



DIVISION OF
CORPORATION FINANCE

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

March 23, 2023

Derek Windham
Tesla, Inc.

Re: Tesla, Inc. (the "Company")
Incoming letter dated February 14, 2023

Dear Derek Windham:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Domini Impact Equity Fund and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(e)(2) because the Company received it after the deadline for submitting proposals. 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(e)(2).

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/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Mary Beth Gallagher
Domini Impact Investments LLC

February 14, 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 Domini Impact Equity Fund, SHARE, on behalf of Christine Pawley, and SOC Investment Group

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”). Domini Impact Equity Fund, SHARE, on behalf of Christine Pawley, and SOC Investment Group (each a “Proponent” and together, the “Proponents”) co-submitted the Proposal, with Domini Impact Equity Fund as the lead Proponent.

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 Proponents that if they submit 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 stockholder 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: the Board of Directors of Tesla, Inc. to adopt and publicly disclose a policy on its commitment to respect the rights to freedom of association and collective bargaining in its operations, as reflected in the International Labour Organization Declaration on Fundamental Principles and Rights at Work (“Fundamental Principles”). The policy should:

- Be applicable to Tesla’s direct operations and subsidiaries globally;
- Include a commitment to non-interference when employees exercise their right to form or join trade unions;
- Prohibit any member of management or agent of Tesla from undermining the right to form or join trade unions or pressuring any employee from exercising this right;
- Describe the ongoing due diligence process Tesla will use to identify, prevent, mitigate and account for any violations of these rights, including how it will remedy any misaligned practices.

The Proposal was initially submitted and received by the Company via email on January 11, 2023, with further submissions by the Proponents on January 13, 2023 and January 17, 2023, respectively. A copy of relevant correspondence is attached hereto as Exhibit A. Because the initial submission was received after the Company's deadline for receiving stockholder proposals, the Company did not provide the Proponents 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 stockholders 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 stockholder 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 Proponents knew or should have known this new Deadline. However, as reflected in the email provided in Exhibit A, the first Proponent’s email was not sent until 20 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)

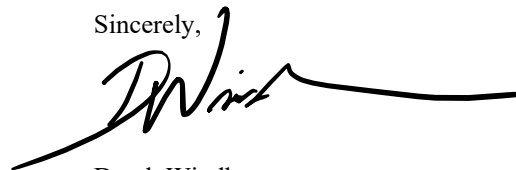
The Company further requests that the Staff waive the 80-day filing requirement as set forth in Rule 14a-8(j) for good cause. Rule 14a-8(j)(1) requires that, if a company “intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days 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 initial Proponent, until January 11, 2023, 77 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,



Derek Windham
Senior Director and Deputy General Counsel

Enclosures

cc: Mary Beth Gallagher, Domini Impact Investments LLC
Sarah Couturier-Tanoh, SHARE
Emma Bayes, SOC Investment Group

EXHIBIT A

From: [Mary Beth Gallagher](#)
To: [ShareholderMail](#)
Subject: Shareholder proposal filing
Date: Wednesday, January 11, 2023 4:01:30 PM
Attachments: [2023 Tesla Domini Filing Letter .pdf](#)
[Tesla Custodial Letter 01.11.23.pdf](#)
[Tesla Freedom of Association, 2023.pdf](#)

Dear Corporate Secretary,

Please find attached a shareholder proposal from Domini Impact Investments for submission for the next shareholder meeting. We may have additional co-filers of the proposal.

Kindly confirm receipt.

Best,

Mary Beth

Mary Beth Gallagher

Director of Engagement
212-217-1027

Domini Impact Investments LLC

180 Maiden Ln, Suite 1302, New York, NY 10038-4925
Main: 212-217-1100 Shareholder Information: 800-582-6757

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January 11, 2023

Via email: shareholdermail@tesla.com

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

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary:

I am writing to you on behalf of the Domini Impact Equity Fund (“the Fund”), a Tesla, Inc. shareholder. The attached shareholder proposal is submitted for inclusion in the next proxy statement in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. The Fund is the lead filer for the Proposal and we may have additional co-filers.

As of January 11, 2023, the Fund beneficially owned, and had beneficially owned continuously for at least one year, shares of Tesla common stock worth at least \$25,000. The Fund will maintain ownership of the required number of shares through the date of the next stockholders’ annual meeting. A letter verifying our ownership of shares from our portfolio’s custodian is enclosed.

A representative of the filers will attend the stockholders' meeting to move the resolution as required by SEC Rules. The Fund welcomes the opportunity to discuss this proposal with the Company. We are available to meet with the Company on January 23rd at 3:00 EST, January 24th at 4:00 EST, January 27th 3:00 EST, or January 30th at 3:00 EST. I can be reached at (212) 217-1027, or at mgallagher@domini.com to schedule a meeting.

Domini.

We strongly believe the attached proposal is in the best interests of our company and its shareholders and welcome the opportunity to discuss the issues raised by the proposal with you.

Sincerely,

A handwritten signature in black ink that reads "Mary Beth Gallagher". The signature is written in a cursive, flowing style.

Mary Beth Gallagher
Director of Engagement
Domini Impact Investments LLC

Encl.

RESOLVED: the Board of Directors of Tesla, Inc. to adopt and publicly disclose a policy on its commitment to respect the rights to freedom of association and collective bargaining in its operations, as reflected in the International Labour Organization Declaration on Fundamental Principles and Rights at Work (“Fundamental Principles”). The policy should:

- Be applicable to Tesla’s direct operations and subsidiaries globally;
- Include a commitment to non-interference when employees exercise their right to form or join trade unions;
- Prohibit any member of management or agent of Tesla from undermining the right to form or join trade unions or pressuring any employee from exercising this right;
- Describe the ongoing due diligence process Tesla will use to identify, prevent, mitigate and account for any violations of these rights, including how it will remedy any misaligned practices.

SUPPORTING STATEMENT: Freedom of association and collective bargaining are fundamental human rights protected by international legal standards including the Fundamental Principles and the United Nations Universal Declaration of Human Rights.

While Tesla’s [Supplier Code of Conduct](#) articulates its expectations for suppliers to respect these fundamental rights, Tesla does not have any corresponding policy commitments for its own operations, nor has it demonstrated how it would effectively operationalize such a commitment.

Tesla has been accused of interfering with workers’ freedom of association rights through tactics of surveillance, intimidation, and retaliation against employees involved in unionization efforts.¹ In 2021, the National Labor Relations Board upheld a 2019 ruling that Tesla illegally fired a worker in retaliation for union organizing, and that the CEO had illegally threatened workers regarding unionization.²

Allegations of poor working conditions have been mounting for years at Tesla. Tesla faces two class action lawsuits from workers and a lawsuit from the California Department of Fair Employment and Housing alleging rampant workplace racial harassment and discrimination.³ Since 2021, at least seven current or former employees have sued Tesla over workplace sexual harassment.⁴ Workers have accused Tesla of wage theft and falsifying safety documents.⁵ Investigations by regulators and the media have found safety problems in Tesla factories.⁶

Such reports represent material reputational, legal, and operational risks to its shareholders. Allegations of interference with unionization efforts, and resulting regulatory enforcement, at other companies further demonstrate the significance of these risks.⁷ The ability of workers to organize, act concertedly, and engage in collective bargaining is an important human right that can be a net positive for companies and investors. Unionization has been shown to support an equitable and inclusive workplace, increase productivity, decrease turnover, improve health and safety, boost innovation, and strengthen responsible business conduct.⁸

The transition to a low-carbon future cannot come at the expense of workers’ fundamental human rights. A public commitment from Tesla to respect its workers’ labor rights would help address concerns about reputational, legal, and operational risk, protecting long-term shareholder value.

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- ¹ <https://www.cnbc.com/2022/06/02/tesla-paid-pr-firm-to-surveil-employees-on-facebook-in-2017-union-push.html>; <https://www.theguardian.com/technology/2018/sep/10/tesla-workers-union-elon-musk>; <https://www.cnbc.com/2017/04/25/workers-involved-in-union-activities-say-tesla-is-illegally-intimidating-them.html>
- ² <https://www.nytimes.com/2021/03/25/business/musk-labor-board.html>
- ³ <https://www.bloomberg.com/news/articles/2022-12-15/tesla-hotbed-of-racism-lawsuit-gains-momentum-in-california?sref=cdlcj118>; <https://arstechnica.com/tech-policy/2022/07/lawsuit-at-tesla-racial-discrimination-is-standard-operating-procedure/>; <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/02/TeslaPR2.10.22.pdf>
- ⁴ <https://www.rollingstone.com/culture/culture-features/tesla-sexual-harassment-lawsuit-investigation-elon-musk-1234590697/>
- ⁵ <https://www.tpr.org/technology-entrepreneurship/2022-11-16/workers-who-built-tesla-gigafactory-in-austin-accuse-employers-of-wage-theft-osha-violations>
- ⁶ <https://www.businessinsider.com/tesla-factory-injuries-incomplete-records-osha-california-2020-3>; <https://www.forbes.com/sites/alanohnsman/2019/03/01/tesla-safety-violations-dwarf-big-us-auto-plants-in-aftermath-of-musks-model-3-push/?sh=11e913e954ce>
- ⁷ <https://www.vice.com/en/article/bvmbpa/starbucks-union-nlrb-cease-and-desist>; <https://www.theguardian.com/technology/2022/nov/28/amazon-staten-island-new-york-retaliation>
- ⁸ <https://www.ipa-involve.com/Handlers/Download.ashx?IDMF=e0209cd6-05d5-414a-ac22-c1d61af403f7>; https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_842807.pdf; https://www.theglobaldeal.com/resources/The%20Business%20Case%20for%20Social%20Dialogue_FINAL.pdf; <https://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>

From: [Sarah Couturier-Tanoh](#)
To: [ShareholderMail](#)
Cc: [Manna Jacob](#); [Tatyana Narchayeva](#)
Subject: Proposal Filing
Date: Friday, January 13, 2023 3:01:42 PM
Attachments: [image001.png](#)
[2023 Tesla Filing Documentation.pdf](#)

Dear,

I am writing to inform you that SHARE is filing a shareholder proposal on behalf of Christine Pawley, a shareholder of Tesla Inc, ahead of the Company's 2023 AGM.

Please, find and acknowledge the attached document to this email which includes (1) a cover letter from the Proponent's representative, (2) and an authorization letter from the Proponent and (3) the shareholder proposal to be included in the 2023 proxy statement.

The proof of ownership will follow under separate cover.

SEC SLB 14L Section F, <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested." I am requesting such acknowledgement.

If you have any question or comment, please contact me at scouturier-tanoh@share.ca or [+1 581 397 5721](tel:+15813975721).

Sincerely,

Sarah Couturier-Tanoh, (She/Her/Hers) LL.M., M.Sc.
Associate Director Corporate Engagement & Advocacy



Vancouver, BC February 14-16

T: +1.581.397.5721 www.share.ca

SHARE's Vancouver office is located on the unceded territory of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and Səl̓ílwətaʔ (Tseil-Waututh) Nations.



Tesla, Inc.
3500 Deer Creek Road
Palo Alto, California 94304
Attention: Legal Department

January 13, 2023

Via email: shareholdermail@tesla.com

Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Corporate Secretary:

Shareholder Association for Research & Education (SHARE) is filing a shareholder proposal on behalf of Christine Pawley (the "Proponent"), a shareholder of Tesla, Inc. (the "Company"), for action at the next annual meeting of the Company. The Proponent submits the enclosed shareholder proposal for inclusion in the Company's 2023 proxy statement, for consideration by shareholders, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

The Proponent has continuously beneficially owned, for at least three (3) years as of the date hereof, at least \$2000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. The Proponent intends to continue to hold such shares through the date of the Company's 2023 annual meeting of shareholders.

A letter from the Proponent authorizing SHARE to act on its behalf is enclosed. A representative of the Proponent will attend the shareholders' meeting to move the resolution as required.

The Proponent and/or Sarah Couturier-Tanoh (on behalf of SHARE) are available to meet with and the co-filers on January 23rd at 3:00 EST, January 24th at 4:00 EST, January 27th 3:00 EST, or January 30th at 3:00 EST, or an alternative time as mutually agreed between 10 and 30 days after the filing.

We are available to discuss this issue and appreciate the opportunity to engage and seek to resolve the Proponent's concerns. While Mary Beth Gallagher, Director of Engagement, representing Domini Impact Investments LLC, is designated to be the main point of contact for future correspondence with the Company related to the shareholder proposal aforementioned, I can be contacted at 581-397-5721 or by email at scouturier-tanoh@share.ca.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah", is written over a horizontal line.

Sarah Couturier-Tanoh
Associate Director, Corporate Engagement & Advocacy

VANCOUVER OFFICE Suite 510, 1155 Robson Street, Vancouver, BC V6E 1B5
TORONTO OFFICE Unit 412, 401 Richmond Street West, Toronto, ON M5V 3A8

T 604 408 2456 F 604 406 2525

share.ca

January 12, 2023

Sarah Couturier-Tanoh
Manager, Corporate Engagement & Advocacy
SHARE
412 – 401 Richmond St. W.
Toronto, ON, M5V 3A7

RE: Authorization to act on behalf of Christine Pawley in matters related to Tesla, Inc. annual shareholder meeting

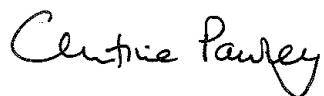
I hereby authorize Sarah Couturier-Tanoh, Associate Director of Corporate Engagement & Advocacy, SHARE, to file a shareholder resolution on my behalf for the Tesla, Inc. 2023 annual shareholder meeting. Specifically, the proposal requests Tesla adopt a comprehensive policy to respect the rights to freedom of association and collective bargaining, and which includes a description of proposed due diligence processes to identify, assess, prevent, and mitigate actual and potential risks to these rights.

I support this proposal and specifically give Sarah Couturier-Tanoh, Associate Director of Corporate Engagement & Advocacy, SHARE full authority to engage with the Company on my behalf regarding the proposal and the underlying issues, and to negotiate a withdrawal of the proposal to the extent the representative views of the company's actions as responsive.

I intend to hold the requisite number of shares required by Rule 14a-8 through the 2023 annual meeting.

I understand that I may be identified on the corporation's proxy statement as the filer of the aforementioned resolution.

Sincerely,

A handwritten signature in cursive script that reads "Christine Pawley".

Christine Pawley
5446 Burley Pl.
PO Box 2348
Sechelt, BC, V0N 3A0

From: [Emma Bayes](#)
To: [ShareholderMail](#)
Subject: Shareholder Proposal for 2023 AGM
Date: Tuesday, January 17, 2023 1:36:52 PM
Attachments: [image001.png](#)
[Tesla Freedom of Association, 2023.pdf](#)
[Tesla Proposal Cover letter 2023.pdf](#)

Hello:

I am writing to submit a shareholder proposal for inclusion in Tesla's 2023 Definitive Proxy Statement. The cover letter and proposal are attached. We are also mailing our submission. The proof of ownership is being sent separately by our broker.

Sincerely,

Emma Bayes (she/her)
Director of ESG Engagement | SOC Investment Group
socinvestmentgroup.com | [@socinvgrp](https://twitter.com/socinvgrp)



January 17, 2023

Via UPS and Email to: shareholdermail@tesla.com

Tesla, Inc.
1 Tesla Road
Austin, Texas 78725
Attention: Legal Department
Re: Shareholder proposal for 2023 Annual Shareholder Meeting

Dear Legal Department,

We are submitting the attached proposal (the "Proposal") pursuant to the Securities and Exchange Commission's Rule 14a-8 to be included in the proxy statement of Tesla, Inc. (the "Company") for its 2023 annual meeting of shareholders. We are co-filing the Proposal with lead filer, the Domini Impact Equity Fund. As indicated by the lead filer in its submission letter, we are available to meet with the Company on January 23rd at 3:00 EST, January 24th at 4:00 EST, January 27th 3:00 EST, or January 30th at 3:00 EST.

We have continuously beneficially owned, for at least 3 years as of the date hereof, at least \$2000 worth of the Company's common stock. Verification of this ownership will be sent under separate cover. We intend to continue to hold such shares through the date of the Company's 2023 annual meeting of shareholders.

The Proposal requests that the Board of Directors of Tesla, Inc. adopt and publicly disclose a policy on its commitment to respect the rights to freedom of association and collective bargaining in its operations, as reflected in the International Labour Organization Declaration on Fundamental Principles and Rights at Work ("Fundamental Principles"). We support this proposal because the Company has been accused of interfering with workers' freedom of association rights through tactics of surveillance, intimidation, and retaliation against employees involved in unionization efforts. Such reports represent material reputational, legal, and operational risks to the Company's shareholders.

We are available to discuss this issue and appreciate the opportunity to engage and seek to resolve these concerns. Please contact Mary Beth Gallagher at (212) 217-1027 or by email at mgallagher@domini.com to schedule a meeting.

Sincerely,



Dieter Waizenegger
Executive Director
SOC Investment Group

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.



March 17, 2023

[Via e-mail at shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Securities and Exchange Commission
Office of the Chief Counsel
Division of Corporation Finance
100 F Street, NE
Washington, DC 20549

Re: Request by Tesla Inc. to omit proposal submitted by Domini Impact Equity Fund and co-filers

Ladies and Gentlemen,

Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, Domini Impact Equity Fund and two co-filers (the “Proponents”) submitted a shareholder proposal (the “Proposal”) to Tesla Inc. (“Tesla” or the “Company”). The Proposal asks Tesla’s board to adopt and disclose a policy on the Company’s commitment to respect the rights of freedom of association and collective bargaining in its operations.

In a letter to the Division dated February 14, 2023 (the “No-Action Request”), Tesla stated that it intends to omit the Proposal from its proxy materials to be distributed in connection with the Company’s 2023 annual meeting of shareholders. Tesla argues that it is entitled to exclude the Proposal in reliance on Rule 14a-8(e)(2), arguing that the Proposal was received after the proposal submission deadline. As discussed more fully below, Tesla has not met its burden of proving its entitlement to exclude the Proposal because the proposal submission deadline on which Tesla relies is unreasonable. Accordingly, the Proponents respectfully request that the Company’s request for relief be denied.

The Proposal

The Proposal states:

RESOLVED: the Board of Directors of Tesla, Inc. to adopt and publicly disclose a policy on its commitment to respect the rights to freedom of association and collective bargaining in its operations, as reflected in the International Labour Organization Declaration on Fundamental Principles and Rights at Work (“Fundamental Principles”). The policy should:

- Be applicable to Tesla’s direct operations and subsidiaries globally;

- Include a commitment to non-interference when employees exercise their right to form or join trade unions;
- Prohibit any member of management or agent of Tesla from undermining the right to form or join trade unions or pressuring any employee from exercising this right;
- Describe the ongoing due diligence process Tesla will use to identify, prevent, mitigate and account for any violations of these rights, including how it will remedy any misaligned practices.

Untimeliness

Tesla's 2022 annual meeting of shareholders ("AGM") was held on August 4, 2022. In the fall of 2022, Tesla's board of directors decided to move up Tesla's 2023 AGM and hold it on May 16, 2023, a change of more than 30 days from the 2022 AGM. Tesla's board set the new shareholder proposal deadline for the 2023 AGM as December 22, 2022. The only place this amended deadline was announced was in Tesla's 10-Q for the quarter ended on September 30, 2022.

Rule 14a-8(e)(2) provides that when an AGM will be held more than 30 days from the previous year's AGM, as was the case here, the shareholder proposal submission deadline is a "reasonable time before the company begins to print and send its proxy materials." The shareholder proposal rule does not define a "reasonable time." Tesla urges the reasonableness argument turns on "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." According to Tesla, which has stated that it intends to send its proxy materials on or around March 29, 2023, it needs the 97 days from the proposal deadline to March 29th in order to evaluate the proposal, submit a request for no-action relief (if appropriate) and await a determination by the Division's Staff.

Far fewer than 97 days are needed for Tesla to assess the Proposal, decide whether to make a no-action request, and, in the event no-action relief is sought, obtain a Staff determination. Large law firms have abundant experience with shareholder proposals; their size and extensive library of previous requests would enable them to analyze a proposal for potential no-action bases and prepare a request in the span of just a few weeks. Assuming three weeks for internal consideration of a proposal and three additional weeks for preparation of a no-action request—should Tesla elect to submit one—Tesla's tasks could be accomplished in six weeks. The Staff could be expected to issue a determination within four to six weeks of receipt of the request, and Tesla could request expedited consideration if its proxy filing debate was approaching. The total number of weeks required for all of these steps to be accomplished would be approximately 10-12 weeks, or 50-60 days.

The example of advance-notice bylaws is instructive on this point. Companies' advance-notice bylaws specify how far in advance a shareholder must provide notice and information about proposals to be presented at the meeting (i.e., not submitted pursuant to Rule 14a-8) and shareholder-backed director nominees. Although such time periods can range up to 120 days before the one-year anniversary of the previous year's AGM, and there is a trend toward longer notice periods, some bylaws require only 30 or 60 days' notice.¹ Some companies, then, view a period much

¹ E.g., https://www.theactivistinvestor.com/The_Activist_Investor/Advance_notice.html

shorter than 140 days, the time period between Tesla's shareholder proposal submission deadline and the 2023 AGM, as sufficient to evaluate the proposed reform or nomination and, in appropriate cases, initiate litigation and obtain injunctive relief.

A reasonable amount of time, within the meaning of the shareholder proposal rule, should reflect the amount of time a company would need to evaluate a proposal, decide whether to seek no-action relief, and prepare a request, together with enough time for the Staff to issue a determination. The 97-day period Tesla gave itself when it advanced its 2023 AGM and set a new proposal submission deadline goes well beyond what's necessary to accomplish those tasks.

* * *

For the reasons set forth above, Tesla has not satisfied its burden of showing that it is entitled to omit the Proposal in reliance on Rule 14a-8(e)(2). The Proponents thus respectfully request that Tesla's request for relief be denied.

The Proponents appreciate the opportunity to be of assistance in this matter. If you have any questions or need additional information, please contact me at (212) 217-1027.

Sincerely,



Mary Beth Gallagher
Director of Engagement
Domini Impact Investments, LLC

cc: Derek Windham
Senior Director and Deputy General Counsel
Derek.windham@tesla.com