



DIVISION OF
CORPORATION FINANCE

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

October 16, 2018

Roel C. Campos
Hughes Hubbard & Reed LLP
1775 I Street, NW
Washington DC 20006-2401

Re: ***SEC v. Elon Musk*, Civil Action No. 1:18-cv-08865 (S.D.N.Y., Sept. 27, 2018) - Waiver of disqualification pursuant to Rule 506(d)(2)(ii) of Regulation D**

Dear Mr. Campos:

This letter responds to your letter dated September 28, 2018 (“Waiver Letter”), written on behalf of Neuralink Corp. (“Neuralink”) and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933 (“Securities Act”). In the Waiver Letter, you requested relief from any disqualification that will arise as to Neuralink under Rule 506 of Regulation D under the Securities Act as a result of the entry of a final judgment on October 16, 2018 in the United States District Court for the Southern District of New York relating to the complaint filed by the Commission on September 27, 2018 against Elon Musk (the “Musk Judgment”) in *SEC v. Elon Musk* (Civil Action No. 1:18-cv-08865).

Based on the facts and representations in the Waiver Letter and assuming Elon Musk (“Musk”) fully complies with the Musk Judgment, we have determined that Neuralink has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny it reliance on Rule 506 of Regulation D by reason of the entry of the Musk Judgment. Accordingly, the relief requested in the Waiver Letter regarding any disqualification that may arise as to Neuralink under Rule 506 of Regulation D by reason of the entry of the Musk Judgment is granted on the condition that Musk fully complies with the terms of the Musk Judgment. Any different facts from those represented or Musk’s failure to comply with the terms of the Musk Judgment would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver to Neuralink. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Elizabeth M. Murphy
Associate Director
Division of Corporation Finance

September 28, 2018

VIA FEDEX & EMAIL

Timothy B. Henseler, Esq.
Chief, Division of Corporation Finance,
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: In the Matter of Tesla Motors, Inc.

Dear Mr. Henseler:

We write on behalf of Neuralink Corp. (“Neuralink”), in connection with the settlement and entry of final judgment as to Mr. Musk (the “Musk Judgment”) relating to Tesla Inc. (“Tesla”) and to *In the Matter of Tesla Motors, Inc.* As discussed in more detail below, Neuralink understands that the entry of the Musk Judgment, enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, will disqualify Neuralink from relying on exemptions from registration under Rule 506 of Regulation D, promulgated under the Securities Act of 1933 (the “Securities Act”). On behalf of Neuralink, we hereby respectfully request a waiver of any disqualification of Neuralink from these Rule 506 exemptions that will result from the entry of the Musk Judgment. We respectfully submit that relief from disqualification is appropriate in this case for the reasons stated below.

BACKGROUND

The staff of the Division of Enforcement (the “Staff”) has engaged in settlement discussions with Tesla in connection with the above-captioned matter. As a result of these discussions, Tesla submitted the Consent of Defendant Tesla Inc. (the “Tesla Consent”), and Mr. Musk submitted the Consent of Defendant Musk (the “Musk Consent”), which the Staff

presented to the United States District Court for the Southern District of New York in connection with a complaint (the “Complaint”) against Tesla related to the investigation captioned above. The Complaint alleges that on August 7, 2018, Mr. Musk made a series of statements via Twitter regarding his consideration of taking Tesla private, and that Mr. Musk made these statements recklessly because he did not have an adequate basis for his statements. The Complaint also alleges that Tesla did not have sufficient disclosure controls or procedures in place to assess whether the information Mr. Musk disseminated via his Twitter account was accurate, complete, or required to be disclosed in reports Tesla files pursuant to the Exchange Act within the time periods specified in the Commission’s rules and forms.

In the Tesla Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, Tesla consented to the entry of a final judgment permanently restraining and enjoining it from violations of Rule 13a-15, promulgated under Section 13A of the Exchange Act [17 C.F.R. § 240.13a-15], without admitting or denying the assertions contained therein (other than those relating to the jurisdiction of the Commission, which are admitted). Pursuant to the Musk Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, Mr. Musk consented to the entry of a final judgment permanently restraining and enjoining him from violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], without admitting or denying the assertions contained therein (other than those relating to the jurisdiction of the Commission, which are admitted). The entry of the Musk Judgment renders Mr. Musk disqualified under Rule 506(d)(1)(ii)(A) [CFR 230.506(d)(1)(ii)(A)], from relying on exemptions from registration under Rule 506 of Regulation D, and also a covered person under Rule 506(d)(1) [CFR 230.506(d)(1)]¹, which will, by extension, disqualify Neuralink, from relying on these Regulation D exemptions.

Neuralink is a private Delaware Corporation with its head offices at 3180 18th St, San Francisco, CA, 94110, in which Mr. Musk has a majority ownership stake. Outside of a shared mutual investor (Mr. Musk), Neuralink and Tesla are not in related industries, and share only a *de minimis* amount of overlap in day-to-day operations, infrastructure, assets, or employees.

DISCUSSION

Neuralink has never needed to seek, nor has it ever sought, a Regulation D waiver. Neuralink understands that, absent a waiver, the entry of the Musk Judgment will disqualify Neuralink and certain other issuers from relying on certain exemptions under Rule 506 of Regulation D, promulgated under the Securities Act. The Commission may waive these Regulation D disqualifications with respect to Neuralink upon a showing of good cause that it is not necessary under the circumstances that the exemptions be denied. Based on the factors set forth by the Division of Corporation Finance for considering waiver requests² and the facts and

¹ As majority owner of Neuralink, Mr. Musk owns in excess of 20% or more of Neuralink’s outstanding voting equity securities, and therefore is a “covered person” under Rule 506(d)(1). Mr. Musk does not serve as an officer or director of Neuralink.

² See Division of Corporation Finance, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (Mar. 13, 2015).

circumstances set forth below, Neuralink requests that the Commission waive any disqualifying effects that the Musk Judgment will have on Neuralink under Regulation D.

1. The Alleged Misconduct Did Not Involve the Offer and Sale of Securities

The conduct set forth in the Complaint does not relate to the offer or sale of securities as neither Tesla nor Mr. Musk issued or sold any securities during August, 2018.

2. Neuralink is Not Subject to the Higher Burden to Show Good Cause in This Case

The Division of Corporation Finance's statement on waivers states that it will "consider whether the conduct involved a criminal conviction or scienter based violation, as opposed to a civil or administrative non-scienter based violation. Where there is a criminal conviction or a scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater."³ Notwithstanding the fact that the Complaint alleges scienter-based violations with respect to Mr. Musk, because the misconduct did not involve the offer or sale of securities, Neuralink is not subject to the higher burden to show good cause in this case.

3. Responsibility for the Conduct

With respect to who was responsible for the misconduct, the Division of Corporation Finance has stated that it would also consider, among other factors, whether (1) "the misconduct reflects more broadly on the entity as a whole" or (2) "the tone at the top of the party seeking the waiver condoned, encouraged or did not address the misconduct, or actions or omissions by the party seeking the waiver, or any of its affiliates, obstructed the regulatory or law enforcement investigation."⁴ As referenced above, the alleged misconduct at issue does not relate to Neuralink.

Although the alleged misconduct did involve Mr. Musk, as discussed below, Neuralink has robust procedures designed to ensure compliance with Regulation D. Accordingly, we do not believe that the alleged misconduct reflects more broadly on Neuralink as a whole.

Neuralink understands the alleged misconduct involved statements by Mr. Musk in his personal capacity as a bidder for Tesla equity, and did not involve any statements or offers regarding Neuralink equity. Outside of a shared mutual investor (Mr. Musk), Neuralink and Tesla are not in related industries, and share only a *de minimis* amount of overlap in day-to-day operations, infrastructure, assets, or employees. Mr. Musk has no executive or management role at Neuralink.

4. Duration of the Conduct

The Complaint limits the duration of the conduct to August 2018.

³ *Id.*

⁴ *Id.*

5. *Neuralink has extensive processes in place to ensure compliance with Regulation D.*

The Division of Corporation Finance's statement on waivers states that it would look at (1) "whether there were changes in the control of the party seeking the waiver or if the personnel involved in the misconduct remain employed by the party seeking the waiver" and (2) "whether the party seeking the waiver has taken steps to improve training or has made improvements to its policies, procedures or practices."⁵ As mentioned above, the misconduct at issue did not involve Neuralink. As a result, Neuralink has not taken any remedial actions in response. To date, Neuralink has been in compliance with its SEC filing requirements, and has strong checks and balances in place for financial and legal control for a company of its size, age, and private company status. Neuralink has utilized sophisticated corporate and securities counsel to guide it with respect to legal and regulatory compliance in connection with its previous Regulation D offering and intends to continue to do so for any future Regulation D offerings. Neuralink has taken customary and appropriate steps to ensure compliance with the applicable requirements of Regulation D, including without limitation the restrictions relating to the use of general solicitation and general advertising and applicable disclosure requirements, and Neuralink intends to continue to do so in any future Regulation D offering. Mr. Musk played a limited role in Neuralink's previous Regulation D offering and did not participate in the diligence efforts regarding the accredited investor status of investors in that offering. We expect that his role in any future Regulation D offerings would be similarly limited.

6. *Failure to Grant Waiver Relief Will Cause Hardship to Neuralink, Its Shareholders, and Employees*

Neuralink is a privately funded, early-stage research and development company with no near-term plans, or ability, to hold a public offering of securities. If Neuralink is disqualified from relying on the exemptions under Regulation D, it could have a material adverse impact on the company's ability to continue operating past its initial financing, and hence would materially harm third parties, namely innocent Neuralink shareholders, and employees. Neuralink has issued tens of millions of dollars of securities under Regulation D and likely would rely on Rule 506 of Regulation D for further issuances of securities in the future.

Neuralink is a fast-growing bio-technology and medical device company focused on developing high bandwidth, long term, brain computer interfaces ("BCI"). The research, development, design, manufacture, testing, and certification of medical devices and BCI's is purely capital intensive business requiring deep investment for years prior to any initial revenue. Neuralink needs sufficient capital to fund its ongoing operations and eventually bringing products to market, for example: continued development of BCI's, continued testing of implantable devices, financing of multi-year FDA trials and certifications, and the construction of FDA-approved manufacturing facilities. Neuralink will need to raise capital for these operations and expansions, and given the development stage of the company, it is most likely that such financing will be through private securities offerings in reliance on Rule 506 of Regulation D. If Neuralink cannot raise additional funds or consummate refinancing through

⁵ See Division of Corporation Finance, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (Mar. 13, 2015).

such means in reliance on Regulation D, Neuralink's operations and prospects would be severely negatively affected.

Neuralink has previously relied on Rule 506 of Regulation D for its financing activities. In 2017 Neuralink raised \$100,155,000 (the entirety of Neuralink's capital raised to date) from Mr. Musk and various other third party investors as indicated in the Form D filed with the Commission and available on EDGAR.

As a private company with no imminent plans to file for a public offering, Neuralink anticipates that it likely would, in the future, rely on Regulation D to issue securities for financing of ongoing operations, research, development, and other strategic purposes. Additionally, Neuralink may choose to acquire or invest in other companies by offering securities in reliance on Regulation D. As Neuralink's needs and operational plans change quickly, the additional flexibility and expediency afforded by Regulation D, including the allowance of general solicitation and advertising and certain preemptive effects on state securities laws, is valuable in allowing Neuralink to obtain capital to quickly grow its business. Furthermore, the availability of a safe harbor from registration allows Neuralink to take quick and decisive action for the benefit of its shareholders.

A decision not to issue a waiver would harm Neuralink's prospects as a company, and hence harm its shareholders, officers, directors, and employees.

CONCLUSION

For the reasons stated above, Neuralink respectfully requests that the Commission (or the Division of Corporation Finance pursuant to delegated authority) waive, effective as of the date of entry of the Musk Judgment, any disqualification of Neuralink under Regulation D with regard to Neuralink arising as a result of such entry.

Please let us know if you have any questions.

Sincerely,

Hughes Hubbard & Reed LLP


Roel C. Campos