

March 19, 2025

VIA STAFF ONLINE FORM

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

RE: Stockholder Proposal Submitted by New York State Common Retirement 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 U.S. Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a stockholder proposal (the “Proposal”) from its proxy materials to be distributed in connection with its 2025 annual meeting of stockholders (the “Proxy Materials”). The New York State Common Retirement Fund (the “Proponent”) submitted the Proposal.

The Company respectfully requests that the Staff advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons discussed below. In accordance with relevant Staff guidance, the Company is submitting this letter and its attachments to the Staff through the Staff’s online Shareholder Proposal Form. Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), the Company is simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal for its Proxy Materials.

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

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

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

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

The Proposal

The Proposal sets forth the following:

Resolved: Shareholders request the Board of Directors oversee the preparation of an annual public report describing and quantifying the effectiveness and outcomes of Tesla, Inc.’s (Tesla) efforts to prevent harassment and discrimination against its protected classes of employees. In its discretion, the Board may wish to consider including disclosures such as:

- the total number and aggregate dollar amount of disputes settled by the company related to abuse, harassment or discrimination in the previous three years;
- the total number of pending harassment or discrimination complaints the company is seeking to resolve through internal processes, arbitration, or litigation;

- the retention rates of employees who raise harassment or discrimination concerns, relative to total workforce retention;
- the aggregate dollar amount associated with the enforcement of arbitration clauses;
- the number of enforceable contracts for current or past employees which include concealment clauses, such as non-disclosure agreements or arbitration requirements, that restrict discussions of harassment or discrimination; and
- the aggregate dollar amount associated with agreements containing concealment clauses.

This report should not include the names of accusers or identifying information from their settlements without their consent and should be prepared at a reasonable cost and omit any information that is proprietary, privileged, or violative of contractual obligations.

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

Basis for Exclusion

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

Rule and Analysis

Rule 14a-8(i)(7) allows the omission of a stockholder proposal from a registrant's proxy statement if the proposal "deals with a matter relating to the company's ordinary business operations." As set out in Securities Exchange Act Release No. 34-40018 (May 21, 1998) (the "1998 Release"), there are two "central considerations" underlying the ordinary business exclusion. One is that certain matters are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. The other relates to the degree that a proposal seeks to "micro-manage" the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.

On February 12, 2025, the Staff issued SLB 14M, which (1) rescinded Staff Legal Bulletin No. 14L ("SLB 14L") and (2) reinstated guidance on "micromanagement" under Staff Legal Bulletin No. 14J ("SLB 14J") and Staff Legal Bulletin No. 14K ("SLB 14K") that had been rescinded by SLB 14L. Taken together, SLB 14M and the reinstated guidance under SLB 14J and SLB 14K make clear that the Proposal is excludable under 14a-8(i)(7), because the Proposal impermissibly seeks to micromanage the Company by seeking to impose a specific method for implementing a complex policy.

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

Under SLB 14K Section B.4, which has been reinstated by SLB 14M, "[w]hen a proposal prescribes specific actions that the company's management or the board must undertake without affording them sufficient flexibility or discretion in addressing the complex matter presented by the proposal, the proposal may micromanage the company to such a degree that exclusion of the proposal would be warranted." In SLB 14K, the Staff explained that it will focus on the prescriptiveness of a proposal in determining whether a proposal seeks to micromanage the Company or inappropriately limit the discretion of the board or management. Further, SLB 14J Section C.3, which has also been reinstated by SLB 14M, specifically states that, in considering whether a proposal micromanages a company, the Staff "looks only to the degree" and "manner in which a proposal seeks to address an issue." Although the Proposal requests a report, the Staff has stated under SLB 14J that the micromanagement framework "also applies to proposals that call for a study or report [...]" For example, a proposal that seeks an intricately detailed study or report may be excluded on micromanagement grounds." See SLB 14J (citing *Ford Motor Company* (Mar. 2, 2004)).

In this case, the report requested by the Proposal implicates precisely these issues, and probes too deeply into matters of a complex nature because it "seeks an intricately detailed study or report" and "seeks to impose specific time-frames or methods for implementing complex policies". [As noted above,] the Proposal' stated focus is on the complex policy issue of the Company's "efforts to prevent harassment and discrimination against its protected classes of employees." The Proposal seeks an extremely detailed report on this complex policy issue. Although the Proposal notes that the board has discretion over information

to be included in the report, it states that the Company must “describ[e] and quantify[] the effectiveness and outcomes” of its anti-harassment and anti-discrimination efforts, and recommends the inclusion of disclosures such as:

- the total number and aggregate dollar amount of disputes settled by the company related to abuse, harassment or discrimination in the previous three years;
- the total number of pending harassment or discrimination complaints the company is seeking to resolve through internal processes, arbitration, or litigation;
- the retention rates of employees who raise harassment or discrimination concerns, relative to total workforce retention;
- the aggregate dollar amount associated with the enforcement of arbitration clauses;
- the number of enforceable contracts for current or past employees which include concealment clauses, such as non-disclosure agreements or arbitration requirements, that restrict discussions of harassment or discrimination; and
- the aggregate dollar amount associated with agreements containing concealment clauses.

Further, as described in the supporting statement, the Proposal intends that these disclosures address numerous ongoing lawsuits and regulatory matters.

The Proposal also seeks to impose specific time-frames and methods for implementing the complex policy issue, including requiring that:

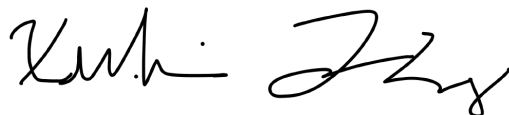
- the report be made on an annual basis; and
- the Board of Directors provide oversight of such reporting.

In prescribing these specific time-frames and actions that the Company’s board must take to issue an intricately detailed report on a complex policy issue, the Proposal does not provide the Company’s board and management “sufficient flexibility or discretion in addressing the complex matter presented by the proposal,” and warrants exclusion under both SLB 14J and SLB 14K Section B.4. Furthermore, many of the details that the Proposal suggests the Company disclose are confidential and could affect the Company’s ongoing litigation. Under SLB 14K, “[w]hen a company asserts the micromanagement prong as a reason to exclude a proposal, [the Staff] would expect it to include in its analysis how the proposal may unduly limit the ability of management and the board to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to shareholders.” The Company has a large workforce in a highly regulated industry across multiple jurisdictions. The decisions it makes concerning employee relations, compliance with anti-discrimination laws and regulations and the terms of employment are complex and based on a range of factors. The Company’s management and reporting on litigation, employment agreements and settlements are similarly matters requiring complex judgment. Therefore, a proposal, such as the Proposal, that prescribes specific time-frames and actions that the Company’s board must take to issue an intricately detailed report these issues unduly limits the ability of the Company’s management and board to manage such issues with a level of flexibility necessary to fulfill their fiduciary duties to shareholders. Consequently, consistent with SLB 14K and SLB 14M, the Proposal should be excluded under Rule 14a-8(i)(7) on the grounds that it impermissibly seeks to micromanage the Company by imposing a specific method for implementing a complex policy.

Conclusion

The Company respectfully requests that the Staff concur that it will take no action if the Company excludes the Proposal from the Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at cassie.zhang@tesla.com. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Sincerely,



Xuehui Cassie Zhang
Associate General Counsel

EXHIBIT A

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 3, 2024

Tesla, Inc.
1 Tesla Road
Austin, TX 78725
Attention: Legal Department--Shareholder Mail

Dear Legal Department:

The Comptroller of the State of New York, Thomas P. DiNapoli, is the Trustee of the New York State Common Retirement Fund (the "Fund") and the Administrative Head of the New York State and Local Retirement System. The Comptroller has authorized me in my capacity as Director of Corporate Governance for the New York State Common Retirement Fund to inform you of his intention to offer the enclosed shareholder proposal for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank, verifying the Fund's ownership of Tesla, Inc. shares with a market value of at least \$25,000, continually for over one year, is enclosed. The Fund intends to continue to hold at least \$25,000 worth of these securities through the date of the annual meeting.

We would be happy to discuss this initiative with you. Should Tesla, Inc. decide to endorse its provisions as company policy, the Comptroller will ask that the proposal be withdrawn from consideration at the annual meeting. A staff member from our office is available to meet with the company via teleconference no less than 10 days, nor more than 30 days after the date of this letter. Specifically, we are available during business hours on December 16, or December 17.

Additionally, please direct any mail correspondence related to this proposal to “New York State Common Retirement Fund” at 110 State Street, 14th Floor, Albany, NY 12236.

Please feel free to contact me at [REDACTED] should you have any further questions on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Gianna McCarthy".

Gianna McCarthy
Director of Corporate Governance

Enclosures

Resolved: Shareholders request the Board of Directors oversee the preparation of an annual public report describing and quantifying the effectiveness and outcomes of Tesla, Inc.'s (Tesla) efforts to prevent harassment and discrimination against its protected classes of employees. In its discretion, the Board may wish to consider including disclosures such as:

- the total number and aggregate dollar amount of disputes settled by the company related to abuse, harassment or discrimination in the previous three years;
- the total number of pending harassment or discrimination complaints the company is seeking to resolve through internal processes, arbitration, or litigation;
- the retention rates of employees who raise harassment or discrimination concerns, relative to total workforce retention;
- the aggregate dollar amount associated with the enforcement of arbitration clauses;
- the number of enforceable contracts for current or past employees which include concealment clauses, such as non-disclosure agreements or arbitration requirements, that restrict discussions of harassment or discrimination; and
- the aggregate dollar amount associated with agreements containing concealment clauses.

This report should not include the names of accusers or identifying information from their settlements without their consent and should be prepared at a reasonable cost and omit any information that is proprietary, privileged, or violative of contractual obligations.

Supporting Statement

Last year in its opposition to this proposal the Company stated it “[does] not tolerate discrimination, harassment, retaliation or any mistreatment of employees in the workplace or work-related situations.”

However, the Company never addressed numerous serious allegations of racial or sexual harassment and discrimination at Tesla. These include, but are not limited to:

- In 2023, the U.S. Equal Employment Opportunity Commission filed a lawsuit claiming that Black employees at Tesla’s Fremont, California, manufacturing facilities “have routinely endured racial abuse, pervasive stereotyping, and hostility.”¹
- In 2024 Black factory workers were granted class action status for common fact issues in a 2017 lawsuit alleging racial discrimination.²
- In 2022 the California Department of Fair Employment and Housing (DFEH) sued Tesla after receiving hundreds of complaints. DFEH alleges that employees were subjected to racial slurs; “segregated” and discriminated against in job assignments, pay, and promotion; and faced retaliation when they reported their experiences.³

There have been several high-profile derivative suits settled including at Twentieth Century Fox, Wynn Resorts, and Alphabet, Inc., alleging boards breached their duties by failing to protect employees from discrimination and harassment, injuring the companies and their shareholders.

¹ <https://www.eeoc.gov/newsroom/eeoc-sues-tesla-racial-harassment-and-retaliation>

² <https://www.reuters.com/legal/tesla-must-face-class-action-claims-by-6000-workers-race-bias-case-2024-02-29/>

³ <https://qz.com/2126548/why-is-california-suing-tesla/>

Civil rights violations within the workplace can result in substantial costs to companies, including fines and penalties, legal costs, costs related to absenteeism, reduced productivity, challenges recruiting, and distraction of leadership. A company's failure to properly manage its workforce can have significant ramifications, jeopardizing relationships with customers and other partners.

A public report such as the one requested would assist shareholders in assessing whether the Company is improving its workforce management.