

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

Ladies and Gentlemen:

Tesla, Inc. (the “Company”) 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 shareholder proposal (the “Proposal”) from its proxy statement and proxy to be filed and distributed in connection with its 2024 annual meeting of shareholders (the “Proxy Materials”). Michael R. Stephen, an individual (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) of 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 no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission. The Company is concurrently sending a copy of this letter to the Proponent.

Proposal

The Proposal sets forth the following:

“Stockholders recommend that Tesla, Inc. redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q.”

Basis for Exclusion

The Company respectfully requests that the Staff concur in the Company’s view that the Proposal may be excluded from the Proxy Materials on the following bases:

- 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.

A. Rule 14a(8)(i)(7) – Relates to Ordinary Business Operations

Rule 14a-8(i)(7) allows the omission of a shareholder 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 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. As discussed in Staff Legal Bulletin No. 14L (November 3, 2021)(the “SLB 14L”), whether or not a proposal seeks to “micro-manage” depends to a significant degree on the level of granularity set forth in the proposal and whether and to what extent the proposal inappropriately limits discretion of the board or management.

The Proposal recommends that the Company “redesign vehicle tires to avoid pollution from harmful chemicals”, stating in support, that tires are currently outsourced and redesigning tires in-house may provide savings. In seeking to dictate the

Company's decision on whether components should be designed in-house versus outsourced, and the design of its components by requiring that the new product be designed without certain chemicals, the Proposal implicates both of the central considerations identified in the 1998 Release. Determining how a company will engineer its products, and which components are to be designed in-house or procured from suppliers is fundamental to management's ability to oversee a company's ordinary course business operations. These decisions involve a wide array of business considerations, including the complexity of the component, the component's usefulness and fit in the context of the finished product, changing regulatory requirements and the resources and expertise available internally versus externally. The ability of management to assess which components are more efficiently designed in-house or procured from a supplier is fundamental to its ability to run the Company on a day-to-day basis and is not appropriate for direct shareholder oversight. Further, the management of the allocation and development of internal resources and products is complex and involves the consideration of many factors. Shareholders cannot possibly make an informed judgment about these factors, given that they are not involved in the day-to-day management of the Company.

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of shareholder proposals that seek to micro-manage a company's ordinary business operations, including when proposals concern the design, product development or product offerings of a company, even when the design, development or product touches on a social issue. See *General Mills, Inc.* (July 2, 2010) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), 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 Home Depot, Inc.* (Mar. 21, 2018) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting that the company end its sale of glue traps); *Ball Corporation* (Feb. 4, 2016) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting the company issue a report reviewing the company's policies, actions and plans to reduce BPA use in its products and set quantitative targets to phase out the use of BPA in light of reputational and regulatory risks, noting that the proposal relates to the company's product development); *Walgreens Boots Alliance, Inc.* (Nov. 7, 2016) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting that the company's board of directors issue a report assessing the financial risk, including long-term legal and reputational risk, of continued sales of tobacco products in the company's stores); *Dominion Resources, Inc.* (Feb. 19, 2014) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), 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"); *Mondelēz International, Inc.* (February 23, 2016) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal that the board publish a report on the company's use of nanomaterials, including describing the products or packaging that currently contain nanoparticles, why nanoparticles are being used, and actions management is taking to reduce or eliminate the risk nanoparticles may pose to human health and the environment, including eliminating the use of nanomaterials until or unless they are proven safe through long-term testing, noting that the proposal relates to the company's product development); and *Rite Aid Corp.* (Mar. 24, 2015) (concurring in the exclusion, pursuant to Rule 14a-8(i)(7), of a proposal requesting that a committee of the company's board provide oversight concerning whether the company should sell a product that especially endangers public health and well-being, has substantial potential to impair the reputation of the company and would reasonably be considered by many to be offensive to the values integral to the company's promotion of its brand endangers public health and wellbeing, noting that note that the proposal relates to the products and services offered for sale by the company and proposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)).

The Company understands that in cases in which shareholder proposals raise significant social policy issues the ordinary business exclusion of Rule 14a-8(i)(7) may be found not to apply. 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 in the exclusion, pursuant to Rule 14a-8(i)(7), 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 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); and *Amazon.com, Inc.* (Apr. 8, 2022), (concurring in the exclusion, pursuant to 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).

The Company respectfully submits that the Proposal does not focus on a significant social policy issue. While the Proposal and its supporting statements allude to environmental risks, these risks are secondary to the Proposal's ultimate outcome of dictating how the Company engineers its products and which components should be designed in-house. As a result, by being squarely focused on the Company's design, engineering and supply chain decisions, the Proposal does not transcend the day-to-day business matters addressed by the Proposal. Further, the Company respectfully submits that the Proposal is not of the sort upon which the stockholders can properly express their social policy judgments. Instead, the Proposal concerns the Company's operational strategies, including use of internal engineering and design resources. The Company believes that the specific strategies regarding design, engineering, manufacturing and procurement are properly within the purview of management, which has the necessary capability and knowledge to evaluate the particular facts and circumstances of its business operations and take appropriate action. Based on the subject matter of the Proposal as discussed above, the Company believes that the exclusion provided under Rule 14a-8(i)(7) is applicable to the Proposal.

B. 14a-8(i)(3) – Proposal so vague and indefinite 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."); *Home Depot, Inc.* (Mar. 12, 2014)(concurring in the exclusion, pursuant to Rule 14a-8(i)(3), of a proposal that the board prepare a sustainability report, which establishes metrics and benchmark objective footprint information and recommendations on the company's sustainability policies and performance, include information specified in the proposal, including multiple GRI type objective statistical indicators identifying accomplishments, failures and objectives of the company and that the report should be prepared by an independent third party organization, noting that "neither shareholder nor the company could be able to determine with any reasonable certainty exactly what actions or measures the proposal requires"); *Bank of America Corporation* (Feb. 25, 2008)(concurring in the exclusion, pursuant to Rule 14a-8(i)(3), of a proposal that the board amend its greenhouse gas emissions policies to observe moratorium on all financing investment and further involvement in activities that support MTR coal mining or the construction of new coal-burning power plants that emit carbon dioxide, as vague and indefinite); *Puget Energy Inc.* (Mar. 7, 2002)(concurring in the exclusion, pursuant to Rule 14a-8(i)(3), of a proposal that the board take the necessary steps to implement a policy of "improved corporate governance", as vague and indefinite).

As with the proposals in the precedents cited above, the Proponent's Proposal is so vague and indefinite that neither the Company nor its shareholders would know with any reasonable certainty exactly what actions or measures the Proposal requires. The Proposal leaves key terms and phrases undefined and subject to multiple interpretations, asking that the Company redesign tires to "avoid pollution" from "harmful chemicals." However, there is not sufficient guidance to enable the Company to implement the Proposal without making numerous and significant assumptions as to what the Proponent intends. For example, the Proponent uses the word "avoid", yet there is no guidance in how much avoidance the Proposal is recommending – the Company and the shareholders would have to make assumptions as to whether "avoid" means complete avoidance or, if not complete avoidance, assumptions on how to measure against how much was avoided and what level of avoidance meets the requirements of the Proposal. In addition, the Proposal does not define what "harmful chemicals" are. The Proposal provides an example of 6PPD-Q which according to the supporting statement is considered "very highly toxic" to aquatic organisms and that human health "may also be seriously harmed." Given the supporting statement, it is unclear whether "harmful" means known to be harmful, or whether there only needs to be a possibility that the chemical may be harmful. It is also unclear as to what needs to be harmed – whether it is human health or coho salmon – and what effects the chemical needs to cause to be considered "harmful," and therefore it is unclear which chemicals the Company must try to avoid. Thus, because these terms are not clearly defined, nor guidance clearly given, it is impossible for the Company and the shareholders to determine when vehicle tires have been redesigned such that the Company has achieved "avoid[ing] pollution from harmful chemicals." 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,

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: Michael R. Stephen

Table 1 below summarizes the monthly statements of my personal Questrade account from October 2022 through to October 2023, which is the most recent statement available.

Table 1 Tesla Shares Held

| Statement Date | Value CDN (\$) | ~ Value USD (\$) @ 1.3 |
|----------------|----------------|------------------------|
| 31-Oct-22 | [REDACTED] | [REDACTED] |
| 30-Nov-22 | [REDACTED] | [REDACTED] |
| 30-Dec-22 | [REDACTED] | [REDACTED] |
| 31-Jan-23 | [REDACTED] | [REDACTED] |
| 28-Feb-23 | [REDACTED] | [REDACTED] |
| 31-Mar-23 | [REDACTED] | [REDACTED] |
| 28-Apr-23 | [REDACTED] | [REDACTED] |
| 31-May-23 | [REDACTED] | [REDACTED] |
| 30-Jun-23 | [REDACTED] | [REDACTED] |
| 31-Jul-23 | [REDACTED] | [REDACTED] |
| 31-Aug-23 | [REDACTED] | [REDACTED] |
| 29-Sep-23 | [REDACTED] | [REDACTED] |
| 31-Oct-23 | [REDACTED] | [REDACTED] |

My contact information is provided at the top of this letter.

To protect my privacy, please do not publish in your proxy statement my street address or the total number or value of Tesla securities that I hold. You may include my email address, city of residence, and the fact that I hold the minimum number of shares required. I would like to discuss this request with you.

Please see the attached stockholder proposal. Microsoft Word calculates my proposal to have 474 words, including endnotes.

Sincerely,



Michael R. Stephen, PAg

Proposal

Stockholders recommend that Tesla, Inc. redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q.

Design Goals

Tesla could collaborate with others seeking an environmentally safe tire.¹ Goals could include the following:

1. Equivalent safety and performance
2. Full recyclability into new tires
3. Increased durability and reduced tire wear
4. Environmental safety
5. Reduced cost.

An Urgent Problem

In 2020, researchers discovered that a tire chemical, 6PPD-quinone (6PPD-Q), was killing 40-90% of pre-spawn adult coho salmon each year in urban streams of the US Pacific Northwest.² Acutely toxic to juvenile coho at 95 ng/L, 6PPD-Q is considered “very highly toxic” to aquatic organisms.^{3,4}

6PPD protects tire rubber from oxidation and flexing⁵, reacting with ozone at the tire surface to form 6PPD-Q. 6PPD comprises 0.4-2% of tires’ mass globally,⁶ making 6PPD-Q a ubiquitous pollutant of air,⁷ water⁸ and soil.⁹

Human health may also be seriously harmed by 6PPD-Q. Tire wear particles enter our food chain and are also inhaled deep into our lungs as fine particulate matter.¹⁰ In a 2022 study, 6PPD-Q was found in the urine of children and adults, with pregnant women having the highest concentrations.¹¹ In 2023, 6PPD-Q was observed to create toxic effects in the livers of laboratory mice.¹²

Unrecognized until 2020, 6PPD-Q was one of the almost 50% of tire leachate chemicals that are still unidentified or have unknown toxicity.¹³

Tire chemicals migrate through solution in water and in tire particles from road wear and recycling.¹⁴ Most recycled U.S. scrap tires are shredded for land application at locations such as children’s playgrounds, sport fields, and civil engineering projects including backfill for roads, bridges, retaining walls and septic system drain fields.^{15,16}

Experiments with filtering road runoff show limited potential to reduce tire pollution.¹⁷ Redesigning tires is the best solution and may become legally required.^{18,19}

Why Tesla?

- 1) Tire pollution is an extremely challenging global problem and a risk to Tesla's strategy of using tire-dependent vehicles to accelerate the world's transition to sustainable energy.
- 2) Tesla has the best material scientists in the world²⁰ and equips them to "be creative and solve engineering problems that have never been solved."²¹
- 3) Tesla's vehicles "are designed to be better in every way,"²² yet electric cars wear tires faster than gas models due to their greater weight and torque.
- 4) Tires are still outsourced and may yield considerable savings if redesigned in-house.
- 5) Tesla has experience with first-principles redesign, creating products such as its cobalt-free battery chemistry and 4680 cell.

Please support Tesla's sustainable, inspiring future by voting for this resolution. Thank you.

1 <https://itrcweb.org/teams/active/6ppd-q>

2 <https://www.science.org/doi/10.1126/science.abd6951>

3 <https://pubs.acs.org/doi/10.1021/acs.estlett.1c00910>

4 <https://doi.org/10.1016/j.jhazmat.2023.131601>

5

https://www.ezview.wa.gov/Portals/_1962/Documents/6ppd/6PPD%20Alternatives%20Technical%20Memo.pdf

6 <https://www.science.org/doi/10.1126/science.abd6951>

7 <https://pubmed.ncbi.nlm.nih.gov/34551519/>

8 <https://pubmed.ncbi.nlm.nih.gov/34426371/>

9 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8988306/>

10 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664766/>

11 <https://pubs.acs.org/doi/abs/10.1021/acs.estlett.2c00821>

12 <https://pubmed.ncbi.nlm.nih.gov/36716866/>

13 <https://www.sciencedirect.com/science/article/pii/S0269749123011181>

14 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664766/>

15 <https://www.ustires.org/>

16 https://archive.epa.gov/epawaste/conserva/materials/tires/web/html/civil_eng.html

17 <https://www.sciencedirect.com/science/article/pii/S0045653514014805>

18 <https://earthjustice.org/press/2023/epa-grants-tribal-nations-petition-to-restrict-6ppd-in-tires>

19 https://dtsc.ca.gov/scp/motor_vehicle_tires_containing_6ppd/

20 <https://ir.tesla.com/webcast-2023-06-19>

21 <https://www.tesla.com/impact>

22 <https://www.tesla.com/impact>