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202-862-8910

* ADMITTED IN DC ONLY

September 28, 2018

VIA FEDEX & EMAIL

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

Re: In the Matter of Tesla Motors, Inc.

Dear Mr. Henseler:

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

BACKGROUND

The staff of the Division of Enforcement (the "Staff") has engaged in settlement discussions with Tesla in connection with the above-captioned matter. As a result of these discussions, Tesla

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

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

Tesla is a publicly traded company with its common stock listed on the New York Stock Exchange and is a reporting company under the Exchange Act.

DISCUSSION

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

¹ Mr. Musk is a “covered person” under Rule 506(d)(1) because (1) as CEO, he is an executive officer of Tesla and (2) he is the beneficial owner of 20% or more of Tesla’s outstanding voting equity securities.

considering waiver requests² and the facts and circumstances set forth below, Tesla requests that the Commission waive any disqualifying effects that the Musk Judgment will have on Tesla under Regulation D.

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

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

2. Tesla Is Not Subject to the Higher Burden to Show Good Cause in This Case

The Division of Corporation Finance's statement on waivers states that it will "consider whether the conduct involved a criminal conviction or scienter based violation, as opposed to a civil or administrative non-scienter based violation. Where there is a criminal conviction or a scienter based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater."³ Notwithstanding the fact that the Complaint alleges scienter-based violations with respect to Mr. Musk, because the misconduct did not involve the offer or sale of securities, Tesla is not subject to the higher burden to show good cause in this case. Further, the Complaint relates only to civil causes of action. The Complaint has charged Tesla only with a non scienter-based violation under Rule 13a-15, and no criminal charges were filed against Tesla or any of its directors, officers, or other employees. As mentioned above, neither Tesla nor Mr. Musk admits nor denies the allegations in the Complaint (other than those relating to the jurisdiction of the Commission, which are admitted).

3. Responsibility for the Conduct

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

The misconduct at issue does not reflect broadly on Tesla. To the contrary, we believe the misconduct at issue involved statements made by Mr. Musk in his personal capacity as a potential bidder, and not on behalf of Tesla. We believe that Tesla addressed the alleged misconduct promptly. After learning of Mr. Musk's August 7, 2018 tweets, Tesla worked with internal counsel, external counsel and Mr. Musk to publish additional information and issued its own statement within

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

³ *Id.*

⁴ *Id.*

days of Mr. Musk's original tweet.⁵ In addition, certain independent members of Tesla's Board of Directors issued a statement on August 8, 2018 to provide additional details regarding Mr. Musk's tweets.

4. Duration of the Conduct

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

5. Enhancements to Governance and Disclosure Controls

The Division of Corporation Finance's statement on waivers states that it would look at (1) "whether there were changes in the control of the party seeking the waiver or if the personnel involved in the misconduct remain employed by the party seeking the waiver" and (2) "whether the party seeking the waiver has taken steps to improve training or has made improvements to its policies, procedures or practices."⁶ Many steps will be taken, pursuant to the resolution in this case, to satisfy both elements.⁷ First, while Mr. Musk remains CEO of Tesla, Mr. Musk will step down as Chairman of Tesla's Board of Directors for a minimum of three years.

Second, Tesla has undertaken, or has agreed to undertake, additional enhancements to its governance and disclosure controls to address the conduct alleged in the Complaint. These enhancements include the creation of a new, permanent committee of Tesla's Board of Directors, consisting of independent directors only. This Committee will provide an additional check on the procedures and processes for overseeing Mr. Musk's Tesla-related public statements. Tesla also has agreed to implement additional oversight of public statements of Mr. Musk. Furthermore, Tesla will add another experienced securities lawyer to its legal department (or designate an experienced securities lawyer from within the Tesla's legal department), whose qualifications are not unacceptable to the staff, to undertake an enhanced review of communications made through Twitter and other social media by the Tesla's senior officers. Tesla also will add two independent directors to its Board of Directors. Tesla believes that these undertakings, directly related to the misconduct at issue, will strengthen Tesla's disclosure controls and procedures, prevent a recurrence of the alleged misconduct and mitigate the possibility of future violations.

6. Failure to Grant Waiver Relief May Cause Hardship to Tesla and Its Shareholders

If Tesla is disqualified from relying on the exemptions under Regulation D, it could have a potential and material adverse impact on third parties, namely innocent Tesla shareholders. Tesla

⁵ See Tesla, Inc., Form 8-K (Aug. 14, 2018), available at <http://ir.tesla.com/static-files/8b0b5a34-d5e4-47bd-b6b6-b58a6677088d>.

⁶ See Division of Corporation Finance, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (Mar. 13, 2015).

⁷ Please see the Consent Judgment with respect to Tesla for a complete discussion of enhancements to governance and disclosure controls that have been or will be implemented by Tesla.

has issued hundreds of millions of dollars of securities under Regulation D and likely will consider relying on Regulation D for further issuances of securities in the future.

Tesla is a fast-growing technology and manufacturing company focused on producing and selling both electric vehicles and energy products. The design, manufacture, sale, installation and/or servicing of automobiles, energy storage products and solar products is a capital intensive business. Tesla needs sufficient capital to fund its ongoing operations and future expansions, for example: ramping vehicle production, continuing research and development projects, establishing sales, delivery and service centers, building and deploying Superchargers, expanding Gigafactory 1, ramping production at Gigafactory 2, building Gigafactory 3 and making the investments in tooling and manufacturing capital required to introduce new vehicles, energy storage products and solar products. Tesla may need to raise capital (or refinance existing indebtedness) for these operations and expansions, including through private securities offerings and/or the use of stock as consideration for strategic acquisitions, in reliance on Regulation D. If Tesla cannot raise additional funds or consummate refinancing through such means in reliance on Regulation D, Tesla's operations and prospects could be negatively affected.

On several occasions, Tesla has relied on Regulation D for its financing activities. In 2010, concurrently with and following its initial public offering, Tesla raised \$50 million from Toyota in a sale of common equity and \$30 million from Panasonic in a sale of common equity, both in reliance on Regulation D. In 2011, Tesla raised \$59 million in reliance on Regulation D through offerings to Elon Musk and a Daimler affiliate. In 2013, Tesla relied again on Regulation D to raise \$55 million from Elon Musk. Tesla also relied on Regulation D several times in offerings conducted prior to its initial public offering in 2010, such as its Series B through Series F financings consummated between February 2005 and August 2009, as indicated in Forms D filed with the Commission and available on EDGAR. In the past, Tesla also has contemplated and discussed additional offerings to sell large amounts of securities to sophisticated investors, which, if realized, likely would have been structured in reliance on Regulation D.

Moving forward, Tesla likely will consider relying on Regulation D to issue securities for financing and other strategic purposes. For example, Tesla may conduct private placements of equity securities with specific investors who seek to take large positions in Tesla's equity, and would likely structure such investments as securities offerings in reliance on Regulation D as Tesla previously had done with Toyota and Panasonic. Tesla has a large amount of convertible securities outstanding, including approximately \$920 million due in March 2019, and it may choose to refinance or otherwise settle such notes using issuances of securities in reliance on Regulation D. Additionally, Tesla may choose to acquire or invest in other companies by offering securities in reliance on Regulation D. As Tesla's needs and operational plans change quickly, the additional flexibility and expediency afforded by Regulation D, including the allowance of general solicitation and advertising and certain preemptive effects on state securities laws, is valuable in allowing Tesla to obtain capital to quickly grow its business. Furthermore, the availability of a safe harbor from registration allows Tesla to take quick and decisive action for the benefit of its shareholders.

Additionally, the Complaint does not allege that Tesla, its officers or directors, or its shareholders received any benefit from the alleged misconduct described therein. The vast majority of Tesla's shares are owned by public shareholders—institutional and retail investors alike who were uninvolved in the misconduct alleged in the SEC's Complaint. Declining to issue a waiver could harm innocent shareholders who did not benefit from the alleged misconduct, which is not consistent with the SEC's mission to protect shareholders.

CONCLUSION

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

Please let us know if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Bradley J. Bondi". The signature is written in a cursive, flowing style.

Bradley J. Bondi



Darren K. DeStefano
+1 703 456 8034
ddestefano@cooley.com

Via Email and Courier

FOIA CONFIDENTIAL TREATMENT REQUEST

CONFIDENTIAL TREATMENT REQUESTED BY
SPACE EXPLORATION TECHNOLOGIES CORP.

September 28, 2018

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

Re: In the Matter of Tesla Motors, Inc.

Dear Mr. Henseler:

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

BACKGROUND

We understand that the staff of the Division of Enforcement (the "**Staff**") has engaged in settlement discussions with Tesla, Inc. ("**Tesla**") in connection with the above-captioned matter. As a result of these discussions, we understand that Tesla submitted the Consent of Defendant Tesla, Inc. (the "**Tesla Consent**") and that Mr. Musk submitted the Consent of Defendant Musk (the "**Musk Consent**"), which the Staff presented to the United States District Court for the Southern District of New York in connection with a complaint (the "**Complaint**") against Tesla related to the investigation captioned above.

The Complaint alleges that on August 7, 2018, Mr. Musk made a series of statements via Twitter regarding his consideration of taking Tesla private, and that Mr. Musk made these statements recklessly because he did not have an adequate basis for his statements. The Complaint also alleges that Tesla did not have sufficient disclosure controls or procedures in place to assess whether the information Mr. Musk disseminated via his Twitter account was accurate, complete, or required to be disclosed in reports Tesla files pursuant to the Exchange Act within the time periods specified in the Commission's rules and forms.

In the Tesla Consent, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, Tesla consented to the entry of a final judgment permanently restraining and enjoining it from violations of Rule 13a-15, promulgated under Section 13A of the Exchange Act [17



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C.F.R. § 240.13a-15], without admitting or denying the assertions contained therein (other than those relating to the jurisdiction of the Commission, which are admitted).

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

DISCUSSION

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

Based on the factors set forth by the Division of Corporation Finance for considering waiver requests² and the facts and circumstances set forth below, SpaceX requests that the Commission waive any disqualifying effects that the Musk Judgment will have on SpaceX under Regulation D.

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

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

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

The Division of Corporation Finance's statement on waivers states that it will "consider whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter based violation. Where there is a criminal conviction or a scienter-based violation involving the offer and sale of securities, the burden on the party seeking the waiver to show good cause that a waiver is justified would be significantly greater."³ Notwithstanding the fact that the Complaint alleges scienter-based violations with respect to Mr. Musk, because the misconduct did not involve the offer or sale of securities, SpaceX is not subject to the higher burden to show good cause in this case. Further, the Complaint relates only to civil causes of action. The Staff has charged Tesla only with a non scienter-based violation under Rule 13a-15, and no criminal charges were filed against Tesla or any of its directors, officers, or other employees. As mentioned above, neither Tesla nor Mr. Musk admits nor denies the allegations in the Complaint (other than those relating to the jurisdiction of the Commission, which are admitted).

¹ Mr. Musk is a "covered person" under Rule 506(d)(1) because (1) as Chairman and CEO, he is an executive officer of SpaceX and (2) he is the beneficial owner of 20% or more of SpaceX's outstanding voting equity securities.

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

³ *Id.*

3. Responsibility for the Conduct: The Alleged Misconduct Did Not Involve SpaceX

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

The misconduct at issue does not relate to SpaceX. Rather, we believe the misconduct involved statements made by Mr. Musk in his personal capacity as a potential bidder regarding a separate company, and not on behalf of SpaceX or with respect to SpaceX equity. As discussed below, notwithstanding that the misconduct at issue related to Mr. Musk, SpaceX has robust procedures in place to ensure compliance with the applicable requirements of Regulation D, and as a result, we do not believe that the misconduct at issue reflects broadly on SpaceX.

4. Duration of the Conduct

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

5. SpaceX's Processes and Procedures to Ensure Compliance with Regulation D

As mentioned above, the misconduct at issue did not involve SpaceX. As a result, SpaceX has not taken any remedial actions in response. However, as discussed below, SpaceX has successfully raised more than \$2 billion in securities offerings pursuant to Regulation D. In connection with these offerings SpaceX has complied with the applicable requirements of Regulation D and has in place appropriate and customary processes and procedures to ensure compliance with Regulation D. In this regard, SpaceX has utilized sophisticated corporate and securities counsel to guide it with respect to legal and regulatory compliance in connection with past Regulation D financings and intends to continue to do so for any future Regulation D offerings. In connection with past offerings, SpaceX has taken customary and appropriate steps to ensure compliance with the applicable requirements of Regulation D, including without limitation the restrictions relating to the use of general solicitation and general advertising and applicable disclosure requirements, and SpaceX intends to continue to do so in any future Regulation D offerings. Mr. Musk has historically played a limited role in SpaceX's Regulation D offerings, and has not participated in the diligence efforts regarding the accredited investor status of investors in those offerings. We expect that his roles in any future Regulation D offerings would be similarly limited.

6. Failure to Grant Waiver Relief May Cause Hardship to SpaceX and Its Shareholders

If SpaceX is disqualified from relying on the exemptions under Regulation D, it could have a potential and material adverse impact on third parties, namely innocent SpaceX stakeholders. SpaceX has issued over \$2 billion of securities under Regulation D and intends to rely on Regulation D for further issuances of securities in the future.

SpaceX is a fast-growing technology and manufacturing company focused on manufacturing launch vehicles and spacecraft and selling related services. The design and manufacture of launch vehicles and spacecraft is extremely capital intensive. SpaceX needs sufficient capital to fund its ongoing operations and future expansions, for example: development of its BFR launch vehicle and Crew Dragon spacecraft, continuing research and development projects, and making investments in tooling and manufacturing.

⁴ *Id.*



Timothy B. Henseler, Esq.
September 28, 2018
Page Four

SpaceX may need to raise capital for these operations and expansions, primarily through private securities offerings and/or the use of stock as consideration for strategic acquisitions, in reliance on Regulation D. If SpaceX cannot raise additional funds through such means in reliance on Regulation D, SpaceX's operations and prospects would be negatively affected.

SpaceX has almost exclusively relied on Regulation D for its financing activities to date. Since its formation in 2002, SpaceX has successfully raised more than \$2 billion in eleven separate Regulation D offerings, as indicated in Forms D filed with the Commission and available on EDGAR, with the most recent such offering effected in April 2018. In the future, SpaceX expects that it is likely it will require continued reliance on Regulation D to issue securities for financing and other strategic purposes. As SpaceX's needs and operational plans change quickly, the flexibility and expediency afforded by Regulation D, including the preemptive effects on state securities laws, is valuable in allowing SpaceX to obtain capital to quickly grow its business. Furthermore, the availability of a safe harbor from registration allows SpaceX to take quick and decisive action for the benefit of its shareholders.

Additionally, the Complaint does not allege that SpaceX, its officers or directors, or its shareholders received any benefit from the alleged misconduct described therein. Although Mr. Musk is a director, executive officer and the majority stockholder of SpaceX, declining to issue a waiver could harm innocent shareholders of SpaceX who did not benefit from the alleged misconduct, which is not consistent with the SEC's mission to protect shareholders.

CONCLUSION

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

Please contact the undersigned at (703) 456-8034 or Brian F. Leaf at (703) 456-8053 if you have any questions.

CONFIDENTIAL TREATMENT REQUEST

SpaceX respectfully requests that this letter be afforded confidential treatment under the Freedom of Information Act ("FOIA") pursuant to 17 C.F.R. § 200.83. We have marked this letter with the legend "FOIA Confidential Treatment Request" in accordance with 17 C.F.R. § 200.83(c)(2). In the event a FOIA Request is received pursuant to which this letter could be deemed responsive, SpaceX requests, in accordance with 17 C.F.R. § 200.83(d), that prompt notice be provided to undersigned counsel along with a reasonable opportunity to respond prior to any determination by the Commission that any materials will be produced. SpaceX's request for confidentiality under FOIA is without prejudice to any other rights, objections, or arguments they may have with respect to the confidential nature, and any production to third parties, of this letter. If the SEC does not afford confidential treatment, SpaceX respectfully requests the opportunity to withdraw, modify, or redact this letter before its release.

Cooley

Timothy B. Henseler, Esq.
September 28, 2018
Page Five

Please send any such notices by facsimile transmission and letter to:

Darren K. DeStefano
Cooley LLP
One Freedom Square, Reston Town Center
11951 Freedom Drive
Reston, VA 20190-5640
Fax: (703) 456-8100

This request for confidential treatment is not required to be disclosed in registration statements, periodic reports or other documents required to be filed with the Commission.

Please note that the submission of this request for confidential treatment is without prejudice to, and with full reservation of, all privileges, rights and protections, including the attorney-client privilege and work product immunity, that may pertain to this request.

Please acknowledge receipt of this letter by file-stamping the enclosed copy of this letter and returning it to the undersigned in the envelope provided. If you have any questions or comments regarding the enclosed, please telephone me at the number listed above.

* * *

Sincerely,

COOLEY LLP



Darren K. DeStefano

cc: FOIA Officer
Michael Sagan, Space Exploration Technologies Corp.
Brian F. Leaf, Cooley LLP

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September 28, 2018

VIA FEDEX & EMAIL

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

Re: In the Matter of Tesla Motors, Inc.

Dear Mr. Henseler:

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

BACKGROUND

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

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

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

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

DISCUSSION

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

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

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

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

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

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

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

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

3. Responsibility for the Conduct

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

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

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

4. Duration of the Conduct

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

³ *Id.*

⁴ *Id.*

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Please let us know if you have any questions.

Sincerely,

Hughes Hubbard & Reed LLP

Roel C. Campos

cc: FOIA Officer

* * *

Neuralink respectfully requests that this letter be afforded confidential treatment under the Freedom of Information Act ("FOIA") pursuant to 17 C.F.R. § 200.83. We have marked this letter with the legend "Confidential Treatment Request Under Freedom of Information Act" in accordance with 17 C.F.R. § 200.83(c)(2). In the event a FOIA Request is received pursuant to which this letter could be deemed responsive, Neuralink requests, in accordance with 17 C.F.R. § 200.83(d), that prompt notice be provided to undersigned counsel along with a reasonable opportunity to respond prior to any determination by the Commission that any materials will be produced. Neuralink's request for confidentiality under FOIA is without prejudice to any other rights, objections, or arguments they may have with respect to the confidential nature, and any production to third parties, of this letter. If the SEC does not afford confidential treatment, Neuralink respectfully requests the opportunity to withdraw, modify, or redact this letter before its release.

September 28, 2018

VIA FEDEX & EMAIL

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

Re: In the Matter of Tesla Motors, Inc.

Dear Mr. Henseler:

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

BACKGROUND

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

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

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

TBC is a private Delaware Corporation registered at 216 Park Rd, Burlingame CA, 94010, in which Mr. Musk has a majority ownership stake. Outside of a shared mutual investor (Mr. Musk), TBC and Tesla are not in related industries, and share only a *de minimis* amount of overlap in day-to-day operations, infrastructure, assets, or employees.

DISCUSSION

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

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

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

below, TBC requests that the Commission waive any disqualifying effects that the Musk Judgment will have on TBC under Regulation D.

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

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

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

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

3. Responsibility for the Conduct

With respect to who was responsible for the misconduct, the Division of Corporation Finance has stated that it would also consider, among other factors, whether (1) "the misconduct reflects more broadly on the entity as a whole" or (2) "the tone at the top of the party seeking the waiver condoned, encouraged or did not address the misconduct, or actions or omissions by the party seeking the waiver, or any of its affiliates, obstructed the regulatory or law enforcement investigation."⁴ As referenced above, the alleged misconduct at issue does not relate to TBC. Although the alleged misconduct did involve Mr. Musk, as discussed below, TBC has robust procedures designed to ensure compliance with Regulation D. Accordingly, we do not believe that the alleged misconduct reflects more broadly on TBC as a whole.

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

4. Duration of the Conduct

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

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

³ *Id.*

⁴ *Id.*

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

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

TBC is a privately funded, early-stage company with no near-term plans to hold a public offering of securities. If TBC is disqualified from relying on the exemptions under Regulation D, it would have a material adverse impact on third parties, namely innocent TBC shareholders and employees. TBC has issued tens of millions of dollars of securities under Rule 506 of Regulation D and likely would rely on Regulation D for further issuances of securities in the future.

TBC is a fast-growing infrastructure and transportation company focused on developing cost effective, and fast tunneling technology, along with electric mass transportation systems to alleviate the massive problem of traffic and congestion within cities. The research, development, design, manufacture, testing, and construction of tunnels and mass transit systems is a capital intensive business. TBC needs sufficient capital to fund its ongoing operations and future expansions, for example: continued development and improvement of Tunnel Boring Machines ("TBMs") and electric skates, the construction of mass transit tunnels including publicly announced projects in Chicago, Los Angeles, and Washington D.C.. TBC may need to raise capital for these operations and expansions, and given the development stage of the company, it is most likely that such financing will be through private securities offerings in reliance on Rule 506 of Regulation D. If TBC cannot raise additional funds or consummate refinancing through such means in reliance on Regulation D, TBC's operations and prospects could be severely negatively affected.

⁵ *Id.*

TBC has previously relied on Rule 506 of Regulation D for its financing activities. In 2018 TBC raised \$112,520,000 (the entirety of TBC's capital raised to date) from Mr. Musk and various other third party investors as indicated in the Form D filed with the Commission and available on EDGAR.

As a private company with no imminent plans to file for a public equity offering, TBC anticipates that it likely would, in the future, rely on Rule 506 of Regulation D to issue securities for financing of ongoing operations, research, development, and other strategic purposes. Additionally, TBC may choose to acquire or invest in other companies by offering securities in reliance on Regulation D. As TBC's needs and operational plans change quickly, the additional flexibility and expediency afforded by Regulation D, including the allowance of general solicitation and advertising and certain preemptive effects on state securities laws, is valuable in allowing TBC to obtain capital to quickly grow its business. Furthermore, the availability of a safe harbor from registration allows TBC to take quick and decisive action for the benefit of its shareholders. A decision not to issue a waiver could harm TBC's prospects as a company, and hence harm its shareholders, officers, directors, and employees.

CONCLUSION

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

Please let us know if you have any questions.

Sincerely,

Hughes Hubbard & Reed LLP

Roel C. Campos

cc: FOIA Officer

* * *

TBC respectfully requests that this letter be afforded confidential treatment under the Freedom of Information Act ("FOIA") pursuant to 17 C.F.R. § 200.83. We have marked this letter with the legend "Confidential Treatment Request Under Freedom of Information Act" in accordance with 17 C.F.R. § 200.83(c)(2). In the event a FOIA Request is received pursuant to which this letter could be deemed responsive, TBC requests, in accordance with 17 C.F.R. § 200.83(d), that prompt notice be provided to undersigned counsel along with a reasonable opportunity to respond prior to any determination by the Commission that any materials will be produced. TBC's request for confidentiality under FOIA is without prejudice to any other rights, objections, or arguments they may have with respect to the confidential nature, and any production to third parties, of this letter. If the SEC does not afford confidential treatment, TBC respectfully requests the opportunity to withdraw, modify, or redact this letter before its release.