



DIVISION OF
CORPORATION FINANCE

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

March 27, 2024

Derek Windham
Tesla, Inc.

Re: Tesla, Inc. (the "Company")
Incoming letter dated January 8, 2024

Dear Derek Windham:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by As You Sow Foundation Fund 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, consistent with the principles announced in the Business Statement Supporting a Moratorium on Deep Sea Mining.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal transcends ordinary business matters and does not seek to micromanage the Company.

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/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Luke Morgan
As You Sow

January 8, 2024

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 As You Sow Foundation Fund

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 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 2024 annual meeting of stockholders (the “Proxy Materials”). As You Sow Foundation Fund (the “Proponent”) is the lead filer for 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. Pursuant to Rule 14a-8(j) under 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, setting forth our reasons for excluding the Proposal. Rule 14a-8(k) and Section E of 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.

Proposal

The Proposal sets forth the following resolution:

RESOLVED: Shareholders request that Tesla commit to a moratorium on sourcing minerals from deep sea mining, consistent with the principles announced in the Business Statement Supporting a Moratorium on 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 the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal inextricably deals with matters relating to the Company’s ordinary business operations.

Rule and Analysis

Rule 14a-8(i)(7) allows the omission of a stockholder 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 stockholder 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 stockholders, as a group, would not be in a position to make an informed judgment.

As discussed below, the Proposal implicates both considerations underlying the ordinary business exclusion and is thus excludable as pertaining to the Company’s ordinary business operations.

A. THE PROPOSAL MAY BE EXCLUDED PURSUANT TO RULE 14A-8(i)(7) BECAUSE IT WOULD HINDER MANAGEMENT’S FUNDAMENTAL ABILITY TO RUN THE COMPANY’S DAY-TO-DAY OPERATIONS

By requesting the Company “commit to a moratorium on sourcing minerals for deep sea mining,” the Proponent’s Proposal implicates core matters involving the Company’s business and operations – (i) the Company’s selection of suppliers and (ii) the source and types of raw materials used in the Company’s products – which are fundamental to management’s ability to run the Company on a day-to-day basis and therefore, cannot, as a practical matter, be subject to direct stockholder oversight.

Supplier relationship and decisions regarding such relationships are fundamental to the Company’s day-to-day business operations.

The Company sources materials for its products from thousands of suppliers. Some of our suppliers are close to our factories, while others are part of global supply chains. These complex supply relationships have been developed over an extensive period of time and the Company maintains comprehensive processes for vetting, contracting with and auditing its suppliers. As a result of the number, variety and complexity of the Company’s supplier relationships, the Company regularly assesses its suppliers and considers ways to mitigate risk, promote responsible sourcing and increase the efficiency of its global supply chain. The Company places considerable importance on forging strong supplier relationships, and the Company’s supplier network is an essential component in accomplishing its business objectives.

In the 1998 Release, the Commission cited “management of the workforce, . . . decisions on production quality and quantity, and the retention of suppliers” as examples of tasks that are fundamental to management’s ability to run a company on a daily basis. Subsequently, the Staff has concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to or affecting a company’s supplier or vendor relationships. *See, e.g., The Home Depot, Inc.* (Mar. 20, 2020) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting a report and analysis of material risk related to the use of prison labor in the company’s supply chain); *Walmart Inc.* (Mar. 8, 2018) (concurring with Rule 14a-8(i)(7) exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability as relating to an ordinary business matter); *Foot Locker, Inc.* (Mar. 3, 2017) (concurring with Rule 14a-8(i)(7) exclusion of a proposal seeking a report on steps taken by the company to monitor overseas apparel suppliers’ use of subcontractors as relating “broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors”); *Corrections Corp. of America* (Feb. 28, 2014, recon. denied Mar. 25, 2014) and *The GEO Group, Inc.* (Feb. 14, 2014, recon. denied Mar. 25, 2014) (each concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting that the board adopt and implement provisions “relate[d] to inmate telephone service contracts at correctional and detention facilities operated by the company” on grounds that it “relates to decisions relating to supplier relationships,” noting that “[p]roposals concerning decisions relating to supplier relationships are generally excludable under rule 14a-8(i)(7)”); *Kraft Foods Inc.* (Feb. 23, 2012) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting a report detailing the ways the company “is assessing water risk to its agricultural supply chain and action it intends to take to mitigate the impact on long-term shareholder value,” noting that the “proposal relates to decisions relating to supplier relationships”); *PetSmart, Inc.* (Mar. 24, 2011) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting that the board require its suppliers to certify that they have not violated certain animal rights statutes as relating to the company’s ordinary business operations); *Alaska Air Group, Inc.* (Mar. 8, 2010) (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting a report disclosing the maintenance and security standards used by contract repair stations as relating to “decisions relating to vendor relationships”).

The Proponent’s Proposal concerns ordinary business decisions relating to the Company’s relationships with particular suppliers, as the Proposal seeks to influence the specific suppliers from which the Company sources its minerals by requesting a moratorium on certain resources. 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. As such, the Proposal may be similarly excluded on the grounds that it relates to the Company’s ordinary business operations under Rule 14a-8(i)(7).

Decisions regarding the composition and offering of products are management functions in running the day-to-day operations of the Company.

As a leading global manufacturer of electric vehicles and energy generation and storage systems, with factories located in three continents, the Company has invested significant time and resources in identifying, approving and maintaining relationships with raw material, including mineral suppliers. 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.

The Staff has repeatedly recognized that a proposal relating to the sale of a particular product, and seeking to intervene with management's day-to-day decisions regarding the particular products offered to customers, is excludable under Rule 14a-8(i)(7) as a component of "ordinary business," even where a product is deemed controversial or the proposal touches upon a social issue. See *The Home Depot, Inc. (Mar. 21, 2018)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting that the company end its sale of glue traps, on the basis that the proposal related to "the products and services offered for sale by the Company"); *General Mills, Inc. (July 2, 2010)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting limits on the use of salt and other sodium compounds in the company's food products, noting in particular that the proposal "relate[d] to the selection of ingredients in [the company's] products" and that "[p]roposals concerning the selection of ingredients in a company's products are generally excludable under rule 14a-8(i)(7)"); *The Procter & Gamble Company (July 15, 2009)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting the company to cease making cat-kibble, noting that it related to the company's "ordinary business operations (i.e., sale of a particular product)"); *Cabela's Inc. (Apr. 7, 2016)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting the implementation of a policy to continue to sell handguns and rifles discharging up to eight shells without reloading and not to sell (other than to police departments and other military and law enforcement agencies of government) firearms capable of discharging more than eight shells without reloading, noting that the proposal related to "the products and services offered for sale by the company"); *Dominion Resources, Inc. (Feb. 19, 2014)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting the company to develop and provide information concerning renewable energy generation services because the proposal related to "the sale of particular products and services that the company offers," which proposals "are generally excludable").

In addition, the Staff has consistently determined that proposals relating to policies and procedures associated with offered products can be excluded pursuant to Rule 14a-8(i)(7) as relating to the company's ordinary business operations. See *The Walt Disney Co. (Dec. 22, 2010)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal that would require the company to modify its current smoking policy to not allow children within designated smoking areas of its theme parks, noting that the proposal related to "the policies and procedures regarding the products and services that the company offers"); *JPMorgan Chase & Co. (Mar. 16, 2010)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting that the board implement a policy mandating that the company cease its current practice of issuing refund anticipation loans, noting that "proposals concerning the sale of particular services are generally excludable under rule 14a-8(i)(7)"); *General Electric Co. (Balch) (Jan. 28, 1997)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal recommending that the company adopt a policy of recalling and refunding defective products, noting that the proposal related to the company's "ordinary business operations (i.e., recall and refund procedures)"); *FMC Corp. (Feb. 25, 2011, recon. denied Mar. 16, 2011)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal recommending that the company establish a "product stewardship program" for certain of its pesticides, noting that the proposal related to "products offered for sale by the company").

The Proponent's Proposal relates to the future production and sale of any products containing certain raw materials, as well as the Company's policies and procedures relating to those products. At its core, the underlying subject matter of the Proposal relates directly to the ordinary business matter of determining the composition of the particular products the Company should or should not offer for sale, thus inappropriately interfering with the Company's production process. By seeking to intervene in decisions regarding the products the Company chooses to sell (including their components) and its sourcing policies with respect to such products, the Proposal interferes with management's ability to manage, and determine the composition of, the Company's products and related policies, and specifically, management's strategic choices relating to future product offerings. Decisions regarding the products (and their composition) that the Company sells implicate myriad factors that must be considered by the Company's management, including customer preferences, expectations with respect to future legislation and regulation of products, products offered by competitors, the Company's overall long-term strategy and the availability of sufficient quantity and quality of raw materials to both meet current and expected future customer demand. The Proposal should therefore be excluded from Proxy Materials on "ordinary business" grounds as it relates to the Company's ordinary business operations under Rule 14a-8(i)(7).

B. THE PROPOSAL MAY BE EXCLUDED PURSUANT TO RULE 14A-8(i)(7) BECAUSE IT SEEKS TO MICROMANAGE THE COMPANY

As discussed above, the commitment sought by the Proponent relates to Company decisions and actions that directly concern its product offerings and its relationships with suppliers. The Proposal ultimately seeks to micromanage the Company by substituting stockholder decisions for management decisions on granular matters, such as the composition of the Company's

products, the choice of Company suppliers and sourcing of raw materials for the Company's products. The Proposal does not request sustainability or environmental concerns be considered when sourcing raw materials; instead, it calls for a permanent commitment to forgo sourcing minerals for deep sea mining. Decisions regarding product composition and supplier relationships are extremely complex and stockholders are not well-positioned to make informed judgements about such matters for which they do not have access to complete and detailed information. The Company's procurement and use of raw materials, decisions regarding ingredient composition of its products, selection of suppliers, supply chain constraints and competitive considerations, and management of supplier relationships are complicated matters that are integrally entwined with its ordinary business operations and fundamental to management's ability to run the Company's day-to-day operations. Evaluating and weighing these matters involves the expertise of professionals in various disciplines who carefully evaluate complex and competing considerations that relate to the Company and its suppliers, such as industry and product development, innovation and advancements, business operations and expenditures, supply chain factors, regulatory requirements and compliance and engineering factors, consumer preferences and environmental impacts.

The Staff's position that proposals which unduly limit the board's or management's discretion are excludable under micromanagement is longstanding, even when the proposal raises important policy considerations. *See, e.g., The Kroger Co. (Apr. 25, 2023)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting the board take the necessary steps to pilot participation in the Fair Food Program for the Company's tomato purchases in the Southeast United States, in order to mitigate severe risks of forced labor and other human rights violations in the Company's produce supply chain, noting that "the proposal seek to micromanage the Company"); *Eli Lilly and Company (Mar. 1, 2019)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal asking the board to implement a policy that it will not fund, conduct or commission use of the "Forced Swim Test," noting that the proposal "micromanages the Company by seeking to impose specific methods for implementing complex policies"); *SeaWorld Entertainment, Inc. (Mar. 30, 2017)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting the board to retire the current resident orcas to seaside sanctuaries and replace the captive-orca exhibits with innovative virtual and augmented reality or other types of non-animal experiences, noting that the proposal "seeks to micromanage 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"); *The Wendy's Company (Mar. 2, 2017)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting the board to take all necessary steps to join the Fair Food Program for the purpose of protecting and enhancing consumer and investor confidence in the Wendy's brand as it relates to the purchase of produce, and to prepare a related report, noting that the proposal seeks to micromanage 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).

Additionally, in applying the micromanagement prong of Rule 14a-8(i)(7), the Staff consistently has concurred that shareholder proposals attempting to micromanage a company by providing a specific method for implementing a proposal as a substitute for the judgment and discretion of management are excludable under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc. (Apr. 7, 2023, recon. denied Apr. 20, 2023)*, the Staff concurred with the exclusion of a proposal for the company to measure and disclose scope 3 GHG emissions from its full value chain. In its reply, the Staff stated that the proposal sought to micromanage the company by "imposing a specific method for implementing a complex policy disclosure without affording discretion to management." *See also Amazon.com Inc. (Apr. 3, 2019)* (concurring with the exclusion of a proposal requesting human rights impact assessments for food products sold as micromanagement for "seeking to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors") and *JPMorgan Chase & Co. (Mar. 30, 2018)* (concurring with the exclusion of a proposal that requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing of tar sands projects as micromanagement for "seeking to impose specific methods for implementing complex policies").

The Proposal, similarly, while purporting to raise concerns about biodiversity, food supply and carbon dioxide absorption, at its core, seeks to micromanage the Company by requiring compliance with a permanent and specific mandate method of achieving its goal—a commitment to a moratorium on sourcing minerals from deep sea mining. The Company has a robust governance structure with active board of director and executive oversight and dedicated management committees and other subject matter experts analyzing the Company's sourcing policies, developing and implementing strategies and ultimately making decisions in a manner that is appropriate for the Company, its customers and its stockholders. Yet, the Proposal does not afford any discretion to management as to how to achieve such goals.

The Commission noted in the 1998 Release that consideration of complex matters upon which stockholders 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." The Proposal specifically implicates the type of day-to-day business operations that the 1998 Release indicated are too impractical and complex to subject to direct stockholder oversight, including the Company's product composition, supply chain operations and

approved suppliers therein. The Proposal does not contemplate the fluctuations in supply, availability, cost, quality, competitive factors or general economic conditions which may impact supply chain strategies and decisions. Such determinations are made by management as part of the Company's routine operations. As such, the matters discussed herein are of the very type contemplated by the Commission as better resolved by management as part of the Company's day-to-day business operations rather than by stockholders at an annual meeting. The Proposal thus probes too deeply into matters of a complex nature upon which stockholders would not be in a position to make an informed judgment, and is properly excludable under Rule 14a-8(i)(7).

C. THE PROPOSAL DOES NOT FOCUS ON A SIGNIFICANT POLICY ISSUE THAT TRANSCENDS THE COMPANY'S ORDINARY BUSINESS OPERATIONS

While the 1998 Release indicated that proposals that "focus on" significant social policy issues may not be excludable under Rule 14a-8(i)(7), in contrast, proposals with passing references touching upon topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). In SLB 14L, the Staff outlined its present approach to evaluating ordinary business proposals, noting a plan to "realign" with the Commission's standard in the 1998 Release, first articulated in 1976, by focusing on "the social policy significance of the issue that is the subject of the shareholder proposal" rather than "the nexus between a policy issue and the company." The explanation provided in SLB 14L confirms the Staff's intent to preserve the Commission's policy objectives behind the ordinary business exclusion, namely, as noted above, "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. Following SLB 14L's publication, the Staff has illustrated the application of these principles to distinguish between proposals that transcend ordinary business matters and those that are excludable under Rule 14a-8(i)(7). *See, e.g., The Kroger Co. (Apr. 25, 2023)* (concurring with Rule 14a-8(i)(7) exclusion of a proposal requesting the board take the necessary steps to pilot participation in the Fair Food Program for the Company's tomato purchases in the Southeast United States, in order to mitigate severe risks of forced labor and other human rights violations in the Company's produce supply chain, noting that "the proposal seeks to micromanage the Company"—The Kroger Co. had argued that the proposal focused on the company's day-to-day relationships with its suppliers, and that the proposal's recitation of human rights issues that might raise a significant social policy issue did not transform the otherwise ordinary business proposal into one that transcends ordinary business); in *Dollar Tree, Inc. (May 2, 2022)* (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on risks to the company's business strategy from increasing labor market pressure, stating that the proposal did not transcend ordinary business matters—Dollar Tree, Inc. had argued that the proposal focused on general workforce concerns and did not raise significant discrimination matters or board-oversight of human capital issues); *Amazon.com, Inc. (Apr. 8, 2022)*, (concurring with the exclusion under Rule 14a-8(i)(7) of a proposal requesting workforce turnover rates and the effects of labor market changes that have resulted from the COVID-19 pandemic, including the impact of the Company's workforce turnover on the Company's diversity, equity and inclusion, noting that the proposal related to ordinary business matters and did not focus on significant social policy issues").

Despite the Proponents' attempt to frame the Proposal as focused on a social policy issue by invoking, among others matters, concerns about environmental, reputational and regulatory risks, the Proposal fails to present an issue of broad societal impact that transcends the matters of the Company's product offerings and its supplier relationships (i.e., the Company's ordinary business). The environmental and reputational risks and aspects of the Proposal are, at best, secondary to the Proposal's ultimate design to micromanage the source of the raw materials used in the Company's products and the specific suppliers from which the Company may purchase from. The Proponents' attempt to insert the complex policy issues associated with environmental risks does not alter the fact that the Proposal itself is squarely focused on the Company's supply chain strategies and decisions. As a result, the Proposal fails to focus on a significant social policy issue that transcends the ordinary business of the Company.

The Company is committed to protecting the environment and maximizing the positive impact of our supply chain for people and the planet as we accelerate the world's transition to sustainable energy. We align with industry best practices and source responsibly according to the Organisation for Economic Co-operation and Development (OECD), the OECD Due Diligence Guidance for Responsible Mineral Supply Chains and Responsible Business Conduct, and the United Nations Guiding Principles on Business and Human Rights. In doing this, we set forth clear expectations for our suppliers, including through our Responsible Sourcing Policy and Supplier Code of Conduct. However, due to the complexity and variety of these relationships, such matters are inherently ordinary business matters integral to the Company's business. Because the proposal remains squarely focused on the Company's policies relating to the sourcing of materials for its products, the significant social policy issue exception does not support inclusion of the Proposal in the Company's Proxy Materials.

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 derek.windham@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,

A handwritten signature in black ink, appearing to read "D. Windham", with a long horizontal line extending to the right.

Derek Windham
Senior Director and Deputy General Counsel

Enclosures

cc: As You Sow Foundation

EXHIBIT A



VIA FEDEX & EMAIL

December 7, 2023

Tesla Inc.,
1 Tesla Road,
Austin TX 78725
Attn: Legal Department
shareholdermail@tesla.com

Attention: Legal Department

As You Sow® is submitting the attached shareholder proposal using shares owned by the *As You Sow* Foundation Fund ("Proponent"), a shareholder of Tesla Inc. for a vote at Tesla's 2024 annual shareholder meeting. This proposal requests Tesla commit to a temporary moratorium on sourcing minerals from deep sea mining, consistent with the principles announced in the Business Statement Supporting a Moratorium on Deep Sea Mining.

The *As You Sow* Foundation Fund meets Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934 requirements including the continuous ownership of over \$25,000 worth of Company stock, with voting rights, which the *As You Sow* Foundation Fund has held continuously for over one year and will continue to hold through the date of the Company's annual meeting in 2024.

The *As You Sow* Foundation Fund supports this proposal and a representative of *As You Sow* 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. Elizabeth Levy, Climate Associate, at [REDACTED] and Cole Genge, Director of Programs at [REDACTED] are the contact persons on behalf of *As You Sow* for this proposal. Ms. Levy and Mr. Genge are available for a meeting with the Company regarding this shareholder proposal at the following days/times: January 2, 2024 at 2:30pm Central Time or January 4, 2024 at 3:00pm Central Time.

Please also send all correspondence regarding this proposal to [REDACTED] and [REDACTED]

Sincerely,

Andrew Behar
CEO, *As You Sow*

Enclosures

- Shareholder Proposal

cc: ir@tesla.com

WHEREAS: The deep sea contains many of the planet’s intact ecosystems and plays a crucial role in regulating the climate.¹ Studies indicate that mining this underexplored and complex area for battery-related minerals will create irreversible habitat and ecosystem loss and could permanently destroy invaluable carbon storage.²

Deep sea mining (DSM) can obliterate sea floor life through dredging, while releasing sediment plumes laced with toxic metals, poisoning marine food chains.³ Deep sea organisms are slow-growing and fragile, and habitats can require millennia to recover from disturbances.⁴ The likely outcomes of DSM include biodiversity loss and jeopardized fish-based livelihoods and food supplies.⁵ Further, industrial-scale exploitation of the seafloor could have grave consequences for the ability of the oceans – one of the planet’s biggest carbon sinks — to absorb carbon dioxide, and may even lead to release of carbon stores.⁶ Scientists warn that DSM, even done cautiously, could be devastating.

The scientific uncertainty and potential catastrophic impacts of DSM have led many civil society groups, including governments, private organizations, and manufacturers to voice concern. Twenty-four governments have put in place a ban, moratorium, or precautionary pause on DSM.⁷ Electric vehicle (EV) manufacturers including BMW, Volvo, Volkswagen, Rivian, and Renault have committed to a global moratorium on deep sea mining, pledging to keep their supply chains deep sea mineral free until scientific findings are sufficient to assess the environmental risks of DSM.⁸

Peers adopting the moratorium underscores the precautionary principle and the availability of more sustainable methods to obtain necessary materials. For example, the BMW Group emphasizes that “its sustainability strategy is also relying more on resource-efficient closed-loop material cycles – with the aim of significantly increasing the percentage of secondary material in vehicles.”⁹

Unlike its peers, Tesla has not supported a DSM moratorium, leaving shareholders concerned that the Company is not addressing the serious reputational and regulatory risks of DSM. The supply of deep sea minerals is also legally, technologically, and financially insecure, making it expensive and risky for Tesla to incorporate deep sea sourced minerals into its supply chain.¹⁰ DSM is also at odds with the Kunming-Montreal Global Biodiversity Framework.¹¹

By committing to a global moratorium on DSM and an ocean mineral free supply chain, Tesla will join the ranks of Google, Samsung, Microsoft, Salesforce, Philips, and its EV peers by protecting a critical ecosystem and reaffirming its commitment to responsible sourcing.

¹ <https://climatesociety.ei.columbia.edu/news/rolling-deep-climate-change-and-deep-sea-ecosystems>

² <https://www.unepfi.org/wordpress/wp-content/uploads/2022/05/Harmful-Marine-Extractives-Deep-Sea-Mining.pdf>; <https://www.frontiersin.org/articles/10.3389/fmars.2020.00165/full>

³ <https://www.iucn.org/resources/issues-brief/deep-sea-mining>

⁴ <https://www.fauna-flora.org/explained/depth-deep-seabed-mining-not-answer-climate-crisis/>, p.17,26

⁵ <https://www.nature.com/articles/s44183-023-00016-8>

⁶ <https://www.fauna-flora.org/wp-content/uploads/2023/05/fauna-flora-deep-sea-mining-update-report-march-23.pdf>, p. 18

⁷ <https://savethehighseas.org/voices-calling-for-a-moratorium-governments-and-parliamentarians/>

⁸ <https://www.stopdeepseabedmining.org/endorsers/>

⁹ <https://www.press.bmwgroup.com/global/article/detail/T0328790EN/bmw-group-protects-the-deep-seas>

¹⁰ <https://ejfoundation.org/news-media/environmentalists-warn-investors-of-deep-sea-mining-risk>;

<https://www.financeforbiodiversity.org/leading-financial-institutions-call-on-governments-to-not-permit-deep-sea-mining/>

¹¹ <https://dsm-campaign.org/wp-content/uploads/2021/10/Precautionary-Principle-Deep-Sea-Mining.pdf>

RESOLVED: Shareholders request that Tesla commit to a moratorium on sourcing minerals from deep sea mining, consistent with the principles announced in the Business Statement Supporting a Moratorium on Deep Sea Mining.

SUPPORTING STATEMENT: If Tesla cannot so commit, shareholders request that the Board disclose its rationale and assess the Company's anticipated need for deep sea materials.

February 8, 2024

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

Re: Shareholder Proposal to Tesla, Inc. Regarding Deep Sea Mining on Behalf of The As You Sow Foundation Fund

Ladies and Gentlemen:

The As You Sow Foundation Fund (the “Proponent”), a beneficial owner of common stock of Tesla, Inc. (the “Company” or “Tesla”), has submitted a shareholder proposal (the “Proposal”) requesting that Tesla commit to a moratorium on the important public policy issue of sourcing minerals from deep sea mining, an issue that transcends the Company’s ordinary business and is a significant policy issue. On January 8, 2024, the Company wrote to the Commission requesting that it concur in the Company’s view that the Proposal may be properly excluded from its upcoming proxy statement (the “Company Letter”).

The Company Letter contends that the Proposal may be excluded from the Company’s 2024 proxy statement because, the Company argues, the Proposal deals with the Company’s ordinary business and because it micromanages the Company. Proponent’s response demonstrates that the Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it cannot concur with the Company’s request.

A copy of this letter is being emailed concurrently to the Company.

SUMMARY

The Proposal requests that the Company commit to a moratorium on sourcing minerals from deep sea mining. Many of the Company’s peers — including BMW, Volvo, Volkswagen, Rivian, and Renault — along with industry leaders in other sectors — such as Google, Samsung, Microsoft — have done so, in recognition of the significant environmental, technical, reputational, and financial risks posed by deep sea mining in the supply chain.

Under the standards previously adopted by the Commission and consistent with prior Staff precedent, this Proposal deals with substantial corporate policy considerations and significant public policy issues that transcend the Company’s ordinary business and therefore does not micromanage the Company.

Tesla’s arguments otherwise are unpersuasive. The Proposal’s request that the Company implement an overarching policy, without reference to specific products or supplier relationships, falls comfortably within the bounds of Staff precedent distinguishing “ordinary,”

day-to-day business from other, larger decisions appropriate for shareholder input. Moreover, the Proposal transcends the Company's ordinary business on the basis of a significant public policy issue. The Company's argument to the contrary amounts to the absurd assertion that Proponent's true motivation is not in addressing the significant environmental and reputational risk posed by deep sea mining — a concern expressed in every paragraph of the Proposal — but instead is intended to micromanage the Company's supplier relationships. To the contrary, under well-established Staff precedent, the Proposal's focus on issues that transcend the Company's ordinary business is clear.

Nor does the Proposal micromanage the Company. The Proposal does not require the Company to implement a specific policy or end any specific supplier relationship. Nor does it prescribe a timeline or methodology for implementing the requested action. Instead, it requests that the Company make an overarching commitment on a matter of big-picture risk. If the Company finds itself unable to make such a commitment, the Proposal requests that it simply disclose its rationale. In so doing, the Proposal preserves management discretion and limits its recommendation to an appropriate level of generality for shareholder consideration.

As such, the Company has no basis to exclude the Proposal.

THE PROPOSAL

WHEREAS: The deep sea contains many of the planet's intact ecosystems and plays a crucial role in regulating the climate.¹ Studies indicate that mining this underexplored and complex area for battery-related minerals will create irreversible habitat and ecosystem loss and could permanently destroy invaluable carbon storage.²

Deep sea mining (DSM) can obliterate sea floor life through dredging, while releasing sediment plumes laced with toxic metals, poisoning marine food chains.³ Deep sea organisms are slow-growing and fragile, and habitats can require millennia to recover from disturbances.⁴ The likely outcomes of DSM include biodiversity loss and jeopardized fish-based livelihoods and food supplies.⁵ Further, industrial-scale exploitation of the seafloor could have grave consequences for the ability of the oceans — one of the planet's biggest carbon sinks — to absorb carbon dioxide, and may even lead to release of carbon stores.⁶ Scientists warn that DSM, even done cautiously, could be devastating.

The scientific uncertainty and potential catastrophic impacts of DSM have led many civil society groups, including governments, private organizations, and manufacturers to voice concern. Twenty-four governments have put in place a ban, moratorium, or precautionary pause on DSM.⁷ Electric vehicle (EV) manufacturers including BMW, Volvo, Volkswagen, Rivian, and Renault

¹ <https://climatesociety.ei.columbia.edu/news/rolling-deep-climate-change-and-deep-sea-ecosystems>

² <https://www.unepfi.org/wordpress/wp-content/uploads/2022/05/Harmful-Marine-Extractives-Deep-Sea-Mining.pdf>; <https://www.frontiersin.org/articles/10.3389/fmars.2020.00165/full>

³ <https://www.iucn.org/resources/issues-brief/deep-sea-mining>

⁴ <https://www.fauna-flora.org/explained/depth-deep-seabed-mining-not-answer-climate-crisis/>, p.17,26

⁵ <https://www.nature.com/articles/s44183-023-00016-8>

⁶ <https://www.fauna-flora.org/wp-content/uploads/2023/05/fauna-flora-deep-sea-mining-update-report-march-23.pdf>, p. 18

⁷ <https://savethehighseas.org/voices-calling-for-a-moratorium-governments-and-parliamentarians/>

have committed to a global moratorium on deep sea mining, pledging to keep their supply chains deep sea mineral free until scientific findings are sufficient to assess the environmental risks of DSM.⁸

Peers adopting the moratorium underscores the precautionary principle and the availability of more sustainable methods to obtain necessary materials. For example, the BMW Group emphasizes that “its sustainability strategy is also relying more on resource-efficient closed-loop material cycles – with the aim of significantly increasing the percentage of secondary material in vehicles.”⁹

Unlike its peers, Tesla has not supported a DSM moratorium, leaving shareholders concerned that the Company is not addressing the serious reputational and regulatory risks of DSM. The supply of deep sea minerals is also legally, technologically, and financially insecure, making it expensive and risky for Tesla to incorporate deep sea sourced minerals into its supply chain.¹⁰ DSM is also at odds with the Kunming-Montreal Global Biodiversity Framework.¹¹

By committing to a global moratorium on DSM and an ocean mineral free supply chain, Tesla will join the ranks of Google, Samsung, Microsoft, Salesforce, Philips, and its EV peers by protecting a critical ecosystem and reaffirming its commitment to responsible sourcing.

RESOLVED: Shareholders request that Tesla commit to a moratorium on sourcing minerals from deep sea mining, consistent with the principles announced in the Business Statement Supporting a Moratorium on Deep Sea Mining.

SUPPORTING STATEMENT: If Tesla cannot so commit, shareholders request that the Board disclose its rationale and assess the Company's anticipated need for deep sea materials.

ANALYSIS

The Company Letter argues that the Proposal is excludable because it relates to the Company’s ordinary business and because it micromanages the Company. The gravamen of the Company’s argument is that, by requesting that the Company commit to a moratorium on deep sea mining, the Proposal addresses ordinary business and micromanages its “supplier relationship[s] and decisions regarding such relationships” and “decisions regarding the composition and offering of products.” *See* Company Letter at 2-3. To the contrary, the overarching policy commitment requested in the Proposal is not an “ordinary” business matter and raises a significant issue of social policy that transcends the Company’s ordinary business. Finally, the Proposal’s

⁸ <https://www.stopdeepseabedmining.org/endorsers/>

⁹ <https://www.press.bmwgroup.com/global/article/detail/T0328790EN/bmw-group-protects-the-deep-seas>

¹⁰ <https://ejfoundation.org/news-media/environmentalists-warn-investors-of-deep-sea-mining-risk>; <https://www.financeforbiodiversity.org/leading-financial-institutions-call-on-governments-to-not-permit-deep-sea-mining/>

¹¹ <https://savethehighseas.org/2022/12/19/as-historic-biodiversity-framework-is-agreed-at-cbd-cop15-civil-society-calls-on-world-leaders-to-defend-the-deep/>

Supporting Statement — which the Company ignores — permits management, in the alternative, to explain its rationale for not committing to a deep sea mining moratorium.

I. THE PROPOSAL TRANSCENDS ORDINARY BUSINESS

A. Ordinary Business Standard

Rule 14a-8 permits the exclusion of a subset of proposals that “deal[] with a matter relating to the company’s ordinary business operations.” Rule 14a-8(i)(7). But not every shareholder proposal that touches in any way upon a company’s business operations is excludable. Rather, Proposals do not fall within Rule 14a-8(i)(7) if they: (a) relate to *non-ordinary* aspects of a company’s business, or (b) raise a significant social policy issue that transcends the Company’s ordinary business.

The first exception is inherent in the text and reasoning of the Rule. As the Commission has explained, the ordinary business rule applies when a proposal would interfere with “[c]ertain tasks . . . 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.” SEC, *Release No. 34-40018* (May 21, 1998) (“1998 Release”). But not every proposal relating to a company’s business meets this criterion. Proposals that “involve substantial corporate policy considerations that go beyond the conduct of the [c]ompany’s ordinary business operations” are not excludable under Rule 14a-8(i)(7). *Pacific Group Telesis* (Feb. 2, 1989). As the Staff has explained, the issues addressed by such proposals are “not a matter relating to the conduct of [a company’s] ordinary business operations, but rather, an important issue that is appropriate for stockholders to address at a meeting.” *Broadridge Financial Solutions, Inc.* (Sept. 22, 2021).

Consistent with this principle, the Staff has declined to exclude proposals dealing with plant closings or relocations, *id.*; option repricing, *see General DataComm Industries, Inc.* (Dec. 9, 1998); pension plan conversion, *IBM Corp.* (Feb. 16, 2000); director compensation, *Reebok* (Mar. 16, 1992); CEO succession planning, *Whole Foods Market, Inc.* (Nov. 10, 2009); and decommissioning of individual nuclear power plants, *DTE Energy Company* (Dec. 18, 2017). *See also* SEC, *Exchange Act Release No. 34-12999* (Nov. 22, 1976) (stating, for example, that a proposal that a power company not construct a nuclear plant raises “economic and safety considerations attendant to nuclear power plants . . . of such magnitude that a determination of whether to construct one is not an ‘ordinary’ business matter”).

The second exception applies when proposals relate to company ordinary business “but focus[] on sufficiently significant social policy issues” that “transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” 1998 Release. Under this rule, “a proposal may transcend a company’s ordinary business operations even if the significant policy issue relates to the ‘nitty-gritty’ of its core business.” Staff Legal Bulletin No. 14H (Oct. 22, 2015).

These two exceptions to the ordinary business exclusion have generated a consistent line of Staff precedent establishing that shareholders may ask companies to implement broad, significant policy changes, particularly where they touch upon important social or environmental issues. For example, the Staff has declined to concur in the exclusion under Rule 14a-8(i)(7) of proposals:

- Requesting that company report on whether its slaughter methods conform to its animal welfare policy and announce plans to address “incompatible sourcing,” *Levi Strauss & Co.* (Feb. 8, 2022);
- Requesting that company commission independent report on material risks of continuing operations without restrictions on animal-sourced products associated with animal cruelty, *The TJX Companies* (Feb. 3, 2020);
- Requesting that company commission a report on the externalized public health costs created by its food and beverage business, *PepsiCo, Inc.* (Mar. 12, 2021)
- Requesting that pharmaceutical company report on governance changes implemented to more effectively respond to opioid crisis, *Walgreens Boots Alliance, Inc.* (Nov. 20, 2018);
- Requesting that company adopt a paid sick leave policy, *CVS Health Corp.* (Mar. 18, 2022);
- Requesting that insurance companies alter their product offerings to ensure that the companies did not “support new fossil fuel supplies,” see *Chubb Ltd. (Green Century)* (Mar. 26, 2022);
- Requesting that company commit to ending the use of gestational crates for pigs in its supply chain, *The Wendy’s Company* (Mar. 16, 2022);
- Requesting the creation of an overarching stormwater management policy for the company’s operations, *Lowes Companies, Inc.* (Mar. 16, 2011); and
- Requesting that company implement a code of conduct, inclusive of suppliers and sub-contractors, committing to the International Labor Organization’s Declaration on Fundamental Principles and Rights at Work, *McDonald’s Corp.* (Mar. 22, 2007).

As discussed below, the Proposal falls comfortably into these lines of Staff precedent and is, therefore, not excludable under Rule 14a-8(i)(7).

B. The Proposal Concerns a Substantial Corporate Policy Consideration and a Significant Issue of Social Policy, Both of Which Transcend Ordinary Business

The Proposal requests that the Company “commit to a moratorium on sourcing minerals from deep sea mining.” This request entails a “substantial corporate policy consideration” that “go[es] beyond the conduct of the [c]ompany’s ordinary business operations.” See *Pacific Group Telesis* (Feb. 2, 1989). As such, it is “appropriate for stockholders to address at a meeting.” See *Broadridge Financial Solutions, Inc.* (Sept. 22, 2021).

The use of deep sea mining in the Company’s supply chains is a substantial policy consideration. Deep sea ecosystems contain mineral nodules that hold minerals used to build batteries for electric vehicles.¹ As a result, there is increasing interest — a “nascent industry” — in harvesting these minerals from the deep sea.² However, there is substantial concern that industrial deep sea

¹ Alexandra Gillespie, *Your Next Car May Be Built With Ocean Rocks. Scientists Can’t Agree If That’s Good*, NPR (Sept. 3, 2021), <https://www.npr.org/2021/09/03/1031434711/your-next-car-may-be-built-with-ocean-rocks-scientists-cant-agree-if-thats-good>.

² *Id.*

mining could have calamitous ecological, environmental, and economic effects. As the United Nations Environmental Programme Explains:

[C]urrent scientific consensus suggests that deep-sea mining will be highly damaging to ocean ecosystems. . . . It can therefore be argued that, at present, no precautionary approach exists to safeguard the ocean against the potential ecological impacts of deep-sea mining. As a result . . . the prospect of deep-sea mining continues to attract significant opposition, with scientists, environmentalists, the European Parliament, and some national governments calling for a moratorium until its ecological consequences can be better understood. Increasingly, these concerns are also being supported by a broad range of private sector organizations.³

The potential consequences of deep sea mining are not limited to the deep sea ecosystem itself. Mining could “cause sediments to enter the ocean ecosystem in plumes hundreds of kilometers long,” which “may disrupt the ability of animal species to survive” in other critical ocean ecosystems.⁴ There is substantial concern that the ecosystem impacts of deep sea mining throughout the ocean could poison marine food chains, leading to reverberating impacts on global fish populations on which human populations, livelihoods, and economies depend.⁵

Other profound environmental and economic considerations include the release of significant stored carbon, adding to the problem of global climate change. The deep sea is a tremendously important part of the planet’s carbon cycle, “absorb[ing] and stor[ing] more than 90% of the excess heat and approximately 38% of the carbon dioxide generated by humanity.”⁶ That carbon is primarily stored in marine sediments that would be disturbed by deep sea mining:

In the deep sea, it takes roughly 10,000 years for the ocean floor sediment layer to grow by just 1 millimeter, a process that includes sequestering carbon. The robotic vacuum’s disturbance [in deep sea mining] reaches 10 centimeters into the seafloor, ‘basically resuspending a million years’ worth of time of carbon.’⁷

³ *Harmful Marine Extractives: understanding the risks & impacts of financing non-renewable extractive industries: Deep-Sea Mining* at 9-10, United Nations Environmental Programme Finance Initiative (2022), <https://www.unepfi.org/wordpress/wp-content/uploads/2022/05/Harmful-Marine-Extractives-Deep-Sea-Mining.pdf>.

⁴ Ryan Murdock, *Deep Sea Mining and the Green Transition*, Harvard International Review (Oct. 16, 2023), <https://hir.harvard.edu/deep-sea-mining-and-the-green-transition/>.

⁵ Todd Woody, *Deep Sea Mining Threatens \$5.5 Billion Tuna Industry, Study Finds*, Bloomberg (July 11, 2023), <https://www.bloomberg.com/news/articles/2023-07-11/deep-sea-mining-threatens-5-5-billion-tuna-industry-study-finds>.

⁶ *Five things you need to know about deep-sea mining*, The Economist (June 4, 2023), <https://impact.economist.com/sustainability/ecosystems-resources/five-things-you-need-to-know-about-deep-sea-mining>.

⁷ Daisy Chung, Ernest Scheyder & Clare Trainor, *The promise and risks of deep-sea mining*, Reuters (Nov. 15, 2023), <https://www.reuters.com/graphics/MINING-DEEPSEA/CLIMATE/zjpqezqzlp/>.

Indeed, a study just published in January 2024 found that deep sea sites were “storing more carbon than initially thought,” and thus that deep sea mining could seriously exacerbate climate change.⁸

All of this goes to demonstrate that deep sea mining is a significant matter of social policy. But it also shows that a commitment to a deep sea mining moratorium is of extraordinary significance to the Company. After all, Tesla has “one mission”: to accelerate the world’s transition to sustainable energy by “design[ing] sustainable systems that are massively scalable — resulting in the greatest environmental impact possible.”⁹ Tesla states that, “[t]o accomplish this mission, we need to . . . source and manufacture [products] as sustainably as possible.”¹⁰ Recognizing the centrality of responsible mineral sourcing to this mission, Tesla’s sustainability reporting addresses this issue several times, but it does not discuss deep sea mining.¹¹

In light of the substantial concerns raised by deep sea mining, numerous of Tesla’s peers and leaders in other fields have committed to a deep sea mining moratorium. This includes BMW, Renault, Rivian, Volkswagen, Volvo, and Polestar in the mobility and energy sector, along with Google, Philips, Razer, Samsung, and Salesforce in the technology sector.¹²

Finally, the issue of deep sea mining is of substantial public and governmental concern. Notably, the International Seabed Authority (ISA) governs deep sea mining in international waters, per the terms of the United Nations Convention on the Law of the Sea. In response to an application by a member nation to permit deep sea mining, more than 20 other states — including France, Canada, Mexico, Brazil, Finland, Germany, Ireland, Portugal, Spain, Sweden, and the United Kingdom — have called for a ban, moratorium, or precautionary pause on deep sea mining.¹³ Indeed, one independent legal analysis concluded that a moratorium on deep sea mining is *required* by international law.¹⁴

These factors demonstrate that whether to commit to a moratorium on deep sea mining is a substantial policy consideration for the Company that goes beyond its day-to-day business. It is also a significant social policy issue that transcends the Company’s ordinary business.¹⁵

⁸ See Staff Writer, *Deep-sea mining could contribute to increasing the scale, speed of climate change — study*, Mining (Jan. 31, 2024), <https://www.mining.com/deep-sea-mining-could-contribute-to-increasing-the-scale-speed-of-climate-change-study/>; Terri A. Souster, et al., *Quantifying zoobenthic blue carbon storage across habitats within the Arctic’s Barents Sea*, *Frontiers in Marine Science* (Jan. 26, 2024), <https://www.frontiersin.org/articles/10.3389/fmars.2023.1260884/full>.

⁹ *About*, Tesla.com (accessed Jan. 30, 2024), <https://www.tesla.com/about>.

¹⁰ *Impact Report 2022* at 2, Tesla, https://www.tesla.com/ns_videos/2022-tesla-impact-report.pdf.

¹¹ See *id.* at 143, 151, 154.

¹² *Endorsers*, Stop Seabed Mining (accessed Jan. 30, 2024), <https://www.stopdeepseabedmining.org/endorsers/>

¹³ *Resistance to Deep-Sea Mining: Governments and Parliamentarians*, Deep Sea Conservation Coalition (accessed Jan. 30, 2024), <https://savethehighseas.org/voices-calling-for-a-moratorium-governments-and-parliamentarians/>.

¹⁴ Julian Jackson, *Seabed Mining Moratorium Is Legally Required by U.N. Treaty, Legal Experts Find*, Pew Trusts (June 30, 2023), <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2023/06/seabed-mining-moratorium-is-legally-required-by-un-treaty-legal-experts-find>.

¹⁵ Additionally, the fact that no deep sea mining currently takes place further demonstrates that the Proposal does not unduly interfere with the Company’s day-to-day business. See Sam Meredith, *Norway defends deep-sea mining, says it may help to break China and Russia’s rare earths stronghold*, CNBC (Jan. 29, 2024), <https://www.cnbc.com/2024/01/29/norway-defends-deep-sea-mining-as-a-necessary-step-into-the-unknown.html>.

C. The Potential for Future Impacts to the Company’s Supply Chain Do Not Override the Substantial Corporate Policy Consideration or the Significant Social Policy Issue

That a substantial company policy might impact the nature of the Company’s supply chain does not mean the Proposal is excludable. The Proposal is extremely similar in structure and relationship to the issues raised in *The Wendy’s Company*. There, the proposal asked that Wendy’s eliminate the individual crate confinement of gestating pigs from its North American supply by the end of 2022 and, if the company could not so confirm, that the company state: 1) its percentage of gestation crate-free pork, and 2) risks Wendy’s may face over the disparity between its gestation crate assurances and the use of crates beyond 2022.

Wendy’s argued that “the sale of pork products and the management of challenges and risks related to those products . . . are part of [the Company’s] ordinary business operations,” and that “animal care and welfare was . . . a priority topic within our responsible sourcing and supply chain management strategy.” Nonetheless, the Staff concluded that the proposal “transcend[ed] ordinary business matters” and thus could not be excluded under Rule 14a-8(i)(7). The *Wendy’s* proposal is essentially identical in all relevant respects to the Proposal here: both ask the company to end or avoid a controversial and socially significant practice in the companies’ supply chain or, in the alternative, request a report about the companies’ use of the practice. In fact, the differences between the proposals are in this Proposal’s favor: unlike the *Wendy’s* proposal, the Proposal here (a) requests a moratorium — *i.e.*, a temporary pause to allow for further study, (b) does not prescribe a particular timeframe by which the policy must be implemented, and (c) requests a *prospective* policy, not an end to an ongoing practice. The Proposal here is also directly analogous to the proposal in *Coach, Inc.* (Aug. 19, 2010), which requested that the Company enact a policy that “will ensure that no fur products are acquired or sold by Coach.” The Staff declined to concur in the exclusion of that proposal under Rule 14a-8(i)(7).

1. The Precedents Concerning Suppliers Cited in the Company Letter Support Inclusion of the Proposal

The Company’s own precedents support inclusion of the Proposal. In *The Home Depot, Inc.* (Mar. 20, 2020), cited in the Company Letter, the proposal requested a report on the risk related to the use of prison labor in the company’s supply chain. The company’s primary argument in that case was that the proposal concerned “enforcement of [the company’s] existing standards of supplier conduct.” By contrast, here, the Proposal does not address the more specific issue of *enforcing existing company policy* in supply chains. Rather, it requests *adoption of a new policy* by the Company that implicates substantial corporate policy considerations and a significant issue of social policy. This is a significant difference: a modified version of the *Home Depot* proposal asking it to “enhance[e] its policies applicable to any suppliers utilizing incarcerated workers” successfully went forward to a vote the next year after the staff declined to concur in its exclusion. *See The Home Depot, Inc.* (Mar. 19, 2021).

The same distinctions recur throughout the Company Letter’s cited precedents. The proposal in *Walmart Inc.* (Mar. 8, 2018) requested a report disclosing the company’s *current* requirements

for its suppliers' intellectual property.¹⁶ Likewise, in *Foot Locker, Inc.* (Mar. 3, 2017), just as in *Walmart* and the original *Home Depot* proposal, the proposal requested the Company report on the enforcement of its *existing* policies. *See also Kraft Foods Inc.* (Feb. 23, 2012) (proposal requested company report on ways it "is assessing water risk" in its supply chain (emphasis added)); *Alaska Air Group, Inc.* (Mar. 8, 2010) (proposal requested company disclose standards currently in use by contract repair stations). None of these proposals asked the company to implement a new policy.

The Company also relies on *PetSmart, Inc.* (Mar. 24, 2011), where the proposal requested the company require that its suppliers certify that they have not violated laws containing provisions regarding the humane treatment of animals. The Staff took particular care in that case to note the limited nature of its decision, which was based on the fact that "the scope of laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping.'" The Staff's affirmation that "the humane treatment of animals is a significant policy issue" suggests that a better-written proposal addressing the company's supply chain would not have been excluded. Indeed, just as with *Home Depot*, the Staff has subsequently permitted numerous proposals concerning the humane treatment of animals in companies' supply chains. *See, e.g., The Wendy's Company, supra; Levi Strauss & Co., supra; TJX Companies, Inc., supra; Coach, Inc., supra.*

2. The Precedents Concerning Products Cited in the Company Letter Are Inapposite.

The Company's also relies on Staff precedents concurring in the exclusion of proposals regarding the sale of particular products. These precedents do not relate to the Proposal, which does not ask the Company to change the products it sells. The Company is in the business of selling, *inter alia*, electric vehicles, not deep sea minerals. Thus, most of the Company Letter's precedents, which concern the sale of particular products, are of no relevance to the Proposal. *See The Home Depot, Inc.* (Mar. 21, 2018) (proposal requested company stop selling glue traps); *The Procter & Gamble Co.* (July 15, 2009) (proposal requested company stop selling cat food); *Cabela's Inc.* (Apr. 7, 2016) (proposal requested company stop selling certain guns); *Dominion Resources, Inc.* (Feb. 19, 2014) (proposal requested company start selling renewable energy); *JPMorgan Chase & Co.* (Mar. 16, 2010) (proposal requested company stop selling certain predatory loans).

Other precedents cited by the Company Letter differ from the Proposal in the extent to which they interfere with Company policy. For example, the proposal in *General Mills, Inc.* (July 2, 2010) sought to dictate with specificity the amount of sodium in company food, and the Company's argument for exclusion centered on micromanagement. Likewise, the proposal in *Walt Disney Co.* (Dec. 22, 2010) demanded specific and minute modifications to the operation of the company's theme parks. The proposals in *General Electric Co.* (Jan. 28, 1997) and *FMC Corp.* (Feb. 25, 2011) each also requested the enactment of specific policies dealing with

¹⁶ The company in *Walmart* also relied heavily upon a line of staff precedent permitting the exclusion of proposals addressed to *retailers* but concerning the *manufacture* of products. By contrast, Tesla is not a retailer, but the manufacturer of its own products and thus is the appropriate entity to look to on initial sourcing considerations.

company products. These proposals stand in contrast to the Proposal here, which relies on precedent like *Wendy's*, *Coach*, *Lowe's*, *Home Depot*, and others described *supra*, which permit shareholders to request changes to “substantial corporate policy decisions,” particularly on significant social issues. This is true even where, as in *Wendy's*, *Coach*, and *Home Depot*, the corporate policy at issue governs its production or sale of products in some way.

D. The Company's Argument that the Proposal Does Not Raise a Significant Issue of Social Policy Is Unpersuasive.

The Company correctly notes that proposals must involve more than a “passing reference[]” to a significant social policy issue. Company Letter at 5. The Company, however, errs in suggesting that the Proposal does not meet this standard. Incredibly, the Company asserts that the Proposal's focus on “environmental and reputational risks . . . are, at best, secondary to the Proposal's ultimate design to micromanage the source of the raw materials used in the Company's products and the specific suppliers from which the Company may purchase” Company Letter at 5.

To be absolutely clear: the Proponent has no interest whatsoever in micromanaging the specific suppliers from which the Company may purchase raw materials. The Proposal's focus on the environmental, regulatory, technological, and financial risks associated with deep sea mining is self-evident. Far from “passing references,” *every* paragraph of the Proposal discusses the environmental or reputational risks of deep sea mining. There is no purpose in attempting to list these references from the Proposal here — doing so would result in simply repeating the Proposal.

The Proposal is far removed from precedents in which the Staff appears to have applied the “passing reference” standard. For example, in *Microsoft Corp.* (Oct. 7, 2022), the proposal requested that the board “annually report all stock distributed to employees, directors and consultants under compensation plans approved by shareholders, which should include a matrix, sorted by an appropriate classification scheme with five or more categories chosen by the committee, showing aggregate amounts of stock ownership distributed and utilized, including associated voting power, if any.” Although the proposal's supporting statement made passing references to wealth inequality, the Staff concluded that the proposal did not transcend the Company's ordinary business. This situation bears no resemblance to the Proposal here.

Nor are the other precedents cited by the Company Letter relevant. For example, in *The Kroger Co.* (Apr. 25, 2023), the proposal requested that the Company participate in a particular pilot program for tomato purchases in the southern United States. As the Company Letter acknowledges, the Staff's decision was based on the fact that the proposal micromanaged the Company, not that it was not sufficiently related to food insecurity. And in both *Dollar Tree, Inc.* (May 2, 2022) and *Amazon.com, Inc.* (Apr. 8, 2022), the “significant policy issue” involved was the *effect* of the prevailing labor market conditions on the companies' workforce management practices, which is not an *independent* social policy issue in the same way that, say, workplace discrimination is. *See* 1998 Release.

II. THE PROPOSAL DOES NOT MICROMANAGE THE COMPANY

The Company Letter also argues that the Proposal “ultimately seeks to micromanage the Company by substituting stockholder decisions for management decisions on granular matters,

such as the Composition of the Company’s products, the choice of Company suppliers and sourcing of raw materials for the Company’s products.” Company Letter at 4. However, under the well-established micromanagement standards, the Proposal is not excludable on this basis. It does not inappropriately interfere with management and board discretion, nor is it inappropriately granular for shareholder consideration. The Company is free to implement and enforce the moratorium to which it commits in any manner it sees fit.

A. 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. The Staff provided additional guidance about the scope of the micromanagement exclusion in Staff Legal Bulletin No. 14L (Nov. 3, 2021). There, the Staff noted that “proposals seeking detail or seeking to promote timeframes or methods do not per se constitute micromanagement.” Rather, the Staff looks at:

[T]he level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Staff Legal Bulletin No. 14L.

Finally, the Staff has provided guidance on the standards it uses to judge the appropriate level of granularity in a proposal, noting that the Staff “may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic” as well as “references to well-established national or international frameworks when assessing proposals related to disclosure . . . as indicative of topics that shareholders are well-equipped to evaluate.” *Id.*

B. The Proposal Does Not Unduly Interfere in Management Discretion, Nor Is It Too Granular for Investor Consideration

The Company’s primary micromanagement argument is that the Proposal inappropriately limits managerial and board discretion “by requiring compliance with a permanent and specific mandate method of achieving its goal—a commitment to a moratorium on sourcing minerals from deep sea mining.” Company Letter at 4.

As an initial matter, this description of the Proposal is inaccurate. “Moratoriums” are, by definition, not “permanent.”¹⁷ Nor is the widespread call for a moratorium on deep sea mining referred to by the Proposal generally considered “permanent.” The Proposal, for instance, refers to the Business Statement Supporting a Moratorium on Deep Sea Mining, which calls for a

¹⁷ See *Moratorium*, Merriam-Webster Dictionary (accessed Jan. 31, 2024), <https://www.merriam-webster.com/dictionary/moratorium> (“a legally authorized period of delay,” “a waiting period set by an authority,” and “a suspension of activity”)

moratorium “until” alternatives are thoroughly explored and research on the effects of deep sea mining is complete.¹⁸ The term “moratorium” is also used in the Proposal specifically as an alternative to a “ban.”

More importantly, the Company’s interpretation of the micromanagement exception goes much too far. 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. Nor, for much the same reasons, is the Proposal too granular for investor consideration. If a request to implement a policy at this high level of generality constitutes micromanagement, it is unclear what constitutes a permissible proposal.

Additionally, the Proposal falls well within the bounds of permissible proposals as articulated by the Staff. For example, the Staff has announced that “proposals that suggest targets or timelines” do not constitute micromanagement “so long as the proposals afford discretion to management as to how to achieve such goals.” Staff Legal Bulletin No. 14L. A proposal requesting a moratorium on a particular activity is the functional equivalent of a proposal requesting a (temporary) target (of zero) concerning that activity. Any other conclusion would lead to the anomalous result that this Proposal would be permissible if it had just been reworded as a request that the company “commit to a target of zero deep sea mining-sourced minerals.”

Staff precedent also establishes that the Proposal does not micromanage the Company. As discussed, the Proposal closely mirrors that in *Coach*, which requested that the Company “enact a policy that will ensure that no fur products are acquired or sold by Coach.” One need only substitute “fur products” with “deep sea mined-minerals” and “Coach” with “Tesla,” and the two proposals are essentially identical. The Staff concluded that the *Coach* proposal did not micromanage the company. Most of the other precedents cited *supra* in the “Ordinary Business Standard” section similarly involved unsuccessful micromanagement challenges by companies in receipt of proposals requesting policy changes at times much more specific than the Proposal here:

- *CVS Health Corp.*, *supra* — proposal requested that company adopt a paid sick leave policy and specified details of the policy, Staff declined to concur in micromanagement exclusion;
- *Chubb Ltd. (Green Century)*, *supra* — proposal requested that company adopt a policy to ensure that its underwriting activities did not “support new fossil fuel supplies, Staff declined to concur in micromanagement exclusion. *See also Citigroup, Inc.* (Mar. 7, 2022) (same); and
- *Lowes Companies, Inc.*, *supra* — proposal requested the creation of an overarching stormwater management policy for the company’s operations and specified details of the policy, Staff declined to concur in micromanagement exclusion, (Mar. 16, 2011).

¹⁸ See Business Statement Supporting a Moratorium on Deep Sea Mining, <https://www.stopdeepseabedmining.org/statement/>.

By contrast, the precedents cited in the Company Letter have little relevance. The request in *The Kroger Co.*, *supra*, that the company participate in a specific pilot program for a specific product in a specific geographic region of the country is self-evidently different from a request that the company commit to an overall moratorium. The proposals are distinct in the granularity of the requested action and in the extent to which each limits management discretion. So, too, with *SeaWorld Entertainment, Inc.* (Mar. 30, 2017), in which the proposal not only requested that the company retire its live animal exhibits, but then prescribed what should happen to the animals and what types of programming should replace the exhibits. Similarly, in *The Wendy's Company* (Mar. 2, 2017), the proposal's request that the company join the "Fair Food Program" was simple at first glance — but the Fair Food Program had extensive and specific requirements concerning contracts the company must sign, wage increases, purchase preferences, submission to a third-party monitoring organization, and more. By contrast, a moratorium on deep sea mining does not implicate any such concerns about specificity, particularly because no deep sea mining is currently undertaken, making the moratorium necessarily prospective in nature. And, likewise, *Amazon.com Inc.* (Apr. 3, 2019) involved a request that the Company conduct and disclose "human rights risk assessments" on individual food products — an incredibly granular and specific request that bears no resemblance to the Proposal.

The proposal in *Eli Lilly & Co.* (Mar. 1, 2019), requested that the company ban a particular type of animal test. However, as the proponent noted, its previous proposals requesting that companies cease the use of *all* animal tests had not been excluded. *See id.* (Proponent Letter at 4 (collecting citations)). Here, the Proposal is more like a request that a company prohibit *all* animal tests than it is on banning a specific kind of test: the Proposal does not request that the Company commit to a moratorium on a specific kind of deep sea mining, in a specific area, or for a specific mineral. Similarly, the Proposal here is more like the proposals in *Chubb* and *Citigroup*, *supra*, requesting that the Company enact a policy ensuring that it did not contribute to any new fossil fuel supplies, than it is like the proposal in *JPMorgan Chase & Co.* (Mar. 30, 2018) which requested that the company commission a specific report on the risks associated with a specific type of fossil fuel project.

Finally, in last season's *Amazon.com, Inc.* (Apr. 7, 2023), the Staff concluded that a proposal requesting the company supplement its Scope 3 disclosures with an additional category of information micromanaged the Company. The Staff concluded that the proposal micromanaged the company by "imposing a specific method for implementing a complex policy disclosure without affording discretion to management." This reasoning goes to the heart of why the Proposal here does not micromanage — it requests *the policy*, not *the method*. Accordingly, there is no basis to exclude the Proposal.

III. THE COMPANY DOES NOT ACKNOWLEDGE THE PROPOSAL'S ALTERNATIVE REQUEST

Finally, at no point in the Company Letter does Tesla acknowledge the Proposal's alternative request in the Supporting Statement that, if it is unable to commit to a moratorium on sourcing minerals from deep-sea mining, that it "disclose its rationale and assess the Company's anticipated need for deep sea materials." The Company simply fails to make an argument as to how such a request interferes with its ordinary business or micromanages it. Accordingly, the

Staff should deny the no-action request. *See, e.g., The Wendy's Company, supra* (similar proposal construction, Staff denied no-action request based on Rule 14a-8(i)(7)).

CONCLUSION

The Proposal requests that the Company commit to a moratorium on sourcing minerals from deep sea mining. This Proposal does not concern an “ordinary” business matter but rather a large question of corporate policy. Additionally, it raises a significant issue of social policy that transcends ordinary business. Moreover, under well-established Staff precedent, the Proposal does not micromanage the Company. Finally, at no point does the Company address the Proposal’s alternative request that if it is unable to commit to a moratorium, it disclose its rationale and its anticipated need for deep sea materials.

Based on the foregoing, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,



Luke Morgan
Staff Attorney, *As You Sow*

cc:

Derek Windham, Tesla, Inc.