, both on a micro- and macro-level. To choose just one example: in the supporting statement to the Proposal, the Proponent notes the stable inflation rate. However, since the Company's receipt of the Proposal, inflation reached 7% in the U.S., the highest level in 39 years. The ability of management to react to changing market conditions, such as inflation, through the diversification of its currency portfolio is fundamental to its ability to run the Company on a day-to-day basis and is not appropriate for direct shareholder oversight. Further, the management of investments is complex and involves the consideration of many factors. Shareholders cannot possibly make an informed judgment about these factors, given that they are not involved in the day-to-day management of the Company. In addition, a requirement to sell investments according to a fixed schedule hampers the flexibility needed by management to align its investment and cash management strategy with then-current market conditions. The pre-determined, granular schedule imposed by the Proposal, including the requirement to liquidate certain assets of the Company within five business days, is an inappropriate limitation on the discretion of the board of directors and management of the Company in managing the financial condition of the Company.

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The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that seek to micro-manage a company's ordinary business operations, including when proposals concern the management of a company's investment and fiscal policies. College Retirement Equities Fund, SEC No-Action Letter (May 10, 2013) (concurring in the exclusion of a shareholder proposal that the company end investments in companies that substantially contribute to or enable egregious violations of human rights); General Electric Company, SEC No-Action Letter (Dec. 15, 1989) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal that the company discontinue "Program Trading" under existing rules); Integrated Circuits, Inc., SEC No-Action Letter (Dec. 27, 1988) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal to get a third-party evaluation and recommendation of how the company might maximize shareholder value); California Real Estate Investment Trust, SEC No-Action Letter (July 6, 1988) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal involving the determination of investment strategies); Newmont Mining Corporation, SEC No-Action Letter (Mar. 20, 1990) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal that the company complete a restructuring begun two years previously by consolidating two entities). See, also, Pinnacle West Capital Corp., SEC No-Action Letter (Mar. 10, 1989) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal that the company divest from all non-utility subsidiaries); General Motors Corporation, SEC No-Action Letter (Mar. 31, 1988) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal that the company re-deploy the assets of the company into more profitable business lines); Sears Roebuck and Co., SEC No-Action Letter (Mar. 10, 1987) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal that the company divest from all unprofitable operating units); Duke Energy Corporation, SEC No-Action Letter (Feb. 16, 2001) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal that the company reduce NOx emissions at coal-fired power plants and boilers); and Marriott International, Inc., SEC No-Action Letter (Mar. 17, 2010) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a shareholder proposal that the company install low-flow showerheads in several test properties and report on the results).

The Company understands that in cases in which shareholder proposals raise significant social policy issues the ordinary business exclusion of Rule 14a-8(i)(7) may be found not to apply. The Company respectfully submits, however, that the Proposal does not focus on a significant social policy issue. The Proposal and its supporting statements allude to the carbon footprint of cryptocurrency, as well as the volatility of the value of cryptocurrency, as the reasons for the immediate divestiture of the Company's cryptocurrency assets. While the Proponent attempts to address the environmental impact of cryptocurrencies by forcing the Company to sell its holdings, doing so would only consume more energy and cause more emissions, thereby exacerbating the issue. As such, the Proposal does not transcend the day-to-day business matters addressed by the Proposal. Further, the Company respectfully submits that the Proposal is not of the sort upon which the stockholders can properly express their social policy judgments. Instead, the Proposal concerns the technical issues regarding the Company's fiscal and investment strategies, as well as the prescribed manner and timing of the liquidation of certain of the Company's assets. The Company believes that the specific strategies of fiscal and investment policies are properly within the purview of management, which has the necessary capability and knowledge to evaluate the particular facts and circumstances of its business operations and take appropriate action. As an example, because the Company's Chief Executive Officer has been very vocal about reducing the GHG footprint of cryptocurrencies, the Company ceased accepting Bitcoin and has decided to accept Doge because of its lower GHG impact. Based on the subject matter of the Proposal as discussed above, the Company believes that the exclusion provided under Rule 14a-8(i)(7) is appliable to the Proposal.

Conclusion

The Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from the Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at xuehzhang@tesla.com or (510) 946-6441. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Sincerely,

Xuehui Cassie Zhang
Managing Counsel, Securities

Enclosure

cc: Karen Róbertsdóttir

Exhibit A

RESOLVED, Tesla, Inc. (“Tesla” or “Company”) shareholders request that the company adopt a policy of immediate (within five business days) liquidation of newly-acquired cryptocurrency assets, and fully divest from existing cryptocurrency assets (including mining hardware) within one year. If the company continues to accept payments of high-impact cryptocurrencies (eg., with a per-transaction energy or e-waste footprint more than 10x of Visa’s), it should minimize their environmental impact (such as Level 2 processing).

Support: A single Bitcoin transaction has a current carbon footprint of 359.04kgCO2—equivalent to 795,752 Visa transactions, 59,840 hours of watching YouTube, or driving a Model 3 approximately 3500 miles in California. The majority of this electricity comes from coal, keeping stranded assets operating 24/7. It likewise subsidizes stranded oil and gas resources, allowing them to offset increasing pollution taxes. This is a massive step backwards for Tesla’s mission of accelerating the world’s transition to sustainable energy.

The minority of Bitcoin’s massive energy demands generated from renewables are creating their own problems. For example, Bitcoin’s rush on Iceland’s renewable power has consumed its available capacity in many regions and is leading to new hydropower projects, causing public backlash—with Tesla’s cryptocurrency advocacy specifically associated as a cause. If one wants to visually see the impact of even “renewable Bitcoin mining”, they need only to do an image search for “Hvalárvirkjun” to see the sort of things being sacrificed.

Bitcoin ASICs become obsolete after ~1.5 years. A single transaction creates an E-waste volume greater than 20,000 Visa transactions. The network as a whole creates an E-waste volume similar to that of a small country, despite processing only ~7 transactions per second.

Tesla is not simply a participant in cryptocurrency markets, but a driver. Bitcoin prices surged specifically because of Tesla’s involvement (alongside other companies’ actions triggered in response to Tesla’s). Bitcoin transaction fees—the primary driver of adding new hardware (and thus energy consumption and E-waste) to the network—spiked from $11.49 to $29.73 within days of Tesla’s announcement, and in the subsequent months averaged approximately $20 per transaction.

Tesla’s cryptocurrency investments also create extreme volatility risks to its balance sheet. BTC commonly fluctuates by ~20% in a normal month. In March 2020, it lost 2/5ths of its value in one day. For the year starting in mid-December 2017 it lost 4/5ths of its value. By contrast, since 2012 the USD inflation rate has not exceeded 3%; the highest rate in the past 25 years is under 6%; and the highest rate ever was under 20%. Each car sold for non-redeemed cryptocurrency puts at risk the profits on five cars sold for cash.

Investors were diluted to gain the “excess cash” for cryptocurrency purchases, which appeared on Tesla’s balance sheets from a $5B December share offering. It is additionally debatable what can be considered “excess” when Tesla could be using money to acquire critical-path suppliers or key mineral resources, expanding service, or even merely completing Giga Nevada’s much-postponed solar roof.

From:	Karen Róbertsdóttir
To:	ShareholderMail
Subject:	Shareholder resolution
Date:	Friday, October 22, 2021 2:11:03 AM
Attachments:	Tesla Shareholder Resolution (1).pdf MULTI_20210101_20211021.pdf

To whom it may concern,

My name is Karen Rós Róbertsdóttir. I am filing this resolution on behalf of my wholly-owned and operated company, Sumtris ehf, a limited liability corporation domiciled in Iceland. I submit this resolution for inclusion in the proxy statement in accordance with Rule 14a-8 of the general rules and regulations of the Securities Exchange Act of 1934. A representative of the filers will attend the annual meeting to move the resolution as required by SEC rules. My institution is the beneficial owner of 1211 shares of Tesla Inc. common stock and has held the requisite amount of stock for over a year.

Attached is the default 'Realized Summary' report in the company's Interactive Brokers trading account demonstrating that (A) 1211 shares are held, and (B) almost all of this has been held for over one year as of the time of writing. Sumtris ehf intends to maintain ownership of the requisite amount of holdings through the annual meeting in 2022.

A physical copy of this has been mailed Tesla, Inc at 3500 Deer Creek Road, Palo Alto, CA 94304. Please follow up with confirmation that this resolution has been received and accepted for inclusion.

Sincerely,

Karen Rós Róbertsdóttir
Owner and CEO, Sumtris ehf
[redacted]
Vagnhöfði 8
110 Reykjavík
Iceland

Sumtris ehf Vagnhöfði 8, 110 Reykjavík, Iceland
PII

January 27, 2022

VIA E-Mail to shareholderproposals@sec.gov
United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-7010

RE: Stockholder Proposal Submitted by Sumtris ehf

To whom it may concern:

Tesla, Inc. (the “Company”) recently submitted an intent to exclude a shareholder proposal from Sumtris ehf, a limited liability corporation domiciled in Iceland (the “Proponent”) to thr staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a shareholder proposal (the “Proposal”) from its proxy statement and proxy to be filed and distributed in connection with its 2022 annual meeting of shareholders (the “Proxy Materials”).

On November 3rd, 2021, the Commission released Staff Legal Bulletin No. 14L (CF), rescinding Staff Legal Bulletin Nos. 14I, 14J and 14K - a move widely interpreted as intending to curb the widespread problem of corporations removing ESG resolutions - such as the Proposal - under Rule 14a-8(i)(7). Regardless, the Company intends, as per its letter, to do precisely that.

It should be first be made quite clear that there is nothing "ordinary" about the Company's decision - on the heels of a $5B capital raise - to invest $1.5B in Bitcoin (as well as purchasing cryptomining assets of its own). The announcement made ripples in the press precisely for its uniqueness - as well as criticism for ethical concerns (ex. "*Tesla may have already earned $600 million on its bitcoin investment, but experts raise concerns*" - Business Insider, Feb. 19, 2021) and on environmental grounds (ex: "*Tesla’s $1.5 billion bitcoin purchase clashes with its environmental aspirations*" - The Verge, February 9, 2021). Indeed, the out-of-the-ordinary action can be readily seen in the outsized impact of the Company’s investment on the price of Bitcoin, which added nearly 50% in market cap in subsequent weeks in expectation of more corporate inflows, due to Tesla "normalizing" the investment. A radical, controversial move can under no circumstances be defined as "normal operations".

The Company’s statement to the Commission cites as an example of "micro-management" the fact while inflation rates were low when the proposal was submitted, they are now high, justifying the Company's choice of Bitcoin as an inflation hedge. Omitted from their statement was the fact that Bitcoin has, in fact, steeply *declined* in response to rising inflation rates, and is (at the time of writing) worth less than when the Company's Bitcoin "hedge" was announced. Had there been "appropriate shareholder oversight", to paraphrase the Company's response, this situation could have been avoided.

But the Proposal is not focused on the wisdom of the Company’s investment decisions – the Company quotes from the supporting statements rather than the proposal itself. Shareholders must weight the costs and benefits of adoption, and discussion of the economic impact is a common feature in support of ESG proposals. A proposal for an energy company to divest from coal may talk argue that coal is a dead-end fuel and poor investment, while a proposal for a food company to ban

palm oil may argue that consumers prefer to buy environmentally-friendly foodstuffs - the general message being, "environmental responsibility is good business". This in no way alters the Proposal itself, which focuses purely on the environmental aspects of the Company's actions.

The Company takes aim at the presence of timelines in the Proposal. But without timelines, the Proposal would be toothless. Given the Company's repeated praise of Bitcoin's liquidity and the short period over which their assets were purchased, the Company cannot truly consider one year to be an unduly short timeperiod to dispose of their Bitcoin assets. Likewise, if the Company plans to allow for purchases in cryptocurrencies and *not* immediately liquidate the acquired assets, they are de facto investing in cryptocurrencies. To omit a timeline would be to omit all impact.

The Company's citation of several past decisions of the Staff in regards to Rule 14a-8(i)(7) omits the fact that the Staff's guidance was recently updated under Staff Legal Bulletin No. 14L (CF), as noted previously, to specifically take a harder line against companies seeking to use Rule 14a-8(i)(7) to exclude ESG proposals. The crux of the recent guidance is that Staff will going forward, quote, "... consider whether the proposal raises issues with a *broad societal impact*, such that they transcend the ordinary business of the company. Under this realigned approach, proposals that the staff previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7)"

Indeed, the cited Staff rulings undercut the Company's argument that this represents micro-management of operations rather than an issue of *broader societal impact*. To pick the only three examples the Company provided which actually pertained to ESG: in College Retirement Equities Funds (May 10, 2013), TIAA-CREF specifically argued that "The Proposal does not raise a widely-accepted social policy that is appropriate for shareholder vote". In Duke Energy Corporation (Feb. 16, 2001), the company argued that the proposal to "reduce by 80% nitrogen oxide (Nox) emissions" was not plausible within the short timeframe provided - an argument the Company can not plausibly hope to sustain concerning the Proposal in this case. And in Marriott International, Inc. (Mar. 17, 2010), Marriott argued that the company *had* in fact installed 400,000 low-flow showerheads and toilets, but that the proposal was seeking to micromanage specific technologies and customer surveying approaches - an analogy that might be appropriate were the Proposal at hand instructing the Company to invest in a specific asset, rather than to simply divest from an asset class with broad ESG concerns.

The key issue at hand for the Staff to decide is: are cryptocurrency investments - which fuel the growth of cryptocurrency mining and its associated massive energy consumption and E-waste problems - an issue of broad societal impact? At no point does the Company actually *make the case* that it is not, simply relying on flat assertion that it is not ("Proposal does not focus on a significant social policy issue"). The mere fact that on January 20th the House Subcommittee on Oversight and Investigations held a hearing on the environmental impacts of cryptocurrency mining on its own shows the level of societal concern about this issue. The Company attempts to argue that its switch from accepting Bitcoin for payment to Dogecoin "because of its lower GHG impact" is sufficient conceals the fact it still consumes two orders of magnitude more energy per transaction than even energy-intensive "traditional" forms of payment, such as VISA (120Wh vs. 1.7Wh) - a difference greater than that between the carbon footprint of solar and wind power (4-6 gCO2e/kWh) and coal power (109 gCO2e/kWh) [Pehl et al, 2017]. Specifically in seeking to avoid micro-managing the company's actions, the proposal did not seek to outright ban the company from allowing cryptocurrency transactions - requiring only the entirely unambitious target of one order of

magnitude difference in energy consumption vs. the already-high energy footprint of VISA if it chooses to utilize them, and Level 2 processing if it cannot.

The Company offers one final argument, which is that selling off its extensive Bitcoin holdings "would only consume more energy and cause more emissions". Is the Company arguing that it *never* intends to sell off its holdings - that it diluted shareholders in order to purchase a $1,5 billion dollar collectible? So long as the Company intends to sell at some point - which it has explicitly stated is its intent - said environmental impact will happen regardless. Meanwhile, as was made quite clear in the proposal's supporting text, it is the very fact that Tesla chose to become a large investor in Bitcoin that sent the cryptocurrency (and its environmental footprint) surging, by "normalizing" the concept of large corporate investments. One must point out for a typical ESG comparison that, say, divesting from coal power plants does not make existing coal power plants cease to exist, but it most certainly discourages investment in new ones. The Company’s divestment of its Bitcoin horde and its immediate liquidation of any received cryptocurrency assets serves the same purpose of de-normalization of the acquisition and holding of environmentally-destructive assets.

Conclusion

While the Company should be praised for operating in a field of operations designed to improve the environment (electric vehicles, solar, and energy storage), the Company undercuts its mission statement in its promotion and acquisition of cryptocurrencies. The Proponent respectfully requests that the Staff do not concur with the Company that it will take no action if the Company excludes the Proposal from the Proxy Materials. The Proponent would be glad to provide, at Staff's request, any information it may need with regards to the issues laid out above, and may be reached at PII or PII.