



DIVISION OF  
CORPORATION FINANCE

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

May 2, 2025

Xuehui Cassie Zhang  
Tesla, Inc.

Re: Tesla, Inc. (the "Company")  
Incoming letter dated March 19, 2025

Dear Xuehui Cassie Zhang:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Michael E. Monteiro 2016 Rev Trust and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company commit to a moratorium on sourcing minerals from deep sea mining.

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 seeks to micromanage 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/2024-2025-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Danielle Fugere  
As You Sow

March 19, 2025

**VIA E-Mail to shareholderproposals@sec.gov**

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

RE: Stockholder Proposal Submitted by As You Sow

Ladies and Gentlemen:

Tesla, Inc. (the “Company” or “Tesla”) is submitting this letter to notify the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a stockholder proposal (the “Proposal”) from its proxy materials to be distributed in connection with its 2025 annual meeting of stockholders (the “Proxy Materials”). As You Sow, on behalf of Michael E. Monteiro 2016 Rev Trust (collectively, the “Proponent”), acted as lead filer for the Proposal, and The Woodcock Foundation and Minnesota Valley National Wildlife Refuge Trust co-filed the Proposal.

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. In accordance with relevant Staff guidance, the Company is submitting this letter and its attachments to the Staff through the Staff’s online Shareholder Proposal Form. Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Company is simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal for its Proxy Materials.

Rule 14a-8(k) and Section E of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the stockholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if it submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

***Good Cause for Waiver of 80-Day Deadline under Rule 14a-8(j)(1)***

Under Rule 14a-8(j), the Staff “may permit the company to make its submission [of a no-action request] later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.”

The Company is filing this letter fewer than 80 days before it intends to file its definitive 2025 Proxy Materials for good cause. As discussed below, Staff Legal Bulletin No. 14M (Feb. 12, 2025) (“SLB 14M”), which was issued after the expiration of the 80-day window for the Company, is central to the legal arguments raised in this letter. As stated in Question 3 of SLB 14M, the Staff “will consider the publication of [SLB 14M] to be ‘good cause’” under Rule 14a-8(j) if SLB 14M relates to the legal arguments made by a later-filed no-action request. Therefore, consistent with Rule 14a-8(j) and SLB 14M, the Company has good cause for filing this letter later than the typical 80-day window.

***The Proposal***

The Proposal sets forth the following:

Resolved: Shareholders request that Tesla commit to a moratorium on sourcing minerals from deep sea mining.

A copy of the Proposal is attached hereto as Exhibit A.

***Basis for Exclusion***

The Company respectfully requests that the Staff concur in our view that, under the Commission’s updated guidance in SLB 14M, the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7) of the Exchange Act, as the Proposal deals with matters relating to the Company’s ordinary business and impermissibly seeks to micromanage the Company.

### ***Rule and Analysis***

Rule 14a-8(i)(7) allows the omission of a stockholder proposal from a registrant’s proxy statement if the 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 matters 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.

On February 12, 2025, the Staff issued SLB 14M, which (1) rescinded Staff Legal Bulletin No. 14L (“SLB 14L”) and (2) reinstated guidance on “micromanagement” under Staff Legal Bulletin No. 14J (“SLB 14J”) and Staff Legal Bulletin No. 14K (“SLB 14K”) that had been rescinded by SLB 14L. Taken together, SLB 14M and the reinstated guidance under SLB 14J and SLB 14K make clear that the Proposal is excludable under 14a-8(i)(7), for the following reasons:

- The Proposal relates to matters that 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; and
- The Proposal impermissibly seeks to micromanage the Company by seeking to impose a specific method for implementing a complex policy.

#### ***a. The Proposal Deals with Matters Relating to the Company’s Ordinary Business.***

The underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” 1998 Release. One of the “central considerations” underlying the ordinary business exclusion is whether a proposal raises matters that 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” relate to a company’s “ordinary” business operations. See 1998 Release and SLB 14M. There is a “significant policy exception” to this consideration, and proposals focusing on a significant policy issue may not be excludable “because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” *Id.* However, as SLB 14M makes clear, whether the significant policy exception applies depends on the particular policy issue raised by the proposal and its significance in relation to the company, and the Staff “will take a company-specific approach in evaluating significance, rather than focusing solely on whether a proposal raises a policy issue with broad societal impact or whether particular issues or categories of issues are universally ‘significant.’” SLB 14M. As a result, the analysis under this prong of the Rule 14a-8(i)(7) will focus on whether a proposal “deals with a matter relating to an individual company’s ordinary business operations or raises a policy issue that transcends the individual company’s ordinary business operations.”

The Proposal requests the Company “commit to a moratorium on sourcing minerals for deep sea mining.” In the “whereas” clause, the Proposal grounds this request in “[g]lobal concern [...] about deep sea mining.” The Proposal cites other information and studies to highlight the “universal significance” of this issue, including the global importance of an undisturbed seafloor environment and potential global impacts of deep sea mining on wildlife populations. However, as SLB 14M clearly states, the Staff’s analysis under Rule 14a-8(i)(7) is not solely on whether an issue is “universally significant”, but instead turns on a proposal deals with a matter relating to an *individual* company’s ordinary business operations. The Proposal contains only one sentence linking these global policy issues with the Company—“Tesla can avoid the reputational harm of being linked to this unnecessary and environmentally harmful industry and avoid the financial risks of orienting its supply chain around an industry with an uncertain regulatory future.” This statement does not establish Company-specific significance of the global policy issues that are the focus of the Proposal. SLB 14M states that “[t]he mere possibility of reputational or economic harm alone will not demonstrate that a proposal is ‘otherwise significantly related to the company’s business.’” Although this statement is made under SLB 14M’s discussion of Rule 14a-8(i)(5), we believe its logic is also applicable to the analysis of company-specific significance under Rule 14a-8(i)(7) as applied to this Proposal.

In the absence of a policy issue with such Company-specific significance that it transcends “ordinary business”, the Proposal falls squarely into the core of the “ordinary business” exclusion because it deals with matters that are fundamental to management’s ability to run a company on a day-to-day basis, namely (i) the Company’s selection of suppliers and supply chain

decisions and (ii) the composition and offering of the Company's products. It is well established that a company's decisions in these two areas are precisely the kind of fundamental, day-to-day operational matters meant to be covered by the "ordinary business" exception under Rule 14a-8(i)(7). Prior to the issuance of the now-rescinded SLB 14L, the Staff has consistently concurred with exclusion on this basis of proposals relating to these types of matters, notwithstanding language in the proposal referencing a policy issue. *See, e.g., The TJX Companies, Inc.* (Apr. 9, 2021) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal that requested a report on "racism through undetected supply chain prison labor" because the proposal related to decisions regarding the company's suppliers and enforcement of its existing standards of supplier conduct); *The Home Depot, Inc.* (Mar. 20, 2020) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal that is similar to the proposal submitted at TJX); *JPMorgan Chase & Co.* (Mar. 19, 2019) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal relating to the construction of a sea-based canal in Mexico because the proposal related to the products and services offered for sale by the company); *Wells Fargo & Co.* (Jan. 28, 2013) (recon. denied Mar. 4, 2013) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting a report "discussing the adequacy of the company's policies in addressing the social and financial impacts of direct deposit advance lending. . ." because "the proposal relates to the products and services offered for sale by the company"); *The Southern Company* (Jan. 19, 2011) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "strive to purchase a very high percentage" of "Made in the USA" goods and services because the proposal related to "decisions relating to supplier relationships"); *Spectra Energy Corp.* (Oct. 7, 2010, recon. denied Oct. 25, 2010) (concurring with exclusion under Rule 14a-8(i)(7) of a proposal that is similar to the proposal submitted at the Southern Company).

In this instance, notwithstanding the reference to global policy issues, the Proposal clearly relates to supply chain- and product-related issues that are complex, that should be resolved by management and the board of directors, and that are impracticable for shareholders to decide how to resolve at an annual shareholders meeting. Specifically, the Proposal seeks to influence the specific suppliers from which the Company sources its minerals by requesting a moratorium on certain resources. The Company's supplier network is an essential component in accomplishing its business objectives. The Company sources materials for its products from thousands of suppliers, and these complex supply chain relationships have been developed over an extensive period of time. As a result of the number, variety and complexity of the Company's supplier relationships, the Company regularly assesses its suppliers. The ongoing decisions of Company management regarding the entry into agreements with suppliers for the purchase of raw materials, the availability of such raw materials particularly during periods of significant supply chain disruption or uncertainty, the terms of those agreements, the timing of such agreements and decisions under those agreements, are fundamental to Company management's ability to operate the Company on a day-to-day basis and to maintain its competitiveness and are not, consistent with Staff precedent, proper matters for direct shareholder oversight. In addition, decisions regarding the composition of the Company's products, as well as the sourcing of raw materials and the selection of the Company's raw material suppliers, are an integral part of the Company's business and inherently involve complex operational, regulatory, engineering and business considerations requiring extensive knowledge of foreign, federal and state regulatory requirements, complex contractual agreements, engineering-related factors, global supply chain constraints and related considerations. Furthermore, understanding the impact on customers of such product decisions is fundamental to the Company's business and requires significant specialized expertise to analyze and make such decisions. It is the Company's management team, which possesses specialized expertise and judgment, that is well-positioned to make informed and specific decisions on such day-to-day business.

As such, the Proposal should be excluded under Rule 14a-8(i)(7) on the grounds that it deals with matters relating to Company's ordinary business. Consistent with SLB 14M, the single reference to the possibility of reputational or economic harm for the Company does not subject this Proposal to the "significant policy exception" under this prong of Rule 14a-8(i)(7).

***b. The Proposal Impermissibly Seeks to Micromanage the Company by Imposing a Specific Method for Implementing a Complex Policy.***

Under SLB 14K, which has been reinstated by SLB 14M, "[w]hen a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." Under SLB 14K, the Staff has stated that proposals may warrant different outcomes under the "micromanagement" analysis, even when they focus on the same subject matter, "based solely on the level of prescriptiveness with which the proposals approach that subject matter." As an example, SLB 14K references a proposal that prescribes a specific method for reducing greenhouse emissions, noting that the proposal was excludable on the basis of "micromanagement" because it "effectively requir[es] the adoption of time-bound targets (short, medium and long) that the company would measure itself against and changes in operations to meet those goals, thereby imposing a specific method for implementing a complex policy." SLB 14K contrasts this proposal with one seeking a report "describing if, and how, [a company] plans to reduce its total

contribution to climate change and align its operations and investments with the Paris [Climate] Agreement’s goal of maintaining global temperatures well below 2 degrees Celsius.” The Staff concluded that this proposal “did not seek to micromanage the company because it deferred to management’s discretion to consider if and how the company plans to reduce its carbon footprint and asked the company to consider the relative benefits and drawbacks of several actions.”

Under SLB 14K, it is clear that clear that the Proposal seeks to micromanage the Company. The Proposal prescribes a specific action for the Company—simply, that Tesla should “commit to a moratorium on sourcing minerals from deep sea mining”—without affording management or the board with any flexibility or discretion. In this respect, the Proposal is similar to the precedent referenced in SLB 14K, which urged a board to adopt a policy prohibiting certain adjusting financial performance metrics and which the Staff determined to be excludable on the basis of “micromanagement” because “such proposal prohibits any such adjustments *without regard to specific circumstances or the possibility of reasonable exceptions.*” See SLB 14K (referencing *Johnson & Johnson* (Feb. 14, 2019)) (emphasis added). The Proposal does not include references to any specific circumstances or possibility of reasonable exceptions to the requested moratorium.

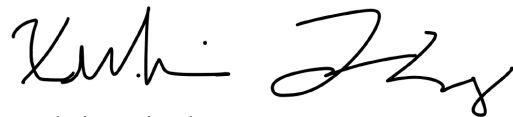
Under SLB 14K, “[w]hen a company asserts the micromanagement prong as a reason to exclude a proposal, we would expect it to include in its analysis how the proposal may unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.” The complexity of the supply chain- and product-related issues that are implicated by the Proposal are further described above in Section a. As noted above, given the complexity of these matters, it is crucial for the Company’s management team, which possesses the necessary expertise and judgment, to have the flexibility to make decisions regarding, among others, the composition of the Company’s products, the sourcing of raw materials and the selection of the Company’s raw material suppliers, the entry into agreements with suppliers for the purchase of raw materials, the availability of such raw materials, the terms of those agreements and the timing of such agreements and decisions under those agreements.

Therefore, a commitment to a specific action with respect to the Company’s supply chain and products, as requested by the Proposal, especially a commitment that does not provide any flexibility or discretion for management or the board to consider specific circumstances or reasonable exceptions, unduly limits the ability of management and the board to manage these complex matters. Consequently, consistent with SLB 14K and SLB 14M, the Proposal should be excluded under Rule 14a-8(i)(7) on the grounds impermissibly seeks to micromanage the company by imposing a specific method for implementing a complex policy.

### ***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 [cassie.zhang@tesla.com](mailto:cassie.zhang@tesla.com). 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  
Associate General Counsel

cc: As You Sow

**EXHIBIT A**



**VIA FEDEX & EMAIL**

December 16, 2024

Tesla Inc.,  
1 Tesla Road,  
Austin TX 78725  
Attn: Legal Department – Shareholder Mail  
[shareholdermail@tesla.com](mailto:shareholdermail@tesla.com)

Attention: Legal Department – Shareholder Mail

*As You Sow*<sup>®</sup> is filing a shareholder proposal on behalf of Michael E. Monteiro 2016 Rev Trust (“Proponent”), a shareholder of Tesla Inc. for inclusion in Tesla’s 2025 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent’s concerns.

To schedule a dialogue, please contact Elizabeth Levy, Biodiversity Coordinator, at [REDACTED].  
Please send all correspondence **with a copy to** [REDACTED].

Sincerely,

Danielle Fugere  
President & Chief Counsel

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: [ir@tesla.com](mailto:ir@tesla.com)

**WHEREAS:** Global concern is growing about deep sea mining, the process of extracting battery-related minerals from the deep seabed. Studies indicate that such mining risks destroying fragile habitats, dramatically reducing biodiversity, and causing irreversible damage to marine ecosystems.<sup>1</sup>

Deep sea mining dredges the ocean floor, indiscriminately killing sea life in its path and releasing sediment plumes laced with toxic metals into the water column, poisoning marine food chains.<sup>2</sup> These plumes can cause a cascading effect of biodiversity loss far beyond the mining site, potentially disrupting entire food webs.<sup>3</sup>

Evidence indicates that the detrimental impacts of deep sea mining are likely to result in a reduction in food supply and fisheries-related employment.<sup>4</sup> It also harms the ability of oceans to sequester carbon and retain long-held carbon stores in the seabed.<sup>5</sup> Recent studies have illuminated the importance of an undisturbed seafloor environment to the ocean's ability to generate oxygen.<sup>6</sup> Studies further demonstrate that deep sea mining can more than halve wildlife populations.<sup>7</sup> This finding is particularly concerning, given the discovery of over 5,000 new species in just one region planned for deep sea mining.<sup>8</sup>

Deep sea mining's scientific uncertainty and potentially catastrophic impacts have led many countries, civil society groups, and corporations to voice concern. More than thirty governments have called for a moratorium on deep sea mining.<sup>9</sup> In addition, electric vehicle ("EV") manufacturers, including BMW, Renault, Rivian, Volkswagen, and Volvo, have joined tech giants Apple, Google, Salesforce, and Samsung in committing to a global deep sea mining moratorium and pledging to keep their supply chains deep sea mining-free until scientific findings are sufficient to assess the environmental risks.<sup>10</sup> This growing support for a deep sea mining moratorium by countries with major EV markets raises competitiveness and regulatory concerns for companies that allow deep sea mined materials into their supply chains.

The mineral needs of large electric vehicle manufacturers such as Tesla are touted as the primary incentive for developing a deep sea mining industry. Yet, EV battery technology is trending away from minerals found in deep sea nodules, with a lithium surplus projected through 2027.<sup>11</sup> Such minerals are currently readily available terrestrially, and future demand for critical minerals can be reduced by over 50% through a combination of new technology, circular economy strategies, and recycling.<sup>12</sup>

---

<sup>1</sup> <https://www.fauna-flora.org/publications/fauna-flora-deep-sea-mining-report-update-march-2023/>, p.28

<sup>2</sup> <https://nhm.openrepository.com/handle/10141/622833>, p.12

<sup>3</sup> [https://www.cell.com/current-biology/fulltext/S0960-9822\(23\)00815-1](https://www.cell.com/current-biology/fulltext/S0960-9822(23)00815-1)

<sup>4</sup> <https://www.nature.com/articles/s44183-023-00016-8>; <https://www.cbd.int/article/food-2018-11-21-09-29-49>

<sup>5</sup> <https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2021.706161/full>;

<https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2020.00165/full>

<sup>6</sup> <https://www.nature.com/articles/s41561-024-01480-8>

<sup>7</sup> [https://www.cell.com/current-biology/fulltext/S0960-9822\(23\)00815-1](https://www.cell.com/current-biology/fulltext/S0960-9822(23)00815-1)

<sup>8</sup> [https://www.cell.com/current-biology/fulltext/S0960-9822\(23\)00534-1](https://www.cell.com/current-biology/fulltext/S0960-9822(23)00534-1)

<sup>9</sup> <https://deep-sea-conservation.org/solutions/no-deep-sea-mining/momentum-for-a-moratorium/>

<sup>10</sup> <https://www.stopdeepseabedmining.org/endorsers/>

<sup>11</sup> <https://www.blueclimateinitiative.org/next-gen-batteries-eliminate-need-for-dsm>, p.2-3;

<https://www.reuters.com/markets/commodities/lithium-supply-surplus-set-stay-with-battery-makers-help-2024-12-10/>

<sup>12</sup> [https://www.energy-transitions.org/wp-content/uploads/2023/08/ETC-Materials-Report\\_highres-1.pdf](https://www.energy-transitions.org/wp-content/uploads/2023/08/ETC-Materials-Report_highres-1.pdf), p.81;

[https://rmi.org/wp-content/uploads/dlm\\_uploads/2023/12/xchange\\_batteries\\_the\\_battery\\_domino\\_effect.pdf](https://rmi.org/wp-content/uploads/dlm_uploads/2023/12/xchange_batteries_the_battery_domino_effect.pdf), p.3;

[https://wwfint.awsassets.panda.org/downloads/the\\_future\\_is\\_circular\\_sintefmineralsfinalreport\\_nov\\_2022\\_1\\_1.pdf](https://wwfint.awsassets.panda.org/downloads/the_future_is_circular_sintefmineralsfinalreport_nov_2022_1_1.pdf), p.2-3

By excluding deep sea mined minerals from its supply chains, Tesla can avoid the reputational harm of being linked to this unnecessary and environmentally harmful industry and avoid the financial risks of orienting its supply chain around an industry with an uncertain regulatory future.

**RESOLVED:** Shareholders request that Tesla commit to a moratorium on sourcing minerals from deep sea mining.

April 3, 2025

**VIA ONLINE SUBMISSION**

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

**Re: Shareholder Proposal to Tesla, Inc. Regarding Deep Sea Mining Moratorium**

Ladies and Gentlemen:

Michael E. Monteiro 2016 Rev Trust (the “Proponent”), a beneficial owner of common stock of Tesla, Inc. (the “Company” or “Tesla”), has submitted a shareholder proposal (the “Proposal”) asking the Company to commit to a moratorium on sourcing minerals from deep sea mining. As *You Sow* writes in response to the Company’s March 19, 2025 “No Action” letter (the “Company Letter”).

The Company submitted an out-of-time no-action letter in response to Staff Legal Bulletin 14M (“SLB 14M”) (Feb. 12, 2025), which purports to grant a blanket “good cause” exception under Rule 14a-8(j) for past-deadline no-action letters seeking retroactive application of the standards announced in SLB 14M. However, the Company Letter—which contains only *two pages* of substantive argumentation—was sent *more than a month* after the publication of SLB 14M and the Company makes no effort to explain or justify this delay. SLB 14M cannot reasonably be read to simply erase all deadlines, without limit, for related company requests. The Staff should decline to consider the Company’s arguments, because its delay stretches the concept of “good cause” well past its breaking point.

If the Staff nonetheless grants the Company’s request for a waiver of its deadlines under Rule 14a-8(j), the no-action request should nonetheless be denied. The Company unsuccessfully sought a no-action decision on an identical basis last year, and the intervening publication of SLB 14M does not change the analysis with regard to this Proposal, which transcends the Company’s ordinary business and does not seek to micromanage it.<sup>1</sup>

---

<sup>1</sup> In responding to the Company’s arguments herein, the Proponent does not concede the lawfulness of the blanket 14a-8(j) exception or the retroactive application of the SLB 14M standards to proposals written and due prior to its publication. Proponent expressly reserves all rights and arguments to challenge the 14a-8(j) waiver and/or the retroactive application of the SLB 14M standards and seek other appropriate relief as permitted by law.

A copy of this letter is being emailed to the Company concurrently with its submission to the Commission's online shareholder proposal portal.

### **SUMMARY**

The Proposal, reproduced in full below, requests that the Company commit to a moratorium on sourcing minerals through the controversial deep sea process. The Company contends that it may exclude the Proposal under Rule 14a-8(i)(7) because the Proposal concerns its ordinary business and seeks to micromanage it.

Procedurally, the Staff should reject the Company's request because it comes too late after the issuance of SLB 14M. The Company took more than a month to submit two pages of argumentation, much of which repeats last year's unsuccessful arguments against the Proposal on the same grounds without actually addressing why the changes in SLB 14M are relevant to this Proposal. No conceivable definition of "good cause" covers the Company's delay in filing so late after the guidance was issued, and shoehorning the Company Letter into the purported SLB 14M waiver would be unreasonable.

On the merits, the Company's arguments are unpersuasive, based on the same reasons they were last year. The Proposal transcends the Company's ordinary business, a point which the Company fails to rebut, despite its burden to do so. Instead, it simply repeats last year's unsuccessful (and not credible) argument that the Proposal's reference to the environmental and human impacts of deep sea mining are a smokescreen for an effort to control the Company's supplier relationships. As to micromanagement, the Company attempts to define "micromanagement" as any request for "specific action," a version of the exclusion that would swallow the shareholder proposal Rule whole. The Proposal does not seek to micromanage the Company under SLB 14M because its broad policy request is within the scope of appropriate shareholder action. Indeed, as the Company Letter notes, the Proposal "does not include references to any specific" details about the requested policy. Company Letter at 4.

### **THE PROPOSAL**

**WHEREAS:** Global concern is growing about deep sea mining, the process of extracting battery-related minerals from the deep seabed. Studies indicate that such mining risks destroying fragile habitats, dramatically reducing biodiversity, and causing irreversible damage to marine ecosystems.<sup>1</sup> Deep sea mining dredges the ocean floor, indiscriminately killing sea life in its path

---

<sup>1</sup> <https://www.fauna-flora.org/publications/fauna-flora-deep-sea-mining-report-update-march-2023/>, p.28

and releasing sediment plumes laced with toxic metals into the water column, poisoning marine food chains.<sup>2</sup> These plumes can cause a cascading effect of biodiversity loss far beyond the mining site, potentially disrupting entire food webs.<sup>3</sup>

Evidence indicates that the detrimental impacts of deep sea mining are likely to result in a reduction in food supply and fisheries-related employment.<sup>4</sup> It also harms the ability of oceans to sequester carbon and retain long-held carbon stores in the seabed.<sup>5</sup> Recent studies have illuminated the importance of an undisturbed seafloor environment to the ocean's ability to generate oxygen.<sup>6</sup> Studies further demonstrate that deep sea mining can more than halve wildlife populations.<sup>7</sup> This finding is particularly concerning, given the discovery of over 5,000 new species in just one region planned for deep sea mining.<sup>8</sup>

Deep sea mining's scientific uncertainty and potentially catastrophic impacts have led many countries, civil society groups, and corporations to voice concern. More than thirty governments have called for a moratorium on deep sea mining.<sup>9</sup> In addition, electric vehicle ("EV") manufacturers, including BMW, Renault, Rivian, Volkswagen, and Volvo, have joined tech giants Apple, Google, Salesforce, and Samsung in committing to a global deep sea mining moratorium and pledging to keep their supply chains deep sea mining-free until scientific findings are sufficient to assess the environmental risks.<sup>10</sup> This growing support for a deep sea mining moratorium by countries with major EV markets raises competitiveness and regulatory concerns for companies that allow deep sea mined materials into their supply chains.

The mineral needs of large electric vehicle manufacturers such as Tesla are touted as the primary incentive for developing a deep sea mining industry. Yet, EV battery technology is trending away from minerals found in deep sea nodules, with a lithium surplus projected through 2027.<sup>11</sup> Such minerals are currently readily available terrestrially, and future demand for critical minerals

---

<sup>2</sup> <https://nhm.openrepository.com/handle/10141/622833>, p.12

<sup>3</sup> [https://www.cell.com/current-biology/fulltext/S0960-9822\(23\)00815-1](https://www.cell.com/current-biology/fulltext/S0960-9822(23)00815-1)

<sup>4</sup> <https://www.nature.com/articles/s44183-023-00016-8>; <https://www.cbd.int/article/food-2018-11-21-09-29-49>

<sup>5</sup> <https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2021.706161/full>;  
<https://www.frontiersin.org/journals/marine-science/articles/10.3389/fmars.2020.00165/full>

<sup>6</sup> <https://www.nature.com/articles/s41561-024-01480-8>

<sup>7</sup> [https://www.cell.com/current-biology/fulltext/S0960-9822\(23\)00815-1](https://www.cell.com/current-biology/fulltext/S0960-9822(23)00815-1)

<sup>8</sup> [https://www.cell.com/current-biology/fulltext/S0960-9822\(23\)00534-1](https://www.cell.com/current-biology/fulltext/S0960-9822(23)00534-1)

<sup>9</sup> <https://deep-sea-conservation.org/solutions/no-deep-sea-mining/momentum-for-a-moratorium/>

<sup>10</sup> <https://www.stopdeepseabedmining.org/endorsers/>

<sup>11</sup> [https://www.blueclimateinitiative.org/next-gen-batteries-eliminate-need-for-dsm\\_p.2-3](https://www.blueclimateinitiative.org/next-gen-batteries-eliminate-need-for-dsm_p.2-3);

<https://www.reuters.com/markets/commodities/lithium-supply-surplus-set-stay-with-battery-makers-help-2024-12-10/>

can be reduced by over 50% through a combination of new technology, circular economy strategies, and recycling.<sup>12</sup>

By excluding deep sea mined minerals from its supply chains, Tesla can avoid the reputational harm of being linked to this unnecessary and environmentally harmful industry and avoid the financial risks of orienting its supply chain around an industry with an uncertain regulatory future.

**RESOLVED:** Shareholders request that Tesla commit to a moratorium on sourcing minerals from deep sea mining.

## ANALYSIS

### I. The Staff Should Reject the Company’s Request for a Rule 14a-8(j) Waiver

The Company has not demonstrated “good cause” for an extension of its deadline under Rule 14a-8(j). Its reliance on SLB 14M to meet the “good cause” requirement is insufficient under the circumstances: the Company Letter, which contains approximately two pages of substantive argumentation, comes more than a month after the publication of that bulletin. Tesla does not explain why it took the Company *a month* after the publication of SLB 14M to seek no-action relief based on 14M. Tesla is an outlier in the lateness of its filing.

Tesla asserts only that SLB 14M granted a blanket “good cause” exception for past-deadline requests based on the guidance changes in that bulletin.<sup>1</sup> While SLB 14M does not contain an explicit limitation on how long the Staff would consider late requests, it would be absurd—not to mention, inconsistent with the language of Rule 14a-8—to suggest that SLB 14M’s purported waiver is available no matter how long the company delays its response. For example, SLB 14M does not specifically state that its waiver is limited to the current no-action season, but it is unreasonable to assume that companies submitting no-action requests relating to micromanagement, ordinary business, or relevance exclusions next season could ignore the deadline imposed by the Rule. SLB 14M’s purported waiver must be bound, at a minimum, by

---

<sup>12</sup> [https://www.energy-transitions.org/wp-content/uploads/2023/08/ETC-Materials-Report\\_highres-1.pdf](https://www.energy-transitions.org/wp-content/uploads/2023/08/ETC-Materials-Report_highres-1.pdf), p.81; [https://rmi.org/wp-content/uploads/dlm\\_uploads/2023/12/xchange\\_batteries\\_the\\_battery\\_domino\\_effect.pdf](https://rmi.org/wp-content/uploads/dlm_uploads/2023/12/xchange_batteries_the_battery_domino_effect.pdf), p.3; [https://wwfint.awsassets.panda.org/downloads/the\\_future\\_is\\_circular\\_sintefmineralsfinalreport\\_nov\\_2022\\_1\\_1.pdf](https://wwfint.awsassets.panda.org/downloads/the_future_is_circular_sintefmineralsfinalreport_nov_2022_1_1.pdf), p.2-3

<sup>1</sup> As indicated *supra*, the Proponent contests the legality of such a blanket waiver based on nothing more than an opportunity for issuers to submit no-action requests based on retroactive application of new guidance.

principles of reason. This is especially true since the waiver itself creates an uneven playing field between proponents and issuers by allowing issuers to ignore deadlines imposed by Rule 14a-8 while not also giving a similar opportunity to proponents to revise their proposals. Allowing companies to unreasonably delay filing a new no action request beyond the Rule's limitation, especially without offering any reasonable justification, makes a mockery of the 14a-8 process.

Interpreting SLB 14M to grant a waiver of the 80-day period without regard to whether an issuer has reacted to the new guidance with appropriate speed would also be inconsistent with the Staff's ordinary practice, which is to *strictly* enforce deadlines, with no allowances for extenuating circumstances. *See, e.g., Exxon Mobil Corp.* (Mar. 6, 2020) (concurring with exclusion due to late response to deficiency notice even where 14-day response period included Christmas Eve, Christmas Day, New Year's Eve, and New Year's Day). The Staff has maintained this strict approach to deficiency responses despite the significant and well-documented difficulty proponents face in acquiring broker letters at ordinary times, let alone over the winter holidays, resulting in numerous valid proposals being withdrawn or excluded. An even-handed and consistent application of the Rule would likewise counsel, at a minimum, against allowing issuers to submit out-of-time no-action requests — especially relatively uncomplicated ones — more than four weeks after the publication of SLB 14M.

Here, the circumstances counsel against extending the waiver. The Company's no-action request is not particularly complex or lengthy. *See generally* Company Letter. The Company does not explain why it needed a month from the publication of SLB 14M to seek no-action relief, in contrast to many smaller companies who have been able to respond much more quickly. The Company's unreasonable delay places unnecessary strain on Staff and Proponent's resources, requiring, with no good explanation, expedited timelines for responding.<sup>2</sup> In short, the Company cannot reasonably demand urgency in a situation in which it has not itself acted with urgency.

Denying the Company's request based on its unexplained (and inexplicable) delay is also consistent with ordinary legal practice. Even otherwise meritorious requests for preliminary injunctions or temporary restraining orders — which, like the SLB 14M waiver, are not subject to any explicit deadline — are routinely doomed by plaintiffs' failure to seek preliminary relief with appropriate urgency. *See ADT, LLC v. Capital Connect, Inc.*, 145 F. Supp. 3d 671, 698 (N.D. Tex. 2015) (noting that Texas district courts "readily decline motions to enjoin for lack of urgency"); *Dallas Safari Club v. Bernhardt*, 453 F. Supp. 3d 391, 403 (D.D.C. 2020)

---

<sup>2</sup> For instance, last season, the Staff averaged 64 (out of 80) days to respond to a no-action request, according to Gibson Dunn. While the Company Letter does not provide an anticipated proxy filing date or earlier print deadline, it filed on April 29 last year. If it plans to file on the same date this year, its March 19 filing would leave only 41 days for the proponent to respond and the Staff to decide, cutting the time literally in half.

(“[U]nexcused delay in seeking extraordinary injunctive relief may be grounds for denial because such delay implies lack of urgency and irreparable harm.”). Here, the Company’s one-month delay, had it occurred in a litigation context, would make it extremely unlikely that a court would grant it any relief. *E.g.*, *Crossover Mkt. LLC v. Newell*, 2022 WL 1797359, at \*3-4 (W.D. Tex. Jan. 12, 2022) (collecting cases); *Studio 010, Inc. v. Digital Cashflow LLC*, No. 2:20-cv-01018-RAJ, 2020 WL 3605654, at \*6 (W.D. Wash. July 2, 2020) (denying temporary restraining order, noting three-week delay in seeking relief); *Fund for Animals v. Frizzell*, 530 F.2d 982, 987 (D.C. Cir. 1975) (describing 44-day delay in seeking preliminary injunction as “inexcusable”).

Finally, granting the Company’s request for a waiver under Rule 14a-8(j) would violate the Rule itself. The Rule states that the Staff “may permit the company to make” a late submission “if the company demonstrates good cause for missing the deadline.” Rule 14a-8(j). While SLB 14M purports to articulate the Staff’s determination that the publication of SLB 14M is itself “good cause,” the Rule *does not* give the Staff authority to re-define the term in a way that conflicts with its promulgated meaning.<sup>3</sup> “Good cause is a legal term of art.” *Robinson v. GDC, Inc.*, 193 F. Supp. 3d 577, 580 (E.D. Va. 2016). Here, Tesla has failed to provide “good cause” why it filed a new no action letter so far beyond SLB 14M’s issuance.

There is a mountain of precedent defining “good cause” in the context of the APA, which contains a “good cause” exception to its notice-and-comment rulemaking standard. The lesson from these cases is that “good cause” for deviation from standard procedures is rare. *See Azar*, 587 U.S. 566; *N.C. Growers*, 702 F.3d at 767.

---

<sup>3</sup> The goal of making a rule retroactive does not constitute “good cause” and *As You Sow* retains its objection to SLB 14M purporting to do so. *See, e.g., Azar v. Allina Health Servs.*, 587 U.S. 566 (2019) (concluding that agency did not demonstrate “good cause” to depart from standard notice-and-comment rulemaking for regulation purporting to retroactively reduce payments to hospitals serving low-income patients). *See also N.C. Growers’ Ass’n v. UFW*, 702 F.3d 755, 767 (4th Cir. 2012) (noting that, under APA, good cause for deviation from standard procedure is “rare” and “applies only in ‘emergency situations’”). The “good cause” standard should include any potential prejudice to the shareholder, *i.e.*, “a process of weighing the equities to each side,” not merely an inquiry into whether the company has “a good excuse” or “excusable neglect.” *Whitefeather v. Wiese*, 431 B.R. 456, 458 (W.D. Wisc. B.R. 2010) (collecting Seventh Circuit citations to this effect); *see also Dobyns v. United States*, 101 F.4th 839, 843 (Fed. Cir. 2024) (good cause necessarily incorporates principles of equity and fairness to both sides). Under these principles, the retroactive application of “interpretive guidance” that effectively makes the micromanagement rule the opposite of what it was under the operative guidance at the time a proposal was due, while extending a deadline for opposition, but no opportunity to revise the proposal according to the new guidance, clearly does not constitute “good cause.”

Outside of the APA context, courts agree that “good cause” necessarily incorporates principles of equity and fairness. *See Dobyns v. United States*, 101 F.4th 839, 843 (Fed. Cir. 2024). This includes any potential prejudice to the shareholder, *i.e.*, “a process of weighing the equities to each side,” not merely an inquiry into whether the company has “a good excuse” or “excusable neglect.” *Whitefeather v. Wiese*, 431 B.R. 456, 458 (W.D. Wisc. B.R. 2010) (collecting Seventh Circuit citations to this effect).

For the foregoing reasons, the Company has not demonstrated “good cause” for its failure to timely seek no-action relief following the publication of SLB 14M. The Proponent respectfully requests that the Staff deny the Company’s no-action request on this basis.

## **II. The Proposal Transcends Tesla’s Ordinary Business**

Last season, Tesla sought to exclude a nearly identical proposal seeking a moratorium on sourcing minerals from deep sea mining, arguing, as it does here, that the Proposal interfered with its ordinary business. The effort was unsuccessful, as the Staff concluded that the Proposal “transcends ordinary business matters.” *Tesla, Inc. (As You Sow)* (Mar. 27, 2024).

By and large, the Company Letter merely rehashes the same arguments, with some obligatory references to SLB 14M thrown in. Compare, for instance, its 2024 Company Letter at 2 (“[T]he Proposal seeks to influence the specific suppliers from which the Company sources its minerals by requesting a moratorium on certain resources.”) with its 2025 Company Letter at 3 (“[T]he Proposal seeks to influence the specific suppliers from which the Company sources its minerals by requesting a moratorium on certain resources.”).

Last year’s decision conclusively forecloses any argument that the Proposal does not sufficiently focus on a transcendent policy issue. The only difference that SLB 14M made to the standard ordinary business exclusion is that 14M articulates a “company-specific” approach to whether a proposal raises a significant policy issue that transcends the Company’s ordinary business. This is as simple as recognizing that “[a] policy issue that is significant to one company may not be significant to another.” SLB 14M. Thus, “whether the significant policy exception applies depends on the particular policy issue raised by the proposal and its significance in relation to the company.” *Id.*

The Company Letter makes no real effort to argue that the source of minerals used in its products is not “significant” to it. Indeed, much of the Company Letter consists of arguing the exact opposite point: that its supply of raw minerals is an “essential component” of its business and an “integral part” of its success. Company Letter at 3. That the Company believes the Proposal interferes with supplier relationships is a *micromanagement* argument (addressed below), but it

is not a basis to exclude under the ordinary business rule, given the Staff’s recognition that proposals may permissibly touch upon the “nitty-gritty of [the company’s] core business” if they concern a transcendent policy issue. Staff Legal Bulletin No. 14H (Oct. 22, 2015). The effort by the Company to simply restate the ordinary business matter upon which the Proposal touches is a circular argument that the Staff routinely rejects, as it did in last year’s decision.

The Company also mistakes the nature of the analysis and burden under the “transcendent policy issue” test, suggesting that “[t]he Proposal contains only one sentence linking ... global policy issues with the Company” through reputational and financial risks. Company Letter at 2. The Proposal in fact is very clear that the Company would be at a competitive disadvantage by using such materials, including stating that the “growing support for a deep sea mining moratorium by countries with major EV markets,” “raises competitiveness and regulatory concerns for companies” who may consider including deep sea-mined minerals in their supply chains. It also lists significant competitors that have adopted the moratorium, including European car companies. Any shareholder reading this language would understand the significance to the Company of it being potentially excluded from major European markets. The Proposal clearly links the transcendent policy of deep sea mining to the Company. Tesla’s failure to understand that the harms discussed in the Proposal—lack of competitiveness and regulatory concerns, among others—are applicable to its business is troubling given that they are specifically addressed in the Proposal.

Additionally, under post-SLB 14M precedent, the Staff has required companies to independently explain why the transcendent issue raised by the proposal is *not* significant to the company, rather than seeking to rely on a purported failure by proponents to explain why it *is*. *See, e.g., General Dynamics Corp.*, (Mar. 25, 2025) (“In our view, based on the information you have presented, the Company has not demonstrated that the Proposal relates to its ordinary business operations.”); *Wells Fargo & Co.* (Mar. 5, 2025) (same); *Bank of America Corp.* (Mar. 3, 2025) (same). As indicated above, the Company does not make any independent argument that the transcendent issues raised by the Proposal are *not* significant to it. As such, it has not met its burden to demonstrate it may exclude the proposal.

### **III. The Proposal Does Not Seek to Micromanage Tesla**

#### *i. Micromanagement Standard*

The Commission has recognized the exclusion under Rule 14a-8(i)(7) of proposals seeking to “micromanage” companies 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.” 1998 Release.

In SLB 14M, the Staff reinstated guidance concerning the scope of the micromanagement exclusion from SLBs 14J and 14K. The guidance in those bulletins emphasizes that a proposal may seek to micromanage if it “involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies.” SLB 14M (Annex A, quoting SLB 14J). Additionally, the Staff looks “to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome, or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” SLB 14K.

*ii. The Proposal Does Not Seek to Micromanage Tesla*

The Staff rejected the Company’s request to exclude a nearly identical proposal last year on micromanagement grounds. *See Tesla (As You Sow), supra*. The Company argues that under SLB 14M’s reinstatement of SLB 14K, “it is clear that clear that [sic] the Proposal seeks to micromanage the Company” because it “prescribes a specific action for the Company . . . without affording management or the board with any flexibility or discretion.” Company Letter at 4.

It is unclear what proposals would remain permissible under the Company’s suggested version of the micromanagement standard. Virtually any proposal can be described in terms of offering a “specific strategy” or a “specific method,” particularly because Rule 14a-8—the binding, promulgated text rather than any interpretive gloss—expressly requires that proposals “state as clearly as possible the course of action that you believe the company should follow.” Rule 14a-8(a). This language forecloses the Staff or companies from defining “micromanagement” to mean nothing more than recommending a “course of action.”

Rather than prohibiting any request that a company take an action, it is clear from Staff precedent that the micromanagement exclusion turns on the *specificity* of how the proposal should be implemented. *See* SLB 14J (micromanagement when a proposal “involves *intricate detail*” or “*specific . . . methods* for implementing complex policies” (emphasis added)), 14K (micromanagement when a proposal “imposes a *specific* strategy, method, action, outcome, or timeline for addressing an issue (emphasis added)). This is compelled not only by Rule 14a-8’s general instruction that a proposal *must* ask a company to take a specific action, but also by its exclusion for vague proposals. *See* Rule 14a-8(i)(3). The Rule does not force proponents into a heads-the-company-wins/tails-the-proponent-loses choice between micromanagement and vagueness, but the Company’s argument would.

Here, the Proposal does not impose a *specific* method for implementing a policy, but rather provides high-level strategic direction. It falls well within the acceptable boundaries of

shareholder action. The Proposal requests the implementation of a broad, *macro* policy — a commitment to a moratorium on sourcing materials from deep sea mining. It does not, in any way, micromanage the particulars of how the Company might achieve that policy, how the Company should source materials for its products, how the Company should interact with suppliers, what conditions the Company might place on its commitment to a moratorium, and more. Accordingly, it does not unduly interfere with management or board discretion.

Exclusion of the Proposal would be inconsistent with both pre-SLB 14L and post-SLB 14M Staff precedent. For example, in *Coach, Inc.* (Aug. 19, 2010), the proposal requested that the company adopt a policy that would “ensure that no fur products are acquired or sold by Coach,” *i.e.*, that the Company commit to a (permanent) moratorium on sourcing fur. The Staff concluded that the proposal — equivalent in all relevant respects to the Proposal here — did not micromanage the company. This was not an aberrant outcome; the Staff routinely declines to concur in the exclusion of proposals that, contrary to the Company’s argument, request action by a company. In *Lowes Companies* (Mar. 16, 2011), for instance, the proposal requested that the company adopt a stormwater management policy and even specified certain details of the policy, but the no-action request was denied.

Post-SLB 14M precedent further demonstrates that the micromanagement exclusion goes nowhere near as far as the Company would like. The Staff has declined to concur in the exclusion of Proposals:

- Requesting that a company disclose an independent third-party evaluation of the alignment of its short- and medium-term greenhouse gas emissions reduction targets with the Paris Agreement, including a third-party assessment of the methodology the company used to set its targets. *Alliant Energy Corp.* (Mar. 27, 2025). The Proposal here is not as prescriptive or detailed as this one.
- Requesting that a company publish a report with the results of a Human Rights Impact Assessment examining the Company’s actual and potential human rights impacts associated with high-risk products and services, including those in conflict-affected areas and/or those violating international law. *General Dynamics Corp.* (Mar. 25, 2025).
- Requesting that a board seek shareholder approval of senior managers’ new or renewed pay package that provides for severance or termination payments with an estimated value exceeding 2.99 times the sum of the executive’s base salary plus target short-term bonus. *The Travelers Companies, Inc.* (Mar. 25, 2025).
- Requesting that a company adopt policies that would result in setting tire wear shedding reduction goals. *Goodyear Tire & Rubber Co.* (Mar. 3, 2025).

- Requesting that the company report on how it could match its peers by committing to make all its packaging curbside recyclable, reusable, or compostable. *Home Depot, Inc.* (Mar. 28, 2025). The company’s argument that the proposal micromanaged by effectively requiring it to adopt a goal of 100% recyclability/reusability/compostability was found unpersuasive. In defending the proposal, proponent specifically referenced last year’s Tesla proposal, writing:

“The Company Letter’s arguments here are essentially identical to those rejected in *Tesla*. This Proposal and the proposal in *Tesla* both set a high-level goal relating to products sold by the Company — respectively, 100% recyclable / reusable / compostable packaging and 100% non-deep-sea-mined minerals. Each proposal leaves the essential details of meeting that goal up to the company.”

A strong example of the application of the micromanagement rule under 14M comes from comparing the outcomes in *Verizon Communications Inc.* (Mar. 25, 2025) and *Newell Brands Inc.* (Mar. 24, 2025):

<b>Verizon – EXCLUDED</b>	<b>Newell – NOT EXCLUDED</b>
<p>“The Proposal requests the Company’s compensation committee adopt a policy that requires senior executives to retain a significant portion of equity obtained through the Company’s equity compensation plans for two years after their departure from the Company and a policy that prohibits hedging techniques that offset the risk of losses during the two-year period.”</p>	<p>“The Proposal asks the board to adopt a policy requiring the five named executive officers to retain a significant percentage of stock acquired through equity pay programs until reaching retirement.”</p>

Both proposals involve substantially the same subject matter and demand a specific policy be enacted by the Board. *Verizon*, however, attempted to prescribe how to implement the policy with too much specificity, and was excluded as micromanagement. *Newell* left significant implementation details to the board’s discretion as to how to implement nearly the same policy, and was not excluded. As described above, the Proposal here, like that in *Newell*, leaves the implementation of its broad policy recommendation in the Company’s discretion.

When set against this array of precedent, the Company’s argument that the Proposal seeks to micromanage it fall flat. The Company’s final argument is that the Proposal “does not include references to any specific circumstances or possibility of reasonable exceptions to the requested

moratorium.” Company Letter at 4. The Company attempts to draw this argument from *Johnson & Johnson* (Feb. 14, 2019), but that precedent is wholly inapposite. There, the *point of the proposal* was to eliminate the company’s discretion to make “reasonable exceptions” or otherwise adjust financial performance metrics in response to “circumstances.” This is far removed from the circumstances in which the Company attempts to apply it here, which is to argue that a proposal must include some rote, explicit reference to management’s authority to respond to circumstances in implementing the proposal. Notably, none of the proposals in the precedents cited above the line include any such proviso, which effectively settles the question of whether it is required. Finally, as the Proponent noted last year in response to Tesla’s similar assertion that the proposal was too restrictive, “moratoriums” are, by definition, not permanent. *See* 2024 Proponent Letter at 11-12. The moratorium provides a reasonable exception to its prohibition on use of deep sea mined minerals: that it end when “scientific findings are sufficient to assess the environmental risks.”

Apart from this, the Company simply reasserts its arguments from last year that supplier management is within management’s purview. This is a truism, but, for the reasons explained last year, the Proposal does not seek to micromanage those relationships, which is the relevant inquiry here. Accordingly, the Company has not met its burden of demonstrating that the Proposal seeks to micromanage it.

## CONCLUSION

The Staff should deny the Company’s request for a waiver of its deadline for submitting an unreasonably late no-action request under Rule 14a-8(j). However, even if the Staff considers the Company’s request, the Company has not met its burden of demonstrating that the Proposal is excludable under Rule 14a-8(i)(7). Therefore, the Company has no valid basis to exclude it from its 2025 proxy statement pursuant to Rule 14a-8. We respectfully urge the Staff to deny the no action request.

Sincerely,



Luke Morgan  
Staff Attorney, *As You Sow*

CC:

Xuehui Cassie Zhang, Tesla, Inc.