Investment Stewardship Group

Voting Bulletin: Tesla, Inc.

As part of our fiduciary duty, BlackRock's Investment Stewardship team (BIS) advocates for sound corporate governance and business practices that are aligned with long-term sustainable financial performance. This objective underpins all our engagements and votes at company meetings.

We engage company leadership on key topics emphasizing governance practices including management of environmental and social factors that potentially have material economic, operational or reputational ramifications for the company.

We determine our engagement priorities based on our observation of market developments and emerging governance themes and evolve them year over year as necessary. The BIS team's key engagement priorities include:

1. Board quality
2. Environmental risks and opportunities
3. Corporate strategy and capital allocation
4. Compensation that promotes long-termism
5. Human capital management

We are committed to enhancing the transparency of our stewardship practices. Where we believe it will help to understand our voting decisions at shareholder meetings, we will publish a Voting Bulletin explaining the rationale for how we have voted, and (where relevant) provide information around our engagement with the issuer

Company	**Tesla, Inc.**
Market	United States
Meeting Date	7th July 2020; postponed to 22nd September 2020
Key Resolutions[1]	Multiple
Board Recommendation	The company recommends shareholders vote FOR all management proposals and AGAINST all four shareholder proposals.
BlackRock Vote	BIS voted AGAINST Director Denholm (Item 1.2). BIS supported management on all other management proposals. Regarding the shareholder proposals, BIS voted in FAVOR of the shareholder proposal on the simple majority vote (Item 5) and voted AGAINST the other three shareholder proposals (Items 4, 6, 7).

[1] Meeting information can be accessed at: https://ir.tesla.com/news-releases/news-release-details/tesla-announces-updates-2020-annual-meeting-stockholders-and

Overview

Tesla, Inc. (Tesla) engages in the design, development, manufacture, and sale of fully electric vehicles, energy generation and storage systems. It also produces and provides electric vehicle service centers and supercharger stations, as well as developing self-driving capability. The company operates through two segments: Automotive and Energy Generation and Storage.

BIS regularly reviews Tesla's governance structure and risk profile. In prior engagements with the company's board and management, we have discussed a range of material issues driving long-term shareholder value, including enhancing the company's governance structure and board independence, particularly adopting a proxy access provision and simple majority voting standard. In 2018, BlackRock supported a shareholder proposal requiring an independent board chairman as we believed investors would benefit from greater independent leadership in the boardroom.

During our most recent engagement with Tesla, we discussed the shareholder proposals on the agenda at the 2020 annual shareholder meeting, as well as other pertinent issues including board independence and Tesla's equity pledging policy. For the 2019-2020 year in review Elon Musk, CEO and member of the board, is the insurer of the directors' and officers' liability insurance policy. Mr. Musk does not have unilateral discretion regarding the policy, and it is intended to replace an ordinary course insurance policy. The board is exploring various insurance alternatives but has also expressed an openness to continue with the current arrangement. As a result, BIS is concerned this practice may compromise the board's independence.

We are also concerned with Mr. Musk's use of social media and communications about company events. In 2018, Mr. Musk and Tesla settled with the SEC following securities fraud charges related to Mr. Musk's tweets regarding Tesla's stock price potential. The settlements required that Mr. Musk step down as Tesla's chairman, be replaced by an independent chairman and be ineligible for re-election for three years. Tesla was also required to appoint two new independent directors to its board. The company agreed to establish a new committee of independent directors and put in place additional controls and procedures to monitor and manage Mr. Musk's communications. However, on June 22, 2020, Tesla disclosed Mr. Musk's June 19 and 21 Twitter posts on his personal account noting the postponement of the company's annual meeting (originally scheduled for July 7, 2020) and likely convergence with the company's "Battery Day" event. In light of these recent public statements, BlackRock continues to have reservations about Tesla's ability to adhere to governance controls.

Rationale for BlackRock's Vote

Item 1.2: Elect Director Robyn Denholm (AGAINST)

We are concerned that the company's pledging policy is not sufficiently robust, particularly given the significant number of shares committed by Mr. Musk. The company's stock pledging policy states that directors and executive officers may pledge or use their company stock (exclusive of options, warrants, restricted stock units or other rights to purchase stock) as collateral for loans and investments, provided that the maximum aggregate loan or investment amount collateralized by such pledged stock does not exceed 25% of the total value of the pledged stock. Tesla's management monitors compliance with this policy by reviewing and, if necessary, reporting to the board or its committees the extent to which any officer or director has pledged shares of company stock. Since pledging represents a margin loan secured by company stock, theoretically large price declines in the stock could automatically trigger margin calls and ultimately result in significant selling pressure on the stock.

According to the proxy statement, Mr. Musk has approximately 18.5 million shares pledged as collateral (~46% of the shares owned by Mr. Musk) to secure certain personal indebtedness. Because the amounts drawn from the credit line are not disclosed, external parties are not able to determine compliance with the company's policy; this is why the board confirms with each individual that they are in compliance with the policy. While the company assured us that Mr. Musk is following the stock pledging policy, the quantum pledged as collateral is considerable. Given Mr. Musk's social media communications, the significant percentage of equity pledged by Mr. Musk and the unique structure of the directors' and officers' liability insurance policy, we remain concerned that there is insufficient board oversight of management. As a result, BlackRock voted against Ms. Denholm, the Board Chair.

Item 5: Adopt Simple Majority Vote (FOR)

BlackRock supported this shareholder proposal in 2019. This year, the proposal is requesting amendments to the company's charter and bylaws.[2] Upon analysis, we decided to support the proposal again because a simple majority voting requirement could provide additional protections to minority investors. While Tesla is not a controlled company and does not have a dual class structure, there are other corporate governance concerns. Tesla shareholders do not elect each director annually; action cannot be taken by written consent; shareholders cannot call special meetings and there is no right to proxy access to nominate directors. We believe that voting in favor of the proposal is in the best interest of our clients as shareholders.

As discussed in our US proxy voting guidelines, we generally favor a simple majority voting requirement to pass proposals. Therefore, we will support the reduction or the elimination of supermajority voting requirements to the extent that we determine shareholders' ability to protect their economic interests is improved.

Additional ballot items

In addition to the routine agenda items, Tesla received three other shareholder proposals on paid advertising, employee arbitration, and human rights. Based on our analysis of the company's proxy materials, existing disclosures, and our engagement, BlackRock voted against the remaining three proposals, as explained below.

Item 4: Report on Paid Advertising (AGAINST)

BlackRock determined that the management team is best placed to determine the company's marketing strategy. We also view the shareholder proposal as overly prescriptive and believe it verges on micromanagement.

Item 6: Report on Employee Arbitration (AGAINST)

The shareholder proposal requests a report on the impact of the use of mandatory arbitration on Tesla's employees and workplace culture. However, Tesla's standard arbitration provision specifically states that the parties are entitled to all remedies available in a court of law.[3] An employee is free to publicize the results of an arbitration, other than any trade secrets or proprietary business information. Arbitration provisions do not impede employees' freedom to first file lawsuits in court, and arbitration proceedings are private only if such court rules that the underlying claims are subject to arbitration. Thus, we determined that the requested report would be redundant.

Item 7: Additional Reporting on Human Rights (AGAINST)

We do not currently have concerns regarding the company's reporting on human rights because of adequate existing disclosures: Tesla's Impact Report published in 2019 details its Environmental, Health and Safety program, specifically the various health and safety training programs, initiatives, controls and remediations that they have implemented within the company.[4] Tesla's Supplier Code of Conduct and Human Rights and Conflict

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[2] See Tesla's 2020 proxy for more information: https://ir.tesla.com/node/20976/html

[3] See previous footnote

[4] See Tesla's 2019 Impact Report: https://www.tesla.com/impact-report/2019

Minerals Policy address the company's policies regarding human rights within the company's supply chain.[5] Tesla also files a Conflict Minerals Report to the SEC on an annual basis that specifies its processes for identifying and addressing risks relating to conflict minerals and performing related due diligence in its supply chain.

[5] See Tesla's Supplier Code of Conduct: https://www.tesla.com/sites/default/files/about/legal/tesla-supplier-code-of-conduct.pdf and Conflict Minerals Report: https://www.tesla.com/sites/default/files/about/legal/2018-conflict-minerals-report.pdf