



DIVISION OF
CORPORATION FINANCE

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

March 25, 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 Richie Campbell for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company restore full access to its annual shareholder meeting.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In this regard, we note that the Proposal relates to ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

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: Richie Campbell

January 8, 2023

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 Richie Campbell

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”). Richie Campbell (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. 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:

Restoring Full Access to Tesla’s Annual Shareholder Meeting.

1. Revoke Attendance Restrictions: Return to the pre-2020 policy, allowing all shareholders to attend meetings in person.
2. Enhance Shareholder Engagement: Encourage participation from all shareholders, regardless of share count, to foster diverse perspectives and stronger engagement.
3. Implement Safety Measures: Ensure attendee safety with appropriate health guidelines.

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; and
- Rule 14a-8(i)(3), because the Proposal is so vague and indefinite as to be inherently misleading.

Rule and Analysis

- I. **THE PROPOSAL MAY BE EXCLUDED PURSUANT TO RULE 14A-8(i)(7) BECAUSE IT INEXTRICABLY DEALS WITH MATTERS RELATING TO THE COMPANY’S ORDINARY BUSINESS OPERATIONS**

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 Company believes that the Proposal relates to issues that are inherently fundamental to management’s ability to run the Company on a day-to-day basis. First, the Proposal relates to the determination by the Company on in person attendance at annual meetings. Second, the Proposal relates to the location and conduct of the Company’s annual meetings.

A. THE PROPOSAL MAY BE EXCLUDED PURSUANT TO RULE 14A-8(i)(7) BECAUSE IT RELATES TO THE DETERMINATION OF THE COMPANY ON IN-PERSON ATTENDANCE AT ANNUAL MEETINGS

The Proposal requests that the Company “return to the pre-2020 policy, allowing all shareholders to attend meetings in person.” The Company believes that the Proposal can be omitted from the Proxy Materials pursuant to Rule 14a-8(i)(7), as relating to ordinary business operations. The determination of whether or not to hold in-person meetings is precisely the type of judgment that should be made and resolved by the Company’s board and management and, therefore, a proposal which seeks to constrain, interfere with or preclude such determination falls squarely within the Rule 14a-8(i)(7) ordinary business exclusion.

In determining the format and attendance for its annual meetings, the Company must consider, among other factors, the various costs associated with having a virtual meeting, an in-person meeting or both simultaneously, the availability of location and staffing resources, security concerns, the accessibility to stockholders, the likelihood that a stockholder will choose to access an electronic meeting and/or attend an in-person meeting, stockholder relations and the necessary technology required to hold an electronic meeting and any potential technical issues. As such, beginning in 2020, in consideration of the above factors and health guidance related to the COVID-19 pandemic, the Company began to simultaneously hold, for its annual meetings, a virtual meeting with no restriction on attendance, and an in-person meeting with attendance restrictions. Such matters have, and will require, complex and informed analysis by the Company’s management and board, and therefore, as stated in the 1998 Release, the “[shareholders], as a group, [are not] in a position to make an informed judgment” on such matters. The Company’s management and board have intimate knowledge of these factors and are better equipped than stockholders to evaluate such a decision.

The Staff has previously taken the view that a company may omit similar proposals on Rule 14a-8(i)(7) grounds. In *Comcast Corporation* (Feb. 28, 2018), the company received a proposal requesting the board of directors to “adopt a corporate governance policy affirming the continuation of in-person annual meetings in addition to internet access to the meeting, adjust its corporate governance practices accordingly, and publicize this policy to investors.” Similarly, in *Alaska Air Group, Inc.* (Jan. 25, 2017) and *HP, Inc.* (Dec. 28, 2016), each company received a proposal requesting that the company’s board of directors “adopt a corporate governance policy to initiate or restore in-person annual meetings and publicize this policy to investors.” In each case, the Staff permitted the exclusion of the proposal on the grounds that the decision of whether to hold in-person annual meetings is related to the company’s ordinary business operations because the proposal relates to the determination of whether to hold annual meetings in person.

While we are aware that in some instances the Staff has declined to permit the exclusion of proposals relating to the format of annual meetings, in those cases, the proposal cited specific health concerns relating to the COVID-19 pandemic and those proposals occurred during the height of the pandemic. See *Campbell Soup Co.* (Sept. 22, 2021) and *Brinker International, Inc.* (Sept. 22, 2021). More recently, the Staff has permitted exclusion of proposals that related to health concerns over COVID-19. See *Amazon.com, Inc.* (Apr. 8, 2022) (concurring that the proposal may be excluded under Rule 14a-8(i)(7) where the proposal requested a report on workforce turnover as a result of COVID-19, noting that the proposal “relates to ordinary business matters and does not focus on significant social policy issues”). Thus, we believe that the instances where the Staff denied relief were limited to the unique circumstances of the COVID-19 pandemic and should not govern in this matter. Moreover, the Proposal does not cite any particular health concern. Accordingly, the Proposal should be excluded on the grounds that 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 RELATES TO THE LOCATION AND CONDUCT OF THE COMPANY’S ANNUAL MEETING

The Proposal may also be omitted from the Proxy Materials pursuant to Rule 14a-8(i)(7), as relating to ordinary business operations, because it attempts to regulate the location and conduct of the Company’s annual meeting, a matter that is fundamental

to the day-to-day operations of the Company and is therefore generally best left to the discretion of the Company's board and management, as opposed to being subject to the judgment of stockholders. The Proposal is analogous to stockholder proposals excluded under Rule 14a-8(i)(7) that sought to specify the location and conduct of a company's stockholder meeting. Because the Proposal requests that the Company allow all stockholders to attend annual meetings in person, with no attendance restrictions, a key goal of the Proposal is to determine where the Company's annual stockholder meetings are held, which makes the Proposal similar to proposals that seek to constrain the location of a company's annual meeting to a specific city or venue. The Staff has repeatedly taken the position that determining the location of a company's stockholder meeting is a matter relating to the conduct of the company's ordinary business operations. *See, e.g., Zions Bancorporation (Feb. 11, 2008)* (agreeing with the exclusion of a proposal requesting that the locations of annual meetings be rotated outside of Salt Lake City, Utah each year as "relating to Zions' ordinary business operations (i.e., the location of stockholder meetings)"); *Ford Motor Co. (Jan. 2, 2008)* (permitting the exclusion of a proposal that required a company to hold its annual meeting in the Dearborn, Michigan area on the grounds that the proposal related to the company's ordinary course of business "i.e., the location of Ford's annual meetings"); *Raytheon Co. (Jan. 19, 2006)* (concurring in the omission of a proposal that would have required the company to hold its annual meeting within 25 miles of its headquarters); *The Gillette Co. (Feb. 4, 2004)* (concurring that the proposal may be excluded under Rule 14a-8(i)(7) as "relating to the company's ordinary business operations" where the proposal suggested that all company annual meetings be held in Andover, Massachusetts).

In addition, the Staff has consistently permitted the exclusion of stockholder proposals under Rule 14a-8(i)(7) as relating to a company's ordinary course of business if such proposals seek to oversee the conduct of a company's annual meeting. *See, e.g., USA Technologies, Inc. (Mar. 11, 2016)* (concurring in the omission of a proposal under Rule 14a-8(i)(7) that sought a bylaw amendment to include rules of conduct at all meetings of stockholders and set forth detailed rules of conduct for such meetings as "relat[ing] to the conduct of shareholder meetings"); *Servotronics, Inc. (Feb. 19, 2015)* (permitting the exclusion of a proposal that requested a question-and-answer period to be included in conjunction with the company's annual stockholder meetings as relating to the company's ordinary business operations because "proposals concerning the conduct of stockholder meetings generally are excludable under Rule 14a-8(i)(7)"); *Mattel, Inc. (Jan. 14, 2014)* (allowing the exclusion of a proposal requesting that the chairman of the company "answer with accuracy the questions asked by shareholders at the Annual Meeting" on ordinary course of business grounds); *Bank of America Corp. (Dec. 22, 2009)* (allowing the exclusion of a proposal recommending that all stockholders be entitled to attend and speak at all annual meetings on ordinary course of business grounds).

Tesla has one of the largest and most engaged retail stockholder bases of any public company. As such, in recent years we have seen interest for in-person attendance grow significantly. If the Company did not have the latitude to impose attendance limits, these attendance numbers would not only greatly limit the locations the annual meeting could be held at, as discussed above, but other factors including security concerns, accessibility to stockholders and potential technical issues would also limit the Company's conduct at the meeting. While the Company continues to encourage stockholder participation and interaction through a number of different formats, it also requires the flexibility to determine limits on the number of in-person attendees after consideration of these factors. By removing this flexibility, and thus attempting to regulate the location and conduct of the Company's annual meetings, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the ordinary business operations of the Company.

C. THE PROPOSAL MAY BE EXCLUDED PURSUANT TO RULE 14A-8(i)(7) BECAUSE IT DOES NOT FOCUS ON A SIGNIFICANT POLICY ISSUE

The Company understands that in cases in which stockholder proposals raise significant social policy issues the ordinary business exclusion of Rule 14a-8(i)(7) may be found not to apply. The Proposal does not, however, focus on any significant social policy issue. The Proposal and its supporting statements exclusively refer to the conduct of the Company's annual meeting and does not implicate any larger policy issues. Based on the subject matter of the Proposal, the Company believes that the exclusion provided under Rule 14a-8(i)(7) is applicable to the Proposal.

II. THE PROPOSAL MAY EXCLUDED PURSUANT TO RULE 14A-8(i)(3) BECAUSE IT IS IMPERMISSIBLY VAGUE AND INDEFINITE SO AS TO BE INHERENTLY MISLEADING

Rule 14a-8(i)(3) permits the exclusion of a shareholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules or regulations, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials. The Staff consistently has taken the position that overly vague and indefinite shareholder proposals are inherently misleading and therefore excludable under Rule 14a-8(i)(3) because "neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004). *See also Dyer v. SEC, 287 F.2d 773, 781 (8th Cir. 1961)* ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so

vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.”); *Alaska Air Group, Inc.* (Mar. 10, 2016) (concurring in the exclusion of a proposal, as vague and indefinite, that requested amendments to governing documents to require that management strictly honor alleged shareholders’ rights in communications to its shareholders). The Staff also concurred in a registrant’s exclusion on vague and indefinite grounds of a proposal requesting that the board of directors “implement a policy of improved corporate governance,” where the registrant and its shareholders might interpret the proposed resolution differently such that actions taken by the registrant could significantly differ from the action intended by the stockholders voting on the proposal. *See, e.g., Puget Energy Inc.* (Mar. 7, 2002). Recently, the Staff concurred in the exclusion of a stockholder proposal that sought to “improve guiding principles of executive compensation,” noting that such proposal “lack[ed] sufficient description about the changes, actions or ideas for the Company and its shareholders to consider that would potentially improve [such] guiding principles.” *Apple Inc.* (Dec. 6, 2019).

As with the proposals in the precedents cited above, the Proponent’s Proposal is so vague and indefinite that neither the Company nor its stockholders would know with any reasonable certainty exactly what actions or measures the Proposal requires. First, the Proposal asks the Company to “ensure attendee safety with appropriate health guidelines” but does not provide any specificity or measurement on what these guidelines are or what attendee safety means. The stockholders voting on this proposal, and the Company implementing it, would be unable to determine with reasonable certainty exactly which actions need to be taken to ensure safety as required by the Proposal, and what a successful result might be. Second, the Proposal requests the Company to “encourage participation from all shareholders, regardless of share count, to foster diverse perspectives and stronger engagement.” Again, this is a vague and ambiguous statement, and difficult for the Company to implement, as each stockholder may have different views on how to encourage participation and foster diverse perspectives. Even if the Company did attempt to take certain actions to implement the Proposal, the Proposal is vague on how such results would be measured and what would qualify as successful implementation, and stockholders voting on this Proposal, including the Proponent, may have materially different expectations of any outcome if implemented. Due to these reasons, the Proposal may be excluded from the Company’s Proxy Materials pursuant to Rule 14a-8(i)(3) as it is impermissibly vague and indefinite so as to be inherently misleading.

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,



Derek Windham
Senior Director and Deputy General Counsel

Enclosures

cc: Richie Campbell

EXHIBIT A

Shareholder Proposal for Tesla, Inc. Annual Shareholder Meeting

Date: November 20th, 2023

Submitted by: Richie Campbell



Statement of Ownership: I, Richie Campbell, a Tesla Inc. shareholder holding over \$25,000 in stock continuously over the past year, propose the following for the upcoming annual meeting.

Proposal: Restoring Full Access to Tesla's Annual Shareholder Meeting

Introduction: Since 2020, Tesla has restricted individual shareholder attendance at annual meetings. This proposal advocates for reinstating the pre-2020 open attendance policy.

Background: Before 2020, Tesla's shareholder meetings were fully accessible, promoting direct engagement and transparency. The recent limitations have curtailed this inclusive approach.

Proposal Details:

- 1. Revoke Attendance Restrictions:** Return to the pre-2020 policy, allowing all shareholders to attend meetings in person.
- 2. Enhance Shareholder Engagement:** Encourage participation from all shareholders, regardless of share count, to foster diverse perspectives and stronger engagement.
- 3. Implement Safety Measures:** Ensure attendee safety with appropriate health guidelines.

Rationale:

- Democratic Process: Full access supports a democratic environment where every shareholder can interact with leadership.
- Transparency and Accountability: Open meetings provide direct insights into Tesla's operations and future plans.
- Strengthening Shareholder Relations: Broader participation enhances the shareholder-company relationship, building a sense of community.

Request to the Board: We urge the Board to reconsider the current attendance policy and develop a plan for inclusive and safe meetings.

Conclusion: Restoring full access to Tesla's annual meetings is crucial for a transparent, democratic governance structure. We call on fellow shareholders to support this proposal, reinforcing our commitment to an engaged and informed shareholder community.

Supporting Statement for Tesla, Inc. Shareholder Proposal

Dear Fellow Shareholders,

In an era of significant achievements at Tesla, we must uphold the principles of a vibrant, inclusive shareholder community. This proposal advocates for reinstating the pre-2020 policy of allowing all shareholders to attend annual meetings in person, thus reviving our democratic ethos.

Reinstating this policy will enhance transparency and accountability, offering direct insights into Tesla's operations and future strategies. It will transform shareholders from passive investors to active partners, contributing to Tesla's innovative and sustainable growth.

Broader participation will strengthen our shareholder relations, fostering a sense of community and shared purpose. This approach aligns with industry best practices, promoting a governance structure that is transparent and inclusive.

As Tesla continues its innovative journey, we urge your support for this proposal. Let's foster a culture where every voice is heard, and every shareholder actively participates in shaping Tesla's future.

Thank you for considering this proposal.

Statement of Availability

In accordance with Rule 14a-8(b)(1)(iii) of the Exchange Act, I, Richie Campbell, am available to meet with the company, via teleconference, to discuss the shareholder proposal. I can be reached at [REDACTED] or by email at [REDACTED]. I am available for discussion no less than 10 calendar days, nor more than 30 calendar days, after the submission of the shareholder proposal. My availability during the company's regular business hours is as follows: Monday-Friday 12:00pm-5:00pm EST. I look forward to engaging in productive discussions regarding the proposal.

Intent to Hold Shares Statement

"I, Richie Campbell, hereby affirm that I meet all three Ownership Requirements under Rule 14a-8(b) of the Exchange Act for submitting a shareholder proposal to Tesla Inc. Specifically, I confirm that I have held:

1. \$2,000 in market value of Tesla Inc.'s shares entitled to vote on the Proposal for at least three years preceding and including the Submission Date;
2. \$15,000 in market value of Tesla Inc.'s shares entitled to vote on the Proposal for at least two years preceding and including the Submission Date;
3. \$25,000 in market value of Tesla Inc.'s shares entitled to vote on the Proposal for at least one year preceding and including the Submission Date.

Furthermore, I declare my intent to continue holding the requisite amount of Tesla Inc. shares through the date of the Company's 2024 Annual Meeting of Shareholders. This commitment underscores my ongoing interest and investment in Tesla Inc., and I assure the Company of my compliance with the stated Ownership Requirements."