

March 6, 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 National Center for Public Policy Research

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 2023 annual meeting of stockholders (the “Proxy Materials”). National Center for Public Policy Research (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 shareholder proponents are required to send companies a copy of any correspondence that the shareholder 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.

The Company intends to file its definitive proxy statement on March 29, 2023. Because the Proposal was received after the Company’s deadline for shareholder proposals, this letter is being set to the Staff fewer than 80 calendar days before such date and accordingly, as described below, the Company requests the Staff to waive the 80-day requirement set forth in Rule 14a-8(j)(1) with respect to this letter.

Proposal

The Proposal sets forth the following resolution:

RESOLVED

Shareholders request that Tesla issue a public report detailing the potential risks associated with omitting “viewpoint” and “ideology” from its written employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information.

The Proposal was initially submitted and received by the Company via email on February 21, 2023. A copy of relevant correspondence is attached hereto as Exhibit A. Because the initial submission was received after the Company’s deadline for receiving shareholder proposals, the Company did not provide the Proponent with a deficiency notice. In this regard, Rule 14a-8(a)(f)(1) provides that a company is not required to provide a stockholder with notice of a deficiency “if the deficiency cannot be remedied, such as if [the stockholder] fails to submit a proposal by the company’s properly determined deadline.”

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(e)(2) because the Proposal was received by the Company after the deadline for submitting stockholder proposals for inclusion in the Proxy Materials.

Rule and Analysis

Rule 14a-8(e) of the Exchange Act provides that a stockholder proposal “must be received at the company’s principal executive offices not less than 120 calendar days before the date of the company’s proxy statement released to shareholders in

connection with the previous year’s annual meeting.” The rule further provides that “if the company did not hold an annual meeting the previous year, or if the date of this year’s annual meeting has been changed by more than 30 days from the date of the previous year’s meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials” and a stockholder “can usually find the deadline in one of the company’s quarterly reports on Form 10-Q.”

The Company’s 2022 annual meeting of stockholders was held on August 4, 2022. In the fall of 2022, Tesla’s Board of Directors determined that the 2023 annual meeting of stockholders would occur on May 16, 2023 – more than 30 days from the previous year’s meeting. As required by Rule 14a-5(f), the Company notified stockholders of an updated shareholder proposal deadline by publishing the following information in Item 5 of its Quarterly Report on Form 10-Q filed on October 24, 2022, an excerpt of which is attached to this letter as Exhibit B:

The Board of Directors (the “Board”) of Tesla has established May 16, 2023 as the date of the Company’s 2023 annual meeting of stockholders (the “2023 Annual Meeting”). The time and location of the 2023 Annual Meeting will be specified in the Company’s proxy statement for the 2023 Annual Meeting. The Board has fixed the close of business on March 20, 2023 as the record date for determining stockholders of the Company who are entitled to vote at the 2023 Annual Meeting, including any adjournments or postponements of the 2023 Annual Meeting.

Tesla’s 2022 annual meeting of stockholders (the “2022 Annual Meeting”) was held on August 4, 2022. Because the date of the 2023 Annual Meeting is being changed by more than 30 days from the one-year anniversary of the 2022 Annual Meeting, the Company is informing stockholders of this change in accordance with Rule 14a-5(f) under the Exchange Act, and is informing stockholders of the new dates described below for submitting stockholder proposals and other matters.

Pursuant to Rule 14a-8(e)(2) of the Exchange Act, a stockholder intending to present a proposal to be included in the proxy statement for the 2023 Annual Meeting must deliver the proposal in writing to our principal executive offices no later than a reasonable time before we begin to print and mail the proxy materials for the 2023 Annual Meeting. Accordingly, the Board has fixed the new deadline for the submission of proposals to be included in the proxy statement for the 2023 Annual Meeting as December 22, 2022. Proposals should be addressed to: Tesla, Inc.; Attention: Legal Department; 1 Tesla Road, Austin, Texas 78725, with a copy sent by e-mail to shareholdermail@tesla.com. Proposals of stockholders must also comply with the SEC’s rules regarding the inclusion of stockholder proposals in proxy materials, and we may omit any proposal from our proxy materials that does not comply with the SEC’s rules.

The Staff has strictly construed the Rule 14a-8 deadline in the past and has consistently permitted companies to exclude from their proxy materials those proposals that were received after an appropriate deadline. See, e.g., *Hewlett Packard Enterprise Co.* (Jan. 15, 2021); *Comcast Corporation* (Apr. 4, 2019); *DTE Energy Co. (Moore)* (Dec. 18, 2018); *Verizon Communications, Inc.* (Jan. 4, 2018); *Wal-Mart Stores, Inc.* (Feb. 13, 2017); *Whole Foods Market, Inc.* (Oct. 30, 2014); *Dean Foods Company* (Jan. 27, 2014); *PepsiCo, Inc.* (Jan. 3, 2014); *General Electric Company* (Jan. 24, 2013); *QEP Resources, Inc.* (Jan. 4, 2013); *General Electric Co.* (Jan. 17, 2012); and *Johnson & Johnson* (Jan. 13, 2010).

Although Rule 14a(e)(2) does not specify what constitutes a “reasonable time” for purposes of setting a new deadline for stockholder proposals under Rule 14a-8(e)(2), the fundamental consideration is whether the time of submission of a proposal affords the company reasonable time to consider the proposal without causing a significant delay in the distribution of proxy materials to its stockholders, which includes factors such as whether the new deadline the company has set is reasonable, and when and how it was announced. See e.g. *Jefferson-Pilot Corp.* (January 31, 2006) and *Science Applications International Corporation* (Dec. 6, 2005). The Company’s Form 10-Q disclosure clearly notified stockholders the date of the annual meeting and the new proposal deadline of December 22, 2022 (the “Deadline”) as required pursuant to the Exchange Act. It also gave stockholders ample notice by providing approximately two months’ notice to submit any proposals. The Proponent knew or should have known this new Deadline. However, as reflected in the email provided in Exhibit A, the Proponent’s email was not sent until 61 days after the deadline.

In addition, the Company believes that the December 22, 2022 deadline is both reasonable and necessary to provide it with a sufficient amount of time to assess any stockholder proposals submitted pursuant to Rule 14a-8 and seek potential no-action relief. The Company intends to distribute its proxy materials in March and believes the December 22, 2022 deadline is necessary to fully evaluate and appropriately respond to stockholder proposals, including through discussion with the Company’s

Nominating and Corporate Governance Committee and Board of Directors. The inclusion of stockholder proposals which are received past the deadline would lead to delays in the distribution of its proxy materials. Accordingly, the Company believes the Proposal may be excluded from its Proxy Materials under Rule 14(e)(2) because it was submitted after the Deadline.

Request for Waiver under Rule 14a-8(j)(1)

The Company further requests that the Staff waive the 80-day filing requirement as set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a company “intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission.” However, Rule 14a-8(j)(1) allows the Staff, in its discretion, to permit a company to make its submission later than 80 days before the filing of its definitive proxy statement if the company demonstrates good cause for missing the deadline.

As discussed above, the Company did not become aware of, or receive, the Proposal from the Proponent, until February 21, 2023, 36 days before the Company intends to file its definitive proxy statement for the 2023 annual meeting of stockholders and after the deadline required by Rule 14a-8(e). Accordingly, we believe that the Company has good cause for its inability to meet the 80-day deadline, and we respectfully request that the Staff waive the 80-day requirement with respect to this letter.

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 flourish extending to the right.

Derek Windham
Senior Director and Deputy General Counsel

Enclosures

cc: Sarah Rehberg, National Center for Public Policy Research

EXHIBIT A

From: [Sarah Rehberg](#)
To: [ShareholderMail](#)
Cc: [Scott Shepard](#)
Subject: 2023 Shareholder Proposal
Date: Tuesday, February 21, 2023 1:09:51 PM
Attachments: [Tesla Proposal Pack.pdf](#)

Dear Sir/Madam,

Please see the attached shareholder proposal from the National Center for Public Policy Research for inclusion in Tesla's 2023 proxy statement. A hard copy of this proposal has also been sent via FedEx.

Please confirm receipt.

Sincerely,
Sarah

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Sarah Rehberg
Program Coordinator
Free Enterprise Project
National Center for Public Policy Research



February 21, 2023

Via FedEx to

Tesla, Inc.
1 Tesla Road
Austin, Texas 78725
Attention: Legal Department

Dear Sir/Madam,

I hereby submit the enclosed shareholder proposal (“Proposal”) for inclusion in the Tesla (the “Company”) proxy statement to be circulated to Company shareholders in conjunction with the next annual meeting of shareholders. The Proposal is submitted under Rule 14(a)-8 (Proposals of Security Holders) of the United States Securities and Exchange Commission’s proxy regulations.

I submit the Proposal as the Coordinator of the Free Enterprise Project of the National Center for Public Policy Research, which has continuously owned Company stock with a value exceeding \$2,000 for at least 3 years prior to and including the date of this Proposal and which intends to hold these shares through the date of the Company’s 2023 annual meeting of shareholders. A proof of ownership letter is forthcoming.

Pursuant to interpretations of Rule 14(a)-8 by the Securities & Exchange Commission staff, I initially propose as a time for a telephone conference to discuss this proposal March 14, 2023 or March 15, 2023 from 1-4 p.m. eastern. If that proves inconvenient, I hope you will suggest some other times to talk. Please feel free to contact me at srehberg@nationalcenter.org so that we can determine the mode and method of that discussion.

Copies of correspondence or a request for a “no-action” letter should be sent to me at the National Center for Public Policy Research, 2005 Massachusetts Ave. NW, Washington, DC 20036 and emailed to srehberg@nationalcenter.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Rehberg". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Sarah Rehberg

cc: Scott Shepard, FEP Director
Enclosures: Shareholder Proposal

EEO Policy Risk Report

RESOLVED

Shareholders request that Tesla issue a public report detailing the potential risks associated with omitting “viewpoint” and “ideology” from its written equal employment opportunity (EEO) policy. The report should be available within a reasonable timeframe, prepared at a reasonable expense and omit proprietary information.

SUPPORTING STATEMENT

Tesla does not explicitly prohibit discrimination based on viewpoint or ideology in its written EEO policy.

Tesla’s lack of a company-wide best practice EEO policy sends mixed signals to company employees and prospective employees and calls into question the extent to which individuals are protected due to inconsistent state policies and the absence of a relevant federal protection. Approximately half of Americans live and work in a jurisdiction with no legal protections if their employer takes action against them for their political activities or discriminates on the basis of viewpoint in the workplace.

Companies with inclusive policies are better able to recruit the most talented employees from a broad labor pool, resolve complaints internally to avoid costly litigation or reputational damage, and minimize employee turnover. Moreover, inclusive policies contribute to more efficient human capital management by eliminating the need to maintain different policies in different locations.

Presently, shareholders are unable to evaluate how Tesla prevents discrimination towards employees based on their ideology or viewpoint, mitigates employee concerns of potential discrimination, and ensures a respectful and supportive work atmosphere that bolsters employee performance.

Without an inclusive EEO policy, Tesla may be sacrificing competitive advantages relative to peers while simultaneously increasing company and shareholder exposure to reputational and financial risks.

We recommend that the report evaluate risks including, but not limited to, negative effects on employee hiring and retention, as well as litigation risks from conflicting state and company anti-discrimination policies.

EXHIBIT B

Pages 57-58 of the Company's Quarterly Report on Form 10-Q filed on October 24, 2022

not linear throughout a given period), average sales prices, supplier and commodity costs and planned cost reductions. If our guidance varies from actual results due to our assumptions not being met or the impact on our financial performance that could occur as a result of various risks and uncertainties, the market value of our common stock could decline significantly.

Transactions relating to our convertible senior notes may dilute the ownership interest of existing stockholders, or may otherwise depress the price of our common stock.

The conversion of some or all of the convertible senior notes issued by us or our subsidiaries would dilute the ownership interests of existing stockholders to the extent we deliver shares upon conversion of any of such notes by their holders, and we may be required to deliver a significant number of shares. Any sales in the public market of the common stock issuable upon such conversion could adversely affect their prevailing market prices. In addition, the existence of the convertible senior notes may encourage short selling by market participants because the conversion of such notes could be used to satisfy short positions, or the anticipated conversion of such notes into shares of our common stock could depress the price of our common stock.

If Elon Musk were forced to sell shares of our common stock that he has pledged to secure certain personal loan obligations, such sales could cause our stock price to decline.

Certain banking institutions have made extensions of credit to Elon Musk, our Chief Executive Officer, a portion of which was used to purchase shares of common stock in certain of our public offerings and private placements at the same prices offered to third-party participants in such offerings and placements. We are not a party to these loans, which are partially secured by pledges of a portion of the Tesla common stock currently owned by Mr. Musk. If the price of our common stock were to decline substantially, Mr. Musk may be forced by one or more of the banking institutions to sell shares of Tesla common stock to satisfy his loan obligations if he could not do so through other means. Any such sales could cause the price of our common stock to decline further.

Anti-takeover provisions contained in our governing documents, applicable laws and our convertible senior notes could impair a takeover attempt.

Our certificate of incorporation and bylaws afford certain rights and powers to our board of directors that may facilitate the delay or prevention of an acquisition that it deems undesirable. We are also subject to Section 203 of the Delaware General Corporation Law and other provisions of Delaware law that limit the ability of stockholders in certain situations to effect certain business combinations. In addition, the terms of our convertible senior notes may require us to repurchase such notes in the event of a fundamental change, including a takeover of our company. Any of the foregoing provisions and terms that has the effect of delaying or deterring a change in control could limit the opportunity for our stockholders to receive a premium for their shares of our common stock, and could also affect the price that some investors are willing to pay for our common stock.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

In connection with the offering of the 2.375% Convertible Senior Notes due 2022, in March 2017 we sold warrants to each of Goldman, Sachs & Co., Deutsche Bank Securities Inc., Citigroup Global Markets Inc. (later partially assigned to National Bank of Canada), Morgan Stanley & Co. LLC, Barclays Capital Inc. or their respective affiliates (the “2017 Warranholders”). Between July 1, 2022 and August 15, 2022, we issued an aggregate of 28,853,619 shares of our common stock (as adjusted to give effect to the 2022 Stock Split) to the 2017 Warranholders pursuant to their exercise of such warrants, which were net of the applicable exercise prices. Such shares were issued pursuant to an exemption from registration provided by Rule 3(a)(9) of the Securities Act of 1933.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

The Board of Directors (the “Board”) of Tesla has established May 16, 2023 as the date of the Company’s 2023 annual meeting of stockholders (the “2023 Annual Meeting”). The time and location of the 2023 Annual Meeting will be specified in the Company’s proxy statement for the 2023 Annual Meeting. The Board has fixed the close of business on March 20, 2023 as the record date for determining stockholders of the Company who are entitled to vote at the 2023 Annual Meeting, including any adjournments or postponements of the 2023 Annual Meeting.

Tesla’s 2022 annual meeting of stockholders (the “2022 Annual Meeting”) was held on August 4, 2022. Because the date of the 2023 Annual Meeting is being changed by more than 30 days from the one-year anniversary of the 2022 Annual Meeting, the Company is informing stockholders of this change in accordance with Rule 14a-5(f) under the Exchange Act, and is informing stockholders of the new dates described below for submitting stockholder proposals and other matters.

Pursuant to Rule 14a-8(e)(2) of the Exchange Act, a stockholder intending to present a proposal to be included in the proxy statement for the 2023 Annual Meeting must deliver the proposal in writing to our principal executive offices no later than a reasonable time before we begin to print and mail the proxy materials for the 2023 Annual Meeting. Accordingly, the Board has fixed the new deadline for the submission of proposals to be included in the proxy statement for the 2023 Annual Meeting as December 22, 2022. Proposals should be addressed to: Tesla, Inc.; Attention: Legal Department,; 1 Tesla Road, Austin, Texas 78725, with a copy sent by e-mail to shareholdermail@tesla.com. Proposals of stockholders must also comply with the SEC's rules regarding the inclusion of stockholder proposals in proxy materials, and we may omit any proposal from our proxy materials that does not comply with the SEC's rules.

Pursuant to Tesla's bylaws, if a stockholder intends to present certain matters, including nominations for the election of directors, at the 2023 Annual Meeting without inclusion in our proxy materials, the notice must also be delivered to our principal executive offices, at the address set forth in the preceding paragraph, with a copy sent by e-mail to shareholdermail@tesla.com, between 120 days prior to the 2023 Annual Meeting and the later of (i) 90 days prior to the meeting or (ii) the 10th day following the public announcement of the date of the 2023 Annual Meeting (the "Notice Period"). Accordingly, the Notice Period for the 2023 Annual Meeting will start on January 16, 2023 and end on February 15, 2023. The proposal or nomination must also contain the information required by our bylaws.

ITEM 6. EXHIBITS

See Index to Exhibits at the end of this Quarterly Report on Form 10-Q for the information required by this Item.