



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 March 6, 2023

Dear Derek Windham:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the National Center for Public Policy Research 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: Sarah Rehberg
National Center for Public Policy Research

March 6, 2023

VIA E-Mail to shareholderproposals@sec.gov

United States Securities and Exchange Commission
Division of Corporation Finance
100 F Street, N.E.
Washington, D.C. 20549-7010

RE: Stockholder Proposal Submitted by National Center for Public Policy Research

Ladies and Gentlemen:

Tesla, Inc. (the “Company” or “Tesla”) is submitting this letter to notify the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude a stockholder proposal (the “Proposal”) from its proxy materials to be distributed in connection with its 2023 annual meeting of stockholders (the “Proxy Materials”). National Center for Public Policy Research (the “Proponent”) submitted the Proposal.

The Company respectfully requests that the Staff advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials for the reasons discussed below. Pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting this letter electronically, setting forth our reasons for excluding the Proposal. Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if it submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the Company.

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

Proposal

The Proposal sets forth the following resolution:

RESOLVED

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

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

Basis for Exclusion

The Company respectfully requests that the Staff concur in our view that the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(e)(2) because the Proposal was received by the Company after the deadline for submitting stockholder proposals for inclusion in the Proxy Materials.

Rule and Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

Sincerely,



Derek Windham
Senior Director and Deputy General Counsel

Enclosures

cc: Sarah Rehberg, National Center for Public Policy Research

EXHIBIT A

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

Dear Sir/Madam,

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

Please confirm receipt.

Sincerely,
Sarah

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



February 21, 2023

Via FedEx to

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

Dear Sir/Madam,

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Rehberg". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Sarah Rehberg

cc: Scott Shepard, FEP Director
Enclosures: Shareholder Proposal

EEO Policy Risk Report

RESOLVED

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

SUPPORTING STATEMENT

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

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

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

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

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

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

EXHIBIT B

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

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

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

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

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

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

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

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

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

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

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

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

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

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

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

ITEM 6. EXHIBITS

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



March 17, 2023

Via email: shareholderproposals@sec.gov

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

**RE: Stockholder Proposal of the National Center for Public Policy Research,
Securities Exchange Act of 1934 – Rule 14a-8**

Ladies and Gentlemen,

This correspondence is in response to the letter of Derek Windham on behalf Tesla, Inc. (the “Company”) dated March 6, 2023 and transmitted to us on March 14, requesting that your office (the “Commission” or “Staff”) take no action if the Company omits our shareholder proposal (the “Proposal”) from its 2023 proxy materials for its 2023 annual shareholder meeting.

RESPONSE TO TESLA’S CLAIMS

The Company seeks to exclude our Proposal from its 2023 Proxy Materials pursuant to Rule 14a-8(e)(2) because it claims our Proposal was received after the Company’s proposal submission deadline.

Under Rule 14a-8(g), the Company bears the burden of persuading the Staff that it may omit our Proposal. The Company has failed to meet that burden.

Analysis

Part. I. Rule 14a-8(e)

The Company seeks to prevent shareholders' consideration of our Proposal via Rule 14a-8(e), which permits companies to exclude proposals submitted after a company's proposal submission deadline. Rule 14a-8(e) provides that shareholders "can in most cases find the deadline in last year's proxy statement." The Rule also provides that should the company change the date of its meeting for the current year by more than 30 days from the prior year's meeting and the accompanying shareholder proposal submission deadline, that shareholders can "usually find" the new deadline in one of the company's quarterly reports via Form 10-Q. Furthermore, Rule 14a-5(f) requires a company to, "in a timely manner, inform shareholders of such change, and the new dates ...by including a *notice*, under Item 5, in its earliest possible quarterly report on Form 10-Q...." (emphasis added).

Part II. Our Proposal is non-omissible, as the Company changed its proposal submission deadline without providing proper notice to shareholders.

The Company argues that our Proposal is omissible because we submitted it after its proposal submission deadline. However, the Company changed its deadline for shareholders to submit proposals for its 2023 shareholder meeting after already setting the 2023 submission deadline in its 2022 proxy statement. The deadline to submit shareholder proposals to appear in the Company's 2023 proxy statement as listed in the Company's 2022 proxy statement was February 23, 2023.¹ This is the date upon which we relied to submit our shareholder proposal. However, according to the Company, sometime in the fall of 2022, Tesla's Board of Directors determined that the 2023 annual meeting of stockholders would occur on May 16, 2023, leading the Company to subsequently change its 2023 shareholder proposal submission deadline to December 22, 2022.

Although SEC Rules do not prohibit a company from subsequently changing the dates of its annual shareholder meeting and proposal submission deadline, Rule 14a-8(e) does require companies to provide "notice" to shareholders of such a change. The Company claims to have met this requirement by including the information about its new shareholder proposal submission deadline of December 22 in its October 2022 10-Q report under the "Other Information" section. But unless a shareholder already knew through other means that the Company had changed its shareholder meeting date beyond 30 days from last year's meeting as well as its proposal submission deadline, nothing about how this information appears in the 10-Q serves as actual *notice* to a shareholder that such a change has occurred. Indeed, the Company contends that its Form 10-Q disclosure "clearly notified" shareholders of the new proposal deadline, but couching the

¹ https://ir.tesla.com/flysystem/s3/sec/000156459022024064/tsla-def14a_20220804-gen.pdf

new deadline on page 58 of a 64-page document without any specific designation or header drawing attention to such a significant change in the submission deadline hardly serves as clearly notifying shareholders. To the contrary, such opaquely provided information renders the inclusion of such information meaningless.

And despite the burden being on the Company to demonstrate our Proposal's omissibility, it does not cite to any applicable precedent. In fact, not a single proceeding it included in its letter regarding exclusion based on the submission deadline actually outlines the scenario at hand. Instead, the Company points only to proceedings whereby a shareholder proposal is received by a company after the original deadline – and the only deadline – set forth in a company's previous year's proxy statement. *See Hewlett Packard Enterprise Co.* (avail. Jan. 15, 2021) (the company's 2020 proxy statement set the 2021 submission deadline as Oct. 16, 2020, but the company received the proposal on Oct. 18, 2020); *Comcast Corporation* (avail. Apr. 4, 2019) (the company's 2018 proxy statement set the 2019 submission deadline as Dec. 31, 2018, but the company received the proposal on Jan. 29, 2019); *DTE Energy Co. (Moore)* (avail. Dec. 18, 2018) (the company's 2018 proxy statement set the 2019 submission deadline as Nov. 19, 2018, but the company received the proposal on Nov. 21, 2018); *Verizon Communications, Inc.* (avail. Jan. 4, 2018) (the company's 2017 proxy statement set the 2018 submission deadline as Nov. 20, 2017, but the company received the proposal on Nov. 21, 2017); *WalMart Stores, Inc.* (avail. Feb. 13, 2017) (the company's 2016 proxy statement set the 2017 submission deadline as Dec. 21, 2016, but the company received the proposal on Dec. 27, 2016); *Whole Foods Market, Inc.* (avail. Oct. 30, 2014) (the company's 2014 proxy statement set the 2015 submission deadline as Sept. 12, 2014, but the company received the proposal on Sept. 26, 2014); *Dean Foods Company* (avail. Jan. 27, 2014) (the company's 2013 proxy statement set the 2014 submission deadline as Dec. 13, 2013, but the company received the proposal on Dec. 16, 2013); *PepsiCo, Inc.* (avail. Jan. 3, 2014) (the company's 2013 proxy statement set the 2014 submission deadline as Nov. 22, 2013, but the company received the proposal on Nov. 25, 2013); *General Electric Company* (avail. Jan. 24, 2013) (the company's 2012 proxy statement set the 2013 submission deadline as Nov. 14, 2012, but the company received the proposal on Nov. 15, 2012); *QEP Resources, Inc.* (avail. Jan. 4, 2013) (the company's 2012 proxy statement set the 2013 submission deadline as Dec. 4, 2012, but the company received a revised proposal on Dec. 6, 2012); *General Electric Co.* (avail. Jan. 17, 2012) (the company's 2011 proxy statement set the 2012 submission deadline as Nov. 15, 2011, but the proposal was not submitted until Dec. 22, 2011); and *Johnson & Johnson* (avail. Jan. 13, 2010) (the company's 2009 proxy statement set the 2010 deadline as Nov. 11, 2009, but the company received the proposal on Nov. 12, 2009). This only furthers our point that the standard practice is for companies to include the proposal submission date in its annual proxy statement and that we reasonably relied on that previously posted submission deadline.

As such, not a single proceeding cited by the Company contemplates a scenario whereby a company previously discloses a submission deadline in its proxy statement, moves the submission deadline up by more than two months in a subsequent filing, and then is able to exclude a proposal that was submitted in good faith pursuant to the original submission deadline as set forth in the Company's proxy statement.

But even if the Company were to cite to such precedent, the way in which the Company allegedly provided notice of such a change in submission deadline could hardly be considered to constitute adequate notice. As noted above, the "notice" appeared on page 58 of a 64-page document under the Section "Other Information." Although this Section was technically under "Item 5" of the Company's 10-Q report, it hardly draws attention to the fact that the meeting circumstances or shareholder proposal submission deadline was moved. Unlike the way in which information regarding shareholder proposal submission information appears in the Company's 2022 proxy statement, which is bolded with the clear subheading of, "**What is the deadline to propose actions for consideration at next year's annual meeting of stockholders or to nominate individuals to serve as directors?**" and "**For inclusion in Tesla's proxy materials,**" the information about the revised shareholder proposal submission deadline is listed in one of several non-descript paragraphs under the opaquely referenced "Other Information" section. And, unlike annual proxy statements, which shareholders receive like clockwork each shareholder season from its investment houses, shareholders do not likewise receive regular notifications from investment houses regarding quarterly reports.

Therefore, permitting such significant information as a change in the annual shareholder proposal submission deadline to be so obscurely identified in a quarterly report, especially when it is so clearly marked in the Company's annual proxy statement, hardly serves as actual notice to shareholders. To find otherwise would be to invite companies to play fast and loose with the rules to avoid including shareholder proposals all together. All a company would need to do is change its shareholder meeting date by at least 31 days, bury mention of the new shareholder submission deadline in a quarterly report in what could be paragraphs upon paragraphs of "Other Information," and voila, avoid a significant number of shareholder proposals. Should SEC Staff find our Proposal omissible on these grounds, it would open the floodgates to such evasive conduct from companies and permit them to preclude shareholder proposals, especially if there have been issues recently plaguing a company that makes it want to avoid shareholder proposals in a particular year.

Finding our Proposal omissible on these grounds would also result in the absurd conclusion that rather than being able to rely on the information in a company's annual proxy statement regarding submission of proposals at the next annual meeting, shareholders must comb the SEC and company website for each company at which it holds shares to see whether a company has filed a quarterly report and whether such quarterly report contains information about a changed deadline. Indeed, as noted above, this would be unduly burdensome to shareholders, as notifications about quarterly reports

is not information regularly received by shareholders from investment houses. It would also disproportionately harm small shareholders, who lack the resources of large investment firms to comb through every inch of every page of every report on the off chance a deadline is altered. As such, finding our Proposal omissible would effectively eradicate any semblance of certainty that shareholders have as to when they can reasonably expect shareholder proposals to be due, as reviewing a company's annual proxy statement and relying on that information would no longer be sufficient. Instead, shareholders would be left with an inordinate amount of uncertainty regarding proposal submission deadlines, a result which surely is not contemplated by law or regulations.

Finally, the Company asserts that excluding our Proposal is necessary to enable it to file its proxy statement on time. But by the Company's own admission, it doesn't intend to file its definitive proxy statement until March 29, 2023. While we understand the importance of companies meeting their proxy statement filing obligations, whether intentional or not, the Company slow-walked its response to our Proposal every step of the way. Indeed, we submitted our Proposal on February 21, 2023, two days prior to the Company's original submission deadline of February 23. We did so via both email and FedEx to comport with the Company's proposal submission requirements. Upon submitting our Proposal via email on February 21, we requested the Company confirm receipt of our email. The Company did not respond. On February 24, we followed up again with the Company, this time with proof-of-ownership, and again asked the Company to confirm receipt of our email. Again, the Company did not respond. Then, on March 14, three weeks following our Proposal submission, we received a no-action letter from the Company to the SEC dated March 6. If time was truly of the essence as the Company suggests, then it should have started by acknowledging our Proposal sooner and then promptly notifying us of its no-action request. Instead, the Company waited 10 days after presumably submitting its no-action letter to the SEC to even confirm receipt of our Proposal, let alone inform us of its no-action request. This 10-day delay in notification also constituted a violation of section G.9 of SLB No. 14, which requires the Company to promptly share with us communications with the SEC regarding such a request.² Whether such a delay was intentionally calculated to inhibit our ability to advocate for the inclusion of our Proposal on the Company's ballot we of course cannot say. Nonetheless, to find our Proposal omissible on such grounds would certainly invite companies to do just that. This is particularly true and concerning in light of the SEC Staff's apparent practice, as we saw in *BlackRock, Inc.* (avail. Apr. 4, 2022; *reconsideration denied* May 4, 2022), of prohibiting the inclusion of shareholder proposals once proxy statements go to print.

² <https://www.sec.gov/pdf/cfslb14.pdf>; <https://www.sec.gov/corpfin/staff-legal-bulletin-14d-shareholder-proposals>; <https://www.sec.gov/interps/legal/cfslb14.htm>.

Conclusion

We submitted our Proposal based on the clearly marked proposal submission deadline in the Company's 2022 proxy statement, and the Company failed to properly notify shareholders of the subsequent change in submission deadline.

The Company has failed to meet its burden that it may exclude our Proposal under Rule 14a-8(g). Therefore, based upon the analysis set forth above, we respectfully request that the Staff reject the Company's request for a no-action letter concerning our Proposal.

A copy of this correspondence has been timely provided to the Company. If we can provide additional materials to address any queries the Commission may have with respect to this letter, please do not hesitate to call us at (202) 507-6398 or email us at sshepard@nationalcenter.org and at srehberg@nationalcenter.org.

Sincerely,



Scott Shepard
FEP Director



Sarah Rehberg
National Center for Public Policy Research

cc: Derek Windham, Tesla, Inc. (derek.windham@tesla.com)