

March 19, 2025

**VIA STAFF ONLINE FORM**

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 Tulipshare Capital LLC

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”). Tulipshare Capital LLC, on behalf of Tulipshare Fund 1 LP (the “Proponent”), submitted 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, within one year, the Board Compensation Committee adopt targets and publicly report quantitative data appropriate to assessing the feasibility of integrating sustainability metrics, including those regarding diversity and independence among senior executives, into performance measures or vesting conditions that may apply to senior executives under compensation plans or arrangements.

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 Commissions' 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 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), because the Proposal impermissibly seeks to micromanage the Company by seeking to impose a specific method for implementing a complex policy.

As noted above, Rule 14a-8(i)(7) allows the omission of a stockholder proposal from a registrant's proxy statement if the 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. Explaining the standard for micromanagement, the Commission noted in the 1998 Release that consideration of complex matters upon which shareholders could not make an informed judgment "may come into play in a number of circumstances, such as where the proposal involves intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies" (footnote omitted).

Under SLB 14K Section B.4, 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." In SLB 14K, the Staff explained that it will focus on the prescriptiveness of a proposal in determining whether a proposal seeks to micromanage the Company or inappropriately limit the discretion of the board or management. Further, SLB 14J Section C.3, which has also been reinstated by SLB 14M, specifically states that "proposals addressing senior executive and/or director compensation that seek intricate detail, or seek to impose specific timeframes or methods for implementing complex policies can be excluded under Rule 14a-8(i)(7) on the basis of micromanagement."

Consistent with this view, the Staff has permitted the exclusion of stockholder proposals on the basis of micromanagement where the proposals would require a company to alter its executive compensation program. *See, e.g. Johnson & Johnson* (Feb. 12, 2020) (permitting exclusion on the basis of micromanagement for a proposal requesting the company's board of directors adopt a policy that when a financial performance metric is adjusted to exclude "legal or compliance costs" when evaluating performance for purposes of determining the amount or vesting of any senior executive compensation award, it provide an explanation of why the precise exclusion is warranted and a breakdown of the litigation costs); *JPMorgan Chase & Co.* (Mar. 22, 2019) (permitting exclusion on the basis of micromanagement for a proposal requesting the board adopt a policy prohibiting the vesting of equity-based awards for senior executives due to a voluntary resignation to enter government service); *AbbVie Inc.* (Feb. 15, 2019) (permitting exclusion on the basis of micromanagement for a proposal requesting that the board of directors adopt a policy that no performance metric be adjusted to exclude legal or compliance costs when evaluating performance); *Johnson & Johnson* (Feb. 14, 2019) (same).

In this case, the Proposal is a proposal "addressing senior executive [...] compensation that seek[s] intricate detail, or seek[s] to impose specific timeframes or methods for implementing complex policies" that can be excluded under Rule 14a-8(i)(7) on the basis of micromanagement. As stated by the Proposal, the Proponent is focused on the complex policy issue of how the Company "embeds [sustainability] considerations into Tesla's core operations." The Proposal seeks intricate details on this complex policy issue, including:

- information on diversity and independence among senior executives; and
- a report on "robust, comprehensive human rights due diligence process with specific performance metrics aligned with UN Guiding Principles on Business and Human Rights assessing Tesla's success in preventing and mitigating human rights risks across its value chain."

The Proposal also seeks to impose specific timeframes and methods for implementing this complex policy issue, including:

- requesting the Compensation Committee to, “within one year,” adopt certain targets;
- requesting that Compensation Committee to, “within one year,” provide quantitative data assessing the feasibility of integrating sustainability metrics “into performance measures or vesting conditions that may apply to senior executives under compensation plans or arrangements”; and
- the adoption of “[a] performance-based component in the executive compensation structure directly tied to achieving established human rights and sustainability performance metrics.”

In prescribing these specific actions and timelines that the Compensation Committee must adhere to “without affording [the Company’s board and management] sufficient flexibility or discretion in addressing the complex matter presented by the proposal,” the Proposal further warrants exclusion under SLB 14K Section B.4.

As such, under the Staff’s analytical framework under SLB 14J and SLB 14K, as reinstated by SLB 14M, it is clear that the Proposal probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment. As a result, the Proposal should be excluded under Rule 14a-8(i)(7) on the grounds that it 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: Tulipshare Capital LLC

**EXHIBIT A**

**Resolved:** Shareholders request that, within one year, the Board Compensation Committee adopt targets and publicly report quantitative data appropriate to assessing the feasibility of integrating sustainability metrics, including those regarding diversity and independence among senior executives, into performance measures or vesting conditions that may apply to senior executives under compensation plans or arrangements.

**Supporting Statement:** In the Board’s discretion we recommend Tesla’s report include:

- A robust, comprehensive human rights due diligence process with specific performance metrics aligned with UN Guiding Principles on Business and Human Rights assessing Tesla’s success in preventing and mitigating human rights risks across its value chain.
- A performance-based component in the executive compensation structure directly tied to achieving established human rights and sustainability performance metrics, thus incentivizing the Board to embed such considerations into Tesla’s core operations.

Integrating sustainability metrics into executive compensation can enhance transparency, promote responsible corporate citizenship, avoid legal and reputational harm, and ensure Tesla remains at the forefront of sustainable business practices. Increasingly, “companies have rejected generous executive-pay packages in shareholder votes... balking at the massive pay gaps between chief executives and workers.”<sup>1</sup> Companies are “embracing different approaches to factoring ESG into executive pay.”<sup>2</sup> Glass Lewis’ 2024 briefing on executive pay reported “a supermajority of the largest companies in Europe and North America now consider ESG performance in at least one incentive program.”<sup>3</sup> Tesla does not integrate environmental or human capital management-related metrics in executive pay, despite 53.6% and 90.4% of S&P 500 companies doing so, respectively.<sup>4</sup>

Tesla’s legal and reputational risks have already materialized. Tesla’s directors were ordered to “return \$735 million to the company to settle claims they grossly overpaid themselves in one of the largest shareholder settlements of its kind.”<sup>5</sup> Musk’s \$56 billion award has “helped lift the ceiling on CEO pay,” widening the gap between workers’ and executives’ pay packages, per *The New York Times*,<sup>6</sup> while *Reuters* now estimates the “package is worth about \$101 billion.”<sup>7</sup>

ISS and Glass Lewis denounced ratification of Musk’s court-invalidated award,<sup>8</sup> while Tesla’s Chair urged stockholders to ratify it “to retain Elon’s attention and motivate him.”<sup>9</sup> According to *Harvard Law School Forum*, “a well-governed board should take a highly critical court decision with the seriousness that it deserves... [b]ut the Tesla Board chose not to,” and instead “misdescrib[ed] the court’s decision in its efforts to obtain stockholder votes for the ratification,” did not cure the Board’s “lack of independence,” and “reinstate[d] the invalidated grant exactly as it was, without

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<sup>1</sup> <https://time.com/6184355/ceo-pay-investors-workers/>

<sup>2</sup> <https://corpgov.law.harvard.edu/2022/11/27/linking-executive-compensation-to-esg-performance/>

<sup>3</sup> <https://www.glasslewis.com/proxy-season-global-briefing-executive-pay/>

<sup>4</sup>

<https://corpgov.law.harvard.edu/2024/01/15/esg-performance-metrics-in-executive-pay/#:~:text=Some%2090.4%25%20of%20S%26P%20500%20companies%20now%20integrate%20at%20least.and%2053.6%25%20deply%20environmental%20metrics>

<sup>5</sup> <https://www.reuters.com/legal/tesla-directors-settle-lawsuit-over-compensation-735-mln-2023-07-17/>

<sup>6</sup> <https://www.nytimes.com/2022/06/25/business/highest-paid-ceos-elon-musk.html>

<sup>7</sup>

<https://www.reuters.com/legal/delaware-judge-rejects-request-restore-elon-musks-56-billion-tesla-compensation-2024-12-02/>

<sup>8</sup>

<https://www.reuters.com/business/autos-transportation/iss-recommends-votes-against-2018-pay-plan-tesla-ceo-elon-musk-2024-05-31/>

<sup>9</sup> [https://www.sec.gov/Archives/edgar/data/1318605/000110465924068792/tm2413800d20\\_defa14a.htm](https://www.sec.gov/Archives/edgar/data/1318605/000110465924068792/tm2413800d20_defa14a.htm)

even trying to obtain from Musk a time-and-attention commitment.”<sup>10</sup> After the stockholder vote for ratification, the court: continued to express “concern about Musk's control and influence over the company, including its board;” found “[t]here were undoubtedly a range of healthy amounts that the Board could have decided to pay Musk;” and ultimately struck down the 2018 package a second time, awarding the stockholder-plaintiff \$345 million to be paid in cash or Tesla shares.<sup>11</sup>

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<sup>10</sup> <https://corpgov.law.harvard.edu/2024/06/10/tesla-should-take-the-court-decision-seriously-not-dismissively/>

<sup>11</sup> <https://www.npr.org/2024/12/03/nx-s1-5214484/elon-musk-tesla-compensation>