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January 14, 2025

VIA STAFF ONLINE FORM

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 Michael McCutcheon

Ladies and Gentlemen:

Tesla, Inc. (the "Company" or "Tesla") is submitting this letter to notify the staff of the Division of Corporation Finance (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") of the Company's intention to exclude a stockholder proposal (the "Proposal") from its proxy materials to be distributed in connection with its 2025 annual meeting of stockholders (the "Proxy Materials"). Michael McCutcheon (the "Proponent") submitted the Proposal.

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

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

The Proposal

The Proposal sets forth the following resolution:

Resolved:

We understand that Elon is a man of many talents, interests, and memes, and we are pro-robot. Still, as shareholders, we'd like reassurance that Tesla's cutting-edge technology serves Earth and humanity first. There are already plenty of ambitious projects on this planet—like scaling solar, perfecting battery storage, and modernizing the electrical grid—that deserve our focus before we take on the solar system.

Shareholders therefore request that the Board of Directors adopt a policy ensuring that Tesla's AI and Robotics initiatives prioritize and primarily support Tesla's mission to advance sustainable energy until life on Earth is stable and sustainable.

Proposed Implementation:

To align with Tesla's mission and shareholder interests, this resolution proposes the following:

- Tesla should establish a clear framework for prioritizing AI, robotics, and other technological initiatives in ways that accelerates the world's transition to sustainable energy, such as optimizing energy systems, scaling renewable energy infrastructure, or enhancing EV production, over ancillary goals.

- Substantial resources (e.g., capital, R&D, or workforce allocation) for projects unrelated to the sustainability of Earth—such as developing personal Optimus bots or having Optimus explore the galaxy—should be deferred until Tesla demonstrates significant and measurable progress in its renewable energy goals. Examples of such milestones could include producing and deploying 1,000 GWh of battery capacity annually, achieving major breakthroughs in solar energy adoption, or reducing global greenhouse gas emissions meaningfully.

- The Board should provide annual updates to shareholders on how Tesla's AI and robotics projects are accelerating its mission, including specific achievements and resource allocations.

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

Bases for Exclusion

The Company respectfully requests that the Staff concur in our view that the Proposal may be properly excluded from the Proxy Materials pursuant to:

- Rule 14a-8(b)(l) and Rule 14a-8(f)(l) of the Exchange Act, as the Proponent has failed to timely provide proof of the requisite stock ownership after receiving notice of such deficiency; and
- Rule 14a-8(i)(7) of the Exchange Act, as the Proposal deals with matters relating to the Company's ordinary business operations.

Background

The Proposal was submitted to the Company by the Proponent via email and UPS on December 5, 2024 (the "Submission Date"). The Proponent's submission was accompanied by an account statement from Vanguard for the period of November 27, 2014 through November 27, 2024 purporting to verify the Proponent's stock ownership (the "First Account Statement"). On December 16, 2024, the Company sent a letter to the Proponent, via email and overnight UPS delivery, requesting a written statement (1) from the record holder of the Proponent's shares verifying that the Proponent had beneficially owned the requisite number of shares of the Tesla common stock continuously for at least the requisite period preceding and including the Submission Date of the Proposal, (2) with respect to the Proponent's availability to meet with the Company regarding the Proposal in accordance with Rule 14a-8(b)(1)(iii) (the "Deficiency Notice"). On December 28, 2024, the Proponent sent an email to the Company with an updated account statement from Vanguard for the period of January 1, 2004 to December 27, 2024 purporting to verify the Proponent's stock ownership and correct the deficiency identified in the Deficiency Notice (the "Second Account Statement") and providing his availability to discuss the Proposal with the Company. In the email, the Proponent noted that Vanguard "would only offer an account balance statement or an activity report."

A copy of the First and Second Account Statements, Deficiency Notice, and related correspondence are attached hereto as Exhibit B.

Rule and Analysis

A. Rule 14a-8(b)(1) and Rule 14a-8(f)(1) – The Proponent Failed to Demonstrate His Eligibility to Submit the Proposal

Rule 14a-8(b)(1)(i) under Exchange Act provides that, in order to be eligible to submit a proposal, a proponent must have continuously held:

- $2,000 in market value of the company's shares entitled to vote on the proposal for at least three years preceding and including the submission date; or
- $15,000 in market value of the company's shares entitled to vote on the proposal for at least two years preceding and including the submission date; or
- $25,000 in market value of the company's shares entitled to vote on the proposal for at least one year preceding and including the submission date (each an "Ownership Requirement," and collectively, the "Ownership Requirements").

If the proponent is not a registered holder, he or she must provide proof of beneficial ownership of the securities. Under Rule 14a-8(f)(1), a company may exclude a stockholder proposal if the proponent fails to provide evidence that it meets the eligibility requirements of Rule 14a-8(b), provided that the company notifies the proponent of the deficiency within 14 calendar days of receiving the proposal and the proponent fails to correct the deficiency within 14 days of receiving such notice.

In addition, an account statement does not satisfy the requirements of Rule 14a-8(b)(l) because it fails to demonstrate continuous ownership of a company's securities for the requisite period. In Section C.1.c (2) of Staff Legal Bulletin No. 14

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(July 13, 2001) ("SLB 14"), the Staff addressed whether periodic investment statements, like account statements, could satisfy the continuous ownership requirements of Rule 14a-8(b):

> **(2) Do a shareholder's monthly, quarterly or other periodic investment statements demonstrate sufficiently continuous ownership of the securities?**
>
> No. A shareholder must submit an affirmative written statement from the record holder of his or her securities that specifically verifies that the shareholder owned the securities *continuously* for a period of one year as of the time of submitting the proposal.

In accordance with these requirements, the Staff consistently has permitted exclusion under Rule 14a-8(f)(1) of stockholder proposals where a proponent has failed to provide timely evidence of eligibility to submit a proposal in response to a timely deficiency notice from the company. See, e.g., *LL Flooring Holdings, Inc.* (Apr. 1, 2024) (permitting exclusion under Rule 14a-8(f)(1) of a proposal where the proponent failed to supply adequate evidence of eligibility to submit a stockholder proposal after receiving the company's timely deficiency notice); *The Home Depot, Inc.* (Mar. 9, 2023) (permitting exclusion under Rule 14a-8(f)(1) of a proposal where the proponent failed to supply any evidence of eligibility to submit a stockholder proposal after receiving the company's timely deficiency notice); *Exxon Mobil Corp.* (Feb. 13, 2017), (permitting exclusion under Rule 14a-8(f)(1) of a proposal where, despite proper notice from the company, the proponent failed to provide adequate proof of ownership of the company's shares.

In this instance, the Proponent has failed to provide adequate evidence of his eligibility to submit the Proposal after receiving a timely deficiency notice from the Company. Specifically, after receiving the Proposal on December 5, 2024 with the First Account Statement that provided insufficient evidence of the Proponent's eligibility to submit the Proposal, the Company sent the Deficiency Notice on December 16, 2024, via email and UPS, timely notifying the Proponent of the defects in the Proposal. The Deficiency Notice explained how the deficiency could be cured, noting the requirements of Rule 14a-8(b) and that the First Account Statement did not "satisfy the requirements for proof of ownership set forth under Rule 14a-8(b) and in SEC staff guidance." In particular, the Deficiency Notice requested a written statement from the record holder of the Proponent's shares "verifying that, [f]or the requisite period preceding and including the Submission Date, you continuously held the requisite amount of Company shares to satisfy at least one of the Ownership Requirements" described in the Deficiency Notice. The Deficiency Notice also requested that the Proponent furnish such written statement to the Company within 14 days of the Proponent's receipt of the Deficiency Notice.

In response to the Deficiency Notice, on December 28, 2024, the Company received an email from the Proponent that attached the Second Account Statement and conceded that the Proponent's submission was ineligible. In this regard, the Proponent wrote that Vanguard said it would "not provide such a letter" and "would only offer an account balance statement or an activity report." Thus, the Proponent failed to provide sufficient evidence of his eligibility to submit the Proposal because he did not provide an affirmative written statement from the record holder of his securities that specifically verified that the Proponent owned the Company's securities continuously for a period of one year as of the time of submitting the Proposal. The Company did not receive any other purported proof of the Proponent's stock ownership.

Accordingly, consistent with the precedent described above, the Proposal may be excluded pursuant to Rule 14a-8(b)(l) and Rule 14a-8(f)(l) as the Proponent has failed to timely provide proof of the requisite stock ownership after receiving timely notice of such deficiency.

B. Rule 14a-8(i)(7) – The Proposal Deals with Matters Relating to the Company's Ordinary Business Operations

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

As discussed below, in this instance, the Proposal implicates both considerations.

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a. The Proposal deals with the Company's ordinary business operations.

The Proposal requests that the Company's Board of Directors (the "Board") adopt a policy prioritizing terrestrial development over extraterrestrial. In essence, it seeks to direct the fundamental business strategy of the Company to focus on "Tesla's stated mission … to accelerate the world's transition to sustainable energy" over "Tesla's AI and robotics initiatives" due to concerns that "their applications could drift into areas that don't accelerate our shared mission." This implicates at least three core ordinary business matters: (i) product research, development and testing; (ii) the products and services offered by the Company; and (iii) the Company's choice of technologies used in its operations.

The Proposal Deals with Tesla's Ordinary Business Operations Related to Product Research, Development and Testing.

In accordance with the principles underlying the ordinary business exclusion, the Staff has permitted exclusion under Rule 14a-8(i)(7) of proposals relating to a company's product research, development and testing. In *PepsiCo, Inc.* (Feb. 28, 2012), for example, the proposal requested that the board adopt certain standards in private and collaborative research and development agreements. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that the proposal related to the company's "product research and development" and that proposals "concerning product research, development and testing are generally excludable under [R]ule 14a-8(i)(7)." See also *Pfizer Inc.* (Feb. 14, 2008) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested the board form a committee to explore certain research programs as relating to "Pfizer's ordinary business operations (i.e., product research development and testing))"; *International Business Machines Corp.* (Jan. 6, 2005) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that requested that the board take steps to offer the company's customers software technology that had greater simplicity because the proposal related to the company's design and development of its software products); *Pfizer Inc.* (Jan. 25, 2004) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking to change the company's research protocols because the proposal related to product research, development and testing).

In this instance, the Proposal concerns ordinary business matters related to Tesla's product research, development and testing. The Proposal is titled "Focusing Tesla's AI and Robotics on Its Mission" and requests that the Board "adopt a policy ensuring that Tesla's AI and Robotics initiatives prioritize and primarily support Tesla's mission to advance sustainable energy until life on Earth is stable and sustainable." The Proposal also provides that "Tesla should establish a clear framework for prioritizing AI, robotics, and other technological initiatives in ways that accelerates the world's transition to sustainable energy, such as optimizing energy systems, scaling renewable energy infrastructure, or enhancing EV production, over ancillary goals" and states that "Substantial resources (e.g., capital, R&D, or workforce allocation) for projects unrelated to the sustainability of Earth—such as developing personal Optimus bots or having Optimus explore the galaxy—should be deferred until Tesla demonstrates significant and measurable progress in its renewable energy goals." Decisions as to how Tesla researches and develops its products and initiatives are fundamental to the Company's day-to-day operations and cannot, as a practical matter, be subject to shareholder oversight. As a result, consistent with the precedent above, the Proposal is excludable under Rule 14a-8(i)(7).

The Proposal Deals with Tesla's Ordinary Business Operations Related to the Products and Services Offered to Customers by the Company.

In addition, the Staff consistently has permitted exclusion under Rule 14a-8(i)(7) of stockholder proposals relating to the particular products and services offered to customers by a company. For example, in *The Coca Cola Co.* (Mar. 6, 2024), a proposal requested that the company adopt a company-wide policy to sell "more healthy products," including an assessment of the healthiness of the company's product portfolio. The Staff concurred with the proposal's exclusion as "relate[d] to ordinary business matters." Similarly, in *Dominion Resources, Inc.* (Feb. 22, 2011), the proposal requested that the company offer certain customers the option of "directly purchasing electricity generated from 100% renewable energy by 2012." The proposal's supporting statement specifically noted that offering renewable energy to customers would be "economically desirable" for the company, enhance the company's "image as a good corporation citizen" and have many other "beneficial effects" on the company. In granting relief to exclude the proposal under Rule 14a-8(i)(7), the Staff concluded that the proposal related to the ordinary business matter of "products and services that the company offers." See also *JPMorgan Chase & Co.* (Mar. 19, 2019) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report examining the "politics, economics and engineering for the construction of a sea-based canal through the Tehuantepec isthmus of Mexico," noting that the proposal "relates to the products and services offered for sale by the Company"); *Mondelēz International, Inc*. (Feb. 23, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal that sought a report on the company's use of nanomaterials); *The TJX Companies, Inc.* (Apr. 16, 2018) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requested the board of directors "develop and disclose a new universal and comprehensive animal welfare policy applying to all of [the company's] stores, merchandise and suppliers."); *Amazon.com, Inc.* (Mar. 11, 2016) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company "issue a report addressing animal cruelty in the supply chain," where the supporting statement requested that the report address a number

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of concerns relating to the company's policies and guidelines regarding animal cruelty associated with products sold on its website, and the Staff noted that "[p]roposals concerning the sale of particular products and services are generally excludable under [R]ule 14a-8(i)(7)"); *Amazon.com, Inc.* (Mar. 27, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company disclose the "reputational and financial risks it may face . . . pertaining to the treatment of animals used to produce products it sells" as relating to "the products and services offered for sale by the company"); *The Walt Disney Co.* (Nov. 23, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company's board of directors approve the release of a specific film on Blu-ray, noting that the proposal "relates to the products and services offered for sale by the company"); *Papa John's International Inc.* (Feb. 13, 2015) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company include more vegan offerings in its restaurants, despite asserting the proposal would promote animal welfare, as related to "the products offered for sale by the company"); *Wal-Mart Stores, Inc.* (Mar. 20, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting board oversight of determinations as to whether selling certain products that endanger public safety and well-being could impair the reputation of the company and/or would be offensive to family and community values, on the basis that the proposal related to "the products and services offered for sale by the company"); *Wells Fargo & Co.* (Jan. 28, 2013, *recon. denied* Mar. 4, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company report on the adequacy of the company's policies in addressing the social and financial impacts of its direct deposit advance lending service, noting that the proposal "relates to the products and services offered for sale by the company" and that "[p]roposals concerning the sale of particular products and services are generally excludable under rule 14a-8(i)(7)"); *FMC Corp.* (Feb. 25, 2011, *recon. denied* Mar. 16, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking, among other things, an immediate moratorium on sales and a withdrawal from the market of a specific pesticide, as well as other certain pesticides, noting that the proposal "relates to the products offered for sale by the company"); *Wal-Mart Stores, Inc.* (Mar. 24, 2006) (permitting exclusion of a proposal that requested that the board of directors issue "a report evaluating [c]ompany policies and procedures for systematically minimizing customers' exposure to toxic substances in products" the company sells under Rule 14a-8(i)(7), noting that the proposal related to the "sale of particular products").

In this matter, the Proposal seeks to direct the Company's specific product development policies regarding artificial intelligence ("AI") and robotics, shifting them towards a particular use case focused on terrestrial development. Specific decisions regarding the business operations and product strategy of the Company, including policies related to the development and sale of particular products by the Company and the allocation of Company resources implicate a myriad of factors that are more appropriate for the Company's Board and management than stockholders. Decisions regarding product safety, competitive strategy, legal and regulatory requirements where products are sold, the availability of sufficient quantity and quality of products to meet demand, and the costs and revenue associated with those sales, are far too complex for consideration by stockholders at an annual meeting and far exceed the scope of stockholder expertise. As a result, consistent with the examples above, the Proposal is excludable under Rule 14a-8(i)(7).

The Proposal Deals with Tesla's Ordinary Business Operations Related to the Choice of Technologies

The Staff also has consistently permitted exclusion of stockholder proposals under Rule 14a-8(i)(7) concerning a company's choice of technologies for use in its operations. See, e.g., *PG&E Corp.* (Mar. 10, 2014) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company make analog electrical meters available instead of "smart" meters); *FirstEnergy Corp.* (Mar. 8, 2013) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on actions the company could take to reduce risk "by diversifying [its] energy resources to include increased energy efficiency and renewable energy resources," noting that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable"); *AT&T Inc.* (Feb. 13, 2012) (permitting exclusion under Rule 14a-8(i)(7) of a proposal seeking, among other things, a report on the company's "efforts to accelerate the development and deployment of new energy efficient set-top boxes," noting that the proposal "relates to the technology used in AT&T's set-top boxes[,]"and "proposals that concern a company's choice of technologies for use in its operations are generally excludable); *CSX Corp.* (Jan. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company develop a kit to convert its fleet to fuel cell power, noting that "[p]roposals that concern a company's choice of technologies for use in its operations are generally excludable under rule 14a-8(i)(7)").

As discussed above, the Proposal requests that the Company prepare a "framework for prioritizing AI, robotics, and other technological initiatives in ways that accelerates the world's transition to sustainable energy," and requests that the Company defer resources from AI and robotics applications in favor of renewable energy products. Thus, the Proposal concerns Tesla's choice of technologies for use in its operations exactly as in the matters where the Staff has concurred that proposals seeking to address companies' choice of technologies are excludable.

Fundamentally, the Proposal seeks to interfere with the Company's ordinary business operations by directing its operational strategy and priorities. As one of the most innovative companies in the world, Tesla is at the forefront of technological

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improvement and achievement, constantly pushing the boundaries of what is possible. The Company's ability to direct the development of new technologies and prioritize enterprise strategy and allocate resources to do so without interference is essential to the operation of the Company's business as a leading electric vehicle and energy company. Decisions regarding these priorities are so fundamental to the Company's day-to-day operations that they cannot, as a practical matter, be subject to stockholder oversight. As a result, the Proposal is precisely the type that companies are permitted to exclude under Rule 14a-8(i)(7).

The Proposal Does Not Focus on a Significant Policy Issue that Transcends the Company's Ordinary Business Operations

While the 1998 Release indicated that proposals that "focus on" significant social policy issues may not be excludable under Rule 14a-8(i)(7), in contrast, proposals with passing references touching upon topics that might raise significant social policy issues—but that do not focus on or have only tangential implications for such issues—are not transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). See 1998 Release; Staff Legal Bulletin No. 14E (Oct. 27, 2009) ("SLB 14E"). The Staff has consistently permitted exclusion of stockholder proposals where the proposal focused on ordinary business matters, even though it also related to a potential significant policy issue. For example, in *JPMorgan Chase & Co.* (Mar. 12, 2010), the proposal requested, among other things, that the company adopt a policy barring the financing of companies engaged in mountain top removal mining. In permitting exclusion under Rule 14a-8(i)(7), the Staff noted that "the proposal addresses matters beyond the environmental impact of [the Company's] project finance decisions, such as [the Company's] decisions to extend credit or provide other financial services to particular types of customers." See also, e.g., *PetSmart, Inc.* (Mar. 24, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of the humane treatment of animals, the proposal covered a broad scope of laws ranging "from serious violations such as animal abuse to violations of administrative matters such as record keeping"); *CIGNA Corp.* (Feb. 23, 2011) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the potential significant policy issue of access to affordable health care, it also asked CIGNA to report on expense management, an ordinary business matter); *Capital One Financial Corp.* (Feb. 3, 2005) (permitting exclusion under Rule 14a-8(i)(7) when, although the proposal addressed the significant policy issue of outsourcing, it also asked the company to disclose information about how it manages its workforce, an ordinary business matter).

We are aware that recently the Staff has declined to permit the exclusion of a limited number of proposals relating to artificial intelligence on the basis that those proposals transcended ordinary business. For example, in *Paramount Global* (Apr. 19, 2024), the Staff declined to permit exclusion under Rule 14a-8(i)(7) for a proposal that requested the company prepare a report on the company's use of artificial intelligence in its business operations and the board's role in overseeing AI usage, including any ethical guidelines surrounding AI usage. The proposal specifically raised issues with the "public's growing concerns and distrust about the indiscriminate use of AI" and noted that the use of AI by companies raises significant policy concerns relating to discrimination, worker's rights, and privacy.

In this instance, however, while the Proposal nominally addresses the concept of AI, the Proposal does not focus on any significant policy issue because it does not raise any ethical considerations with AI. Instead, it's focus is on the business implications of AI in the context of Tesla's overall corporate strategy, stating that that projects unrelated to Earth should be "deferred" in favor of goals consistent with Tesla's overall corporate missions of accelerating the world's transition to sustainable energy. Even if the Proposal were viewed to touch on a potential significant policy issue, the Proposal's overwhelming concern with the Company's technological development and allocation of resources demonstrates that the Proposal's focus is on ordinary business matters. Therefore, even if the Proposal could be viewed as touching upon a significant policy issue, its focus is on ordinary business matters.

As a result, the Proposal is excludable from the Proxy Materials under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

b. The Proposal seeks to micromanage the Company.

The Proposal seeks to micromanage the Company by substituting stockholder decisions for the expertise of management by imposing specific methods for implementing complex policies.

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

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No. 14L (Nov. 3, 2021) ("SLB 14L"), the Staff explained that a proposal can be excluded on the basis of micromanagement based "on the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management."

In this case, the Proposal implicates precisely these issues— it seeks to impose specific methods for implementing complex policies and also requests overly granular detail. The Proposal seeks to direct the Company's business operations and product strategy regarding AI and robotics, going so far as to request the prioritization of certain products related to renewable energy over other products. Similarly, the Proposal requests an annual report to stockholders regarding how certain projects are "accelerating its mission, including specific achievements and resource allocations." In this regard, the Proposal's resolved clause asks the Company to "adopt a policy ensuring that Tesla's AI and Robotics initiatives prioritize and primarily support Tesla's mission to advance sustainable energy until life on Earth is stable and sustainable." The Proposal continues that the Company "should establish a clear framework for prioritizing AI, robotics, and other technological initiatives in ways that accelerates the world's transition to sustainable energy, such as optimizing energy systems, scaling renewable energy infrastructure, or enhancing EV production, over ancillary goals" and "defer[]" projects "unrelated to the sustainability of Earth" until Tesla "demonstrates significant and measurable progress in its renewable energy goals." The Proposal prescribes examples of such milestones as "producing and deploying 1,000 GWh of battery capacity annually, achieving major breakthroughs in solar energy adoption, or reducing global greenhouse gas emissions meaningfully" and then asks for "annual updates" on these "specific achievements and resource allocations."

The Staff has permitted the exclusion of stockholder proposals on the basis of micromanagement when the proposals prescribe specific methods for implementing complex policies. For example, in *Tesla, Inc.* (Mar. 27, 2024), the Staff determined that a proposal requesting that the Company redesign vehicle tires to avoid pollution from harmful chemicals such as 6PPD-Q would micromanage the Company. See also *Amazon.com, Inc.* (Apr. 7, 2023, *recon. denied* Apr. 20, 2023) (permitting exclusion on the basis of micromanagement for a proposal that would have required the company to adopt a particular methodology for scope 3 greenhouse gas emissions measuring and reporting that was inconsistent with the company's existing approach); *JPMorgan Chase & Co.* (Mar. 29, 2024) (permitting exclusion on the basis of micromanagement of a proposal requesting the company disclose "the proportion of sector emissions attributable to clients that are not aligned with a credible Net Zero pathway, whether this proportion of unaligned clients will prevent the Company from meeting its 2030 targets, and the actions it proposes to address any such emissions reduction shortfalls"); *The Goldman Sachs Group, Inc.* (Mar. 4, 2024) (same); *Bank of America Corporation* (Feb. 29, 2024 *recon. denied* Apr. 15, 2024) (same); *Morgan Stanley* (Mar. 29, 2024) (same); *Chubb Ltd*. (Mar. 27, 2023) (permitting exclusion on the basis of micromanagement of a proposal requesting the adoption and disclosure of a policy for the timebound phase out of the company's underwriting risks associated with new fossil fuel exploration and development projects aligned with limiting global temperature rise to 1.5°C); *SeaWorld Entertainment, Inc.* (Apr. 20, 2021) (permitting exclusion on the basis of micromanagement of a proposal that sought a report on specific changes to the company's business to address animal welfare concerns); *RH* (May 11, 2018) (permitting exclusion on the basis of micromanagement of a proposal requesting that the company adopt a policy to phase out products containing down feathers, noting that the proposal "micromanages the Company by seeking to impose specific methods for implementing complex policies"); *JPMorgan Chase & Co.* (Mar. 30, 2018) (permitting exclusion on the basis of micromanagement of a proposal that requested a report on the reputational, financial and climate risks associated with project and corporate lending, underwriting, advising and investing of tar sands projects, noting that the proposal was seeking "to impose specific methods for implementing complex policies"); *SeaWorld Entertainment, Inc.* (Mar. 30, 2017, *recon. denied* Apr. 17, 2017) (permitting exclusion on the basis of micromanagement of a proposal requesting the replacement of live orca exhibits with virtual reality experiences as "seek[ing] to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."); and *Ball Corporation* (Feb. 4, 2016) (permitting exclusion on the basis of micromanagement of a proposal requesting the company issue a report reviewing the company's policies, actions and plans to reduce BPA use in its products and set quantitative targets to phase out the use of BPA in light of reputational and regulatory risks, noting that the proposal relates to the company's product development).

The Staff also has routinely concurred in the exclusion of proposals on the basis of micromanagement where the proposals request overly granular detail. See *Air Products and Chemicals, Inc.* (Nov. 29, 2024) (permitting exclusion on the basis of micromanagement of a proposal that requested a report disclosing the company's policies and procedures governing lobbying and grassroots lobbying communications, among other things); *Delta Air Lines, Inc.* (Apr. 24, 2024) (permitting exclusion on the basis of micromanagement of a proposal that requested a report on "union suppression expenditures," including internal and external expenses); *Paramount Global* (Apr. 19, 2024) (permitting exclusion on the basis of micromanagement of a proposal that requested disclosure of the recipients of corporate charitable contributions of $5,000 or more); *Walmart Inc.* (Apr. 18, 2024) (permitting exclusion on the basis of micromanagement of a proposal that requested a breakdown of greenhouse gas emissions for different categories of products in a manner inconsistent with existing reporting frameworks); *Phillips 66* (Mar. 20, 2023)

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(permitting exclusion on the basis of micromanagement of a proposal that requested an audited report describing the undiscounted expected value to settle obligations for the company's asset retirement obligations with indeterminate settlement dates); *Valero Energy Corporation* (Mar. 20, 2023) (same).

In addition, framing a stockholder proposal as a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. See Exchange Act Release No. 20091 (Aug. 16, 1983) (the "1983 Release"); See also *Johnson Controls, Inc.* (Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business… it may be excluded under [R]ule 14a-8(i)(7)") and *Netflix, Inc.* (Mar. 14, 2016). The Staff also has consistently found that proposals calling for a study or report may be excluded on micromanagement grounds. See, e.g., *PayPal Holdings, Inc.* (Mar. 6, 2018) (permitting exclusion on the basis of micromanagement of a proposal that asked the company to prepare a report on the feasibility of achieving net-zero emissions by 2030); *Devon Energy Corporation* (Mar. 4, 2019) (permitting exclusion on the basis of micromanagement of a proposal that requested the board provide disclosure of short-, medium- and long-term greenhouse gas targets aligned with the Paris Climate Agreement). Moreover, it is well established that a proposal that seeks to micromanage a company's business operations is excludable under Rule 14a-8(i)(7) regardless of whether the proposal raises a "significant social policy issue." See SLB 14E at note 8, citing the 1998 Release for the premise that "a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it seeks to micro-manage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment."

In this case, the report requested by the Proposal would not only direct the Company to adopt a particular method for its approach the AI strategy, but would involve overly granular detail concerning the Company's AI and robotics initiatives in the context of the Company's overall strategy. In this regard, the Proposal is overly prescriptive in its request and seeks to interfere with the Company's fundamental corporate strategies and reporting thereon. Decisions concerning the Company's technological innovations, research and development expenses and allocations, solar energy adoption, and greenhouse gas reduction targets require complex business judgments and distinct assessments by the Company's teams across various functions regarding what the Company considers to be reasonable and achievable and will serve the best interest of its business and serving its clients. How the Company addresses these issues involves exactly the type of day-today operational decisions that the 1998 Release and SLB 14L recognized as appropriate for exclusion under Rule 14a-8(i)(7). By mandating a particular strategy and requesting granular reports to stockholders on the progress of this strategy related disclosure, the Proposal seeks to impose specific methods for implementing complex policies and, therefore, probes too deeply into matters of a complex nature upon which shareholders, as a group, are not in a position to make an informed judgment.

Accordingly, the Proposal may be excluded pursuant to Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

Conclusion

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

Sincerely,

Xuehui Cassie Zhang

Xuehui Cassie Zhang
Associate General Counsel

cc: Michael McCutcheon

EXHIBIT A

Shareholder Proposal: Earth First—Focusing Tesla's AI and Robotics on Its Mission

Whereas

Tesla's stated mission is to accelerate the world's transition to sustainable energy. This bold, admirable goal is why many retail shareholders invested, cheered on electric vehicle rollouts, and reluctantly applauded Cybertruck's retro, inorganic design.

However, recent developments in Tesla's product roadmap have given shareholders pause. Optimus robots are being taught new tricks faster than a Shiba Inu and there's already talk of using the Tesla fleet for inference. As Tesla's AI and robotics initiatives gain momentum, there's growing concern that their applications could drift into areas that don't accelerate our shared mission.

Resolved

We understand that Elon is a man of many talents, interests, and memes, and we are pro-robot. Still, as shareholders, we'd like reassurance that Tesla's cutting-edge technology serves Earth and humanity first. There are already plenty of ambitious projects on this planet—like scaling solar, perfecting battery storage, and modernizing the electrical grid—that deserve our focus, before we take on the solar system.

Shareholders therefore request that the Board of Directors adopt a policy ensuring that Tesla's AI and Robotics initiatives prioritize and primarily support Tesla's mission to advance sustainable energy until life on Earth is stable and sustainable.

Proposed Implementation

To align with Tesla's mission and shareholder interests, this resolution proposes the following:

- Tesla should establish a clear framework for prioritizing AI, robotics, and other technological initiatives in ways that accelerates the world's transition to sustainable energy, such as optimizing energy systems, scaling renewable energy infrastructure, or enhancing EV production, over ancillary goals.
- Substantial resources (e.g., capital, R&D, or workforce allocation) for projects unrelated to the sustainability of Earth—such as developing personal Optimus bots or having Optimus explore the galaxy—should be deferred until Tesla demonstrates significant and measurable progress in its renewable energy goals. *Examples of such milestones could include producing and deploying 1,000 GWh of battery capacity annually, achieving major breakthroughs in solar energy adoption, or reducing global greenhouse gas emissions meaningfully.*

- The Board should provide annual updates to shareholders on how Tesla's AI and robotics projects are accelerating its mission, including specific achievements and resource allocations.

Conclusion

An "Earth First" policy wouldn't clip Tesla's wings; it would focus them. It would ensure that the company's world-changing innovations stay aligned with the sustainable future that inspired us to become stakeholders in the first place.

Let's keep Tesla's mission grounded—on this planet, for now. After all, Earth is our only home, until the SpaceX Starship is ready to go beyond.

Vote FOR this proposal, because Earth deserves our full attention before we leave it for good.