

December 18, 2022

Dr. Robyn Denholm
Chairman of the Board
Tesla, Inc.
1 Tesla Road
Austin, TX 78725

Dear Dr. Denholm:

State and federal laws impose on the officers and directors of every company fiduciary duties to the company, its workers and its shareholders, and a requirement that they provide disclosures about conflicts of interest and other actions by their executives that may impact these stakeholders.¹ One key element of those duties is that every Board of Directors of a company with multiple shareholders – especially publicly traded companies – is responsible for ensuring that a controlling shareholder (especially one who is also a Chief Executive Officer, or CEO) does not treat the company as a private plaything.

I am writing regarding concerns that Tesla's Board of Directors has failed to meet this legal duty with regard to the actions of Tesla's Chief Executive Officer, Elon Musk,² in the aftermath of his purchase of Twitter. I have a series of questions about how the Tesla Board is dealing with conflicts of interest, misappropriation of corporate assets, and other actions by Mr. Musk that appear not to be in the best interests of Tesla and its shareholders, so that I can assess whether current law is adequate in circumstances such as these.

In April 2022, Tesla's CEO, Mr. Musk, announced his intention to purchase Twitter; he completed the deal in October and also became Twitter's CEO.³ According to press reports, "[t]o finance his Twitter deal, [Mr. Musk] loaded the company with \$13 billion in debt, putting it on the hook to pay more than \$1 billion annually in interest alone" – more than the company's cash flow in 2021.⁴

¹ In *Re The Goldman Sachs Group, Inc. Shareholder Litigation*, Civil Action No. 5215-VCG, Court of Chancery of Delaware (Oct. 12, 2011) ("Delaware case law set this boundary by requiring corporate officers and directors to act as faithful fiduciaries to the corporation and its stockholders."); *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 179 (1986) ("directors owe fiduciary duties of care and loyalty to the corporation and its shareholders")

² Tesla, "Corporate Governance: Elon Musk," <https://ir.tesla.com/corporate/elon-musk>.

³ Reuters, "Explainer: How Elon Musk funded the \$44 billion Twitter deal," Hyunjoo Jin and Chibuike Oguh, October 28, 2022, <https://www.reuters.com/markets/us/how-will-elon-musk-pay-twitter-2022-10-07/>; CNBC, "Elon Musk now in charge of Twitter, CEO and CFO have left, sources say," David Faber and Jonathan Vanian, October 27, 2022, <https://www.cnbc.com/2022/10/27/elon-musk-now-in-charge-of-twitter-ceo-and-cfo-have-left-sources-say.html>.

This debt-ridden financial structure resulted in immediate problems for Twitter. Thousands of employees were laid off,⁵ including key compliance, privacy and security executives.⁶ This, in turn, has led to concerns from regulators.⁷ Advertisers have fled the platform,⁸ and, just two weeks after he purchased Twitter, Mr. Musk was already warning of potential bankruptcy.⁹ Changes that Mr. Musk made to Twitter’s account moderation policy resulted in an “unprecedented” increase in hate speech on the platform.¹⁰ Meanwhile, according to analysts, the debt-financed takeover “essentially... take[s] all the financial resources of the company and just pour[s] it into servicing the debt.”¹¹

However harmful these actions may be to Twitter’s users and to the nation’s discourse, they are not the concern of the Tesla board. Your legal responsibility is – as Tesla’s own public commitments state -- “to serve as a prudent fiduciary for shareholders and to oversee the management of [Tesla’s] business.”¹² That responsibility includes ensuring that Mr. Musk is an effective CEO and that he fulfills his legal obligation to act in the best interests of Tesla and all of its shareholders, not just himself. The fact that Mr. Musk was, until recently, the world’s richest man does not absolve him of those legal responsibilities or provide assurances that he will meet them.

The basic structure of Mr. Musk’s deal to buy Twitter, and his actions since becoming CEO, raise a number of concerns.

⁴ New York Times, “Elon Musk, Under Financial Pressure, Pushes to Make Money From Twitter,” Mike Isaac and Ryan Mac, November 3, 2022, <https://www.nytimes.com/2022/11/03/technology/elon-musk-twitter-money-finances.html>; Reuters, “Explainer: How Elon Musk funded the \$44 billion Twitter deal,” Hyunjoo Jin and Chibuike Oguh, October 28, 2022, <https://www.reuters.com/markets/us/how-will-elon-musk-pay-twitter-2022-10-07/>.

⁵ CNN Business, “Elon Musk’s Twitter lays off employees across the company,” Donie O’Sullivan and Clare Duffy, November 9, 2022, <https://www.cnn.com/2022/11/03/tech/twitter-layoffs/index.html#:~:text=Twitter%20on%20Friday%20laid%20off,acquired%20by%20billionaire%20Elon%20Musk>.

⁶ TechCrunch, “Twitter chief information security officer Lea Kissner departs,” Zack Whittaker and Ingrid Lunden, November 10, 2022, <https://techcrunch.com/2022/11/10/twitter-lea-kissner-departs/>; Cybersecurity Dive, “Twitter, amid security and compliance officer exodus, could run afoul of FTC rules,” Matt Kapko, November 10, 2022, <https://www.cybersecuritydive.com/news/twitter-ciso-resigns/636315/>.

⁷ TechCrunch, “Twitter layoffs trigger oversight risk warning from Brussels,” Natasha Lomas, November 24, 2022, <https://techcrunch.com/2022/11/24/elon-musk-twitter-layoffs-eu-dsa-vlop-warning/>; Politico, “Musk’s Twitter loses key executives, triggers sharp FTC warning,” Rebecca Kern and Alfred Ng, November 10, 2022, <https://www.politico.com/news/2022/11/10/fake-account-chaos-engulfs-musks-twitter-00066217>.

⁸ NPR, “Twitter has lost 50 of its top 100 advertisers since Elon Musk took over, report says,” Halisia Hubbard, November 25, 2022, <https://www.npr.org/2022/11/25/1139180002/twitter-loses-50-top-advertisers-elon-musk#:~:text=via%20Getty%20Images-,Half%20of%20Twitter's%20top%20100%20advertisers%20appear%20to%20no%20longer,%204750%20million%20just%20in%202022>.

⁹ Reuters, “Musk warns of Twitter bankruptcy as more senior executives quit,” Katie Paul and Paresh Dave, November 11, 2022, <https://www.reuters.com/technology/twitter-information-security-chief-kissner-decides-leave-2022-11-10/>.

¹⁰ New York Times, “Problematic content and formerly barred accounts have increased sharply in the short time since Elon Musk took over, researchers,” Sheera Frenkel and Kate Conger, December 2, 2022, <https://www.nytimes.com/2022/12/02/technology/twitter-hate-speech.html>.

¹¹ New York Times, “Can Elon Musk Make the Math Work on Owning Twitter? It’s Dickey,” Lauren Hirsch, October 30, 2022, <https://www.nytimes.com/2022/10/30/technology/elon-musk-twitter-debt.html>.

¹² Tesla, “Corporate Governance,” <https://ir.tesla.com/corporate>.

Misappropriation of Tesla Resources

The first weeks of Mr. Musk's Twitter ownership have raised questions about possible violations of securities or other laws, including whether Mr. Musk is funneling Tesla resources into Twitter, a potentially "improper diversion of resources that might impact Tesla's sales and earnings" and could result in "delays in programs at Tesla."¹³ According to press reports, in late October, Mr. Musk "pulled more than 50 of his trusted Tesla employees, mostly software engineers from the Autopilot team, into his Twitter takeover," including key staff such as Tesla's Chief Information Officer, Director of Software Development, Director of Software Engineering, Autopilot Project Manager, Senior Manager of DevOps and a senior manager of security intelligence.¹⁴ Reports noted that "[i]t is not immediately clear how Tesla employees are expected to split their schedules between the automaker and Twitter" or whether and how they will be reimbursed for those efforts.¹⁵

Although Mr. Musk reportedly indicated in court testimony that Tesla employees' work for Twitter was "just a voluntary thing," one anonymous employee indicated that "most would also feel it was impossible to turn down a direct request from Musk without later facing poor performance reviews or other consequences."¹⁶

This use of Tesla employees raises obvious questions about whether Mr. Musk is appropriating resources from a publicly traded firm, Tesla, to benefit his own private company, Twitter. This, of course, would violate Mr. Musk's legal duty of loyalty to Tesla and trigger questions about the Tesla Board's responsibility to prevent such actions, and may also run afoul other "anti-tunneling" rules that aim to prevent corporate insiders from extracting resources from their firms.¹⁷ The SEC imposes a legal obligation on companies to make public any "material definitive agreements," including employment agreements with executive officers,¹⁸ but Tesla to date has reported no such agreements.

Conflicts of Interest

¹³ The Detroit Bureau, "Musk's Shift of 50 Tesla Twitter May Have Serious Legal Repercussions," Paul A. Eisenstein, November 1, 2022, <https://www.thedetroitbureau.com/2022/11/musks-shift-of-50-tesla-engineers-to-twitter-may-have-serious-legal-repercussions/>.

¹⁴ NBC News, "Elon Musk has pulled more than 50 Tesla employees into his Twitter takeover," Lora Kolodny, October 31, 2022, <https://www.nbcnews.com/tech/tech-news/elon-musk-pulled-50-tesla-employees-twitter-takeover-rcna54946>; CNBC, "SpaceX, Tesla, and Boring Company execs are helping Elon Musk at Twitter, records reveal," Lora Kolodny, December 8, 2022, <https://www.cnbc.com/2022/12/08/spacex-tesla-and-boring-company-execs-helping-musk-at-twitter.html>.

¹⁵ NBC News, "Elon Musk has pulled more than 50 Tesla employees into his Twitter takeover," Lora Kolodny, October 31, 2022, <https://www.nbcnews.com/tech/tech-news/elon-musk-pulled-50-tesla-employees-twitter-takeover-rcna54946>.

¹⁶ CNBC, "SpaceX, Tesla, and Boring Company execs are helping Elon Musk at Twitter, records reveal," Lora Kolodny, December 8, 2022, <https://www.cnbc.com/2022/12/08/spacex-tesla-and-boring-company-execs-helping-musk-at-twitter.html>.

¹⁷ See, e.g., Atanasov, Vladimir & Black, Bernard & Ciccotello, Conrad. (2011). Law and Tunneling. Journal of Corporation Law. 37, https://ecgi.global/sites/default/files/working_papers/documents/SSRN-id1444414.pdf.

¹⁸ Securities and Exchange Commission, "Final Rule: Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date," August 23, 2004, <https://www.sec.gov/rules/final/33-8400.htm>.

Mr. Musk's acquisition created unavoidable conflicts of interest. For example, Twitter relies on advertising revenue from automobile companies that are in direct competition with Tesla, including Audi, Chevrolet, Ford, GM, Jeep, and Volkswagen.¹⁹ As the owner of Twitter, Mr. Musk may decide to run the company to maximize badly-needed revenue, even if that includes great deals for Tesla's competitors and potential injury to Tesla. Or, perhaps the opposite will occur. As part of his fiduciary duty to Tesla, Mr. Musk may run Twitter to benefit Tesla: for example, he could subtly shift Twitter algorithms so that praise of Tesla products receive greater attention and criticism of Tesla products will be suppressed. He could simply provide free advertising to Tesla. Or Mr. Musk could use other methods to benefit Tesla by making it more difficult for Tesla's competitors to use Twitter to reach potential customers.

Twitter's desperation for revenue to cover its new debts could also create conflicts. When Tesla negotiates with Twitter for advertising space, Mr. Musk could decide that he is personally better served if Tesla overpays Twitter for advertising or pays up front to give Twitter access to much-needed cash.

Conflicts of interest emerge in other ways as well. For example, under Mr. Musk's leadership, Twitter has welcomed hate speech and sharply increased use of racist language, while advancing a broader platform for Nazis, virulent sexism, and climate misinformation.²⁰ That association between Tesla's CEO and the actions of Twitter could have an impact on the Tesla brand and its ability to market its vehicles to its target audience. Mr. Musk and Tesla are inextricably intertwined, and while this close relationship has benefited the company in the past,²¹ recent developments may have brought a series of negatives to the forefront.

Given these concerns, I am seeking information on how the Tesla Board is monitoring these conflicts of interest, what guidelines the Tesla Board has put in place to protect Tesla, and how the Board is enforcing those guidelines.

Duty to Comply With Law

¹⁹ Business Insider, "Tesla competitor GM will reportedly temporarily suspend advertising on Twitter after Elon Musk's takeover," Samantha Delouya, October 28, 2022, <https://www.autoblog.com/2022/10/29/gm-stops-twitter-advertising/>; Wall Street Journal, "General Mills, Audi and Pfizer Join Growing List of Companies Pausing Twitter Ads," Suzanne Vranica and Patience Haggin, November 3, 2022, <https://www.wsj.com/articles/general-mills-audi-and-pfizer-join-growing-list-of-companies-pausing-twitter-ads-11667507765>; Media Matters, "In less than a month, Elon Musk has driven away half of Twitter's top 100 advertisers," Sharon Kann and Angela Carusone, November 22, 2022, <https://www.mediamatters.org/elon-musk/less-month-elon-musk-has-driven-away-half-twitters-top-100-advertisers>.

²⁰ The Verge, "Climate misinformation explodes on Twitter," Justine Calma, December 5, 2022, <https://www.theverge.com/2022/12/5/23494220/elon-musk-twitter-climate-misinformation-rise-analysis>; New York Times, "Problematic content and formerly barred accounts have increased sharply in the short time since Elon Musk took over, researchers," Sheera Frenkel and Kate Conger, December 2, 2022, <https://www.nytimes.com/2022/12/02/technology/twitter-hate-speech.html>.

²¹ Fortune, "Tesla Is Elon Musk, For Better Or For Worse," Ellen R. Wald, September 7, 2018, <https://www.forbes.com/sites/ellenwald/2018/09/07/tesla-is-elon-musk-for-better-or-for-worse/?sh=16c7cb1d1f79>.

These actions also raise questions of state and federal labor law. The Tesla Board's fiduciary duties include a subsidiary obligation to prevent the company from breaking the law,²² and Mr. Musk's appropriation of Tesla employees raises potential concerns. It is unclear whether Tesla employees were invited to work for Twitter or – either implicitly or explicitly – forced to do so and whether their existing employment contracts were respected. It is also unclear whether any Tesla employees refused to make the transition and whether their position was threatened or if they were fired. As you know, Mr. Musk is already facing multiple lawsuits for illegally firing Twitter employees,²³ which should make the Tesla Board particularly concerned about possible illegal activities concerning Tesla employees. Nonetheless, I have seen no announcements from the Tesla Board regarding an investigation into Mr. Musk's treatment of Tesla employees.

Impact on Shareholders

The problems identified in this letter are not merely theoretical. In fact, Tesla shareholders are already dealing with some of the fallout. Soon after the announcement of Mr. Musk's purchase of Twitter, financial analysts noted the new risks facing Tesla shareholders. As one noted, "If [Musk's deal for Twitter] goes wrong, it could burn Tesla shareholders."²⁴ Analysts described how "[t]he margin loan to buy Twitter could become a destabilizing force if Tesla's stock value were to plunge. A steep decline might prompt the banks to sell their stock collateral to recoup the money they lent Mr. Musk, which could in turn set off even more selling across the market," and that "Twitter could distract Mr. Musk from running the car company and his other businesses. That risk is especially acute if managing the platform becomes a headache and leads to controversies that are distracting or alienate potential Tesla customers."²⁵

Despite these threats and despite the independent legal obligations of the Tesla Board, it appears that the Board has taken no action to protect the company, and Tesla's stock price has plunged. On April 25, 2022, Twitter announced that Mr. Musk would be purchasing the company, "using a financing plan" which included selling billions of dollars' worth of Tesla stock and using billions of dollars more as collateral on margin loans.²⁶ Analysts note that the actions "alarmed some Tesla investors."²⁷ The day Mr. Musk announced the purchase of Twitter, Tesla stock was trading at \$332.67 per share.²⁸ The day he took over the company, Tesla's stock had declined by 32 percent to \$228.52, and since then Tesla stock has dropped another nearly 30 percent, closing

²² See, e.g., American Bar Association, Jeremy S. Piccini, "Director Liability, The Duty of Oversight, and the Need to Investigate," April 30, 2011, https://www.americanbar.org/groups/business_law/publications/blt/2011/04/03_piccini/.

²³ CNN Business, "Former employees suing Twitter speak out on Elon Musk's 'clumsy and inhumane' layoffs," Clare Duffy, December 8, 2022, <https://www.cnn.com/2022/12/08/tech/twitter-employees-lawsuits-elon-musk/index.html>.

²⁴ New York Times, "Why Musk's Twitter Bid Has Shaken Tesla Investors," Peter Eavis and Jack Ewing, May 6, 2022, <https://www.nytimes.com/2022/05/06/business/elon-musk-tesla-twitter.html>.

²⁵ *Id.*

²⁶ Bloomberg, "Elon Musk Offloads \$4 Billion of Tesla Shares, Pledges No More Sales," Dana Hull, April 29, 2022, <https://www.bloomberg.com/news/articles/2022-04-29/musk-reports-sale-of-3-15-million-tesla-shares-filing-shows-12jrtfji>.

²⁷ *Id.*

²⁸ Yahoo Finance, "Tesla, Inc. (TSLA)," <https://finance.yahoo.com/quote/TSLA/history/>.

on December 13 at \$160.95. In a matter of months, Tesla shareholders have lost hundreds of billions of dollars.²⁹

Notably, stock in both Ford and General Motors, the other two major American publicly traded automobile companies, has outperformed Tesla stock since Mr. Musk announced his takeover of Twitter.³⁰

Tesla's losses did not occur in a vacuum: while not all losses can be attributed to Mr. Musk's decision to take over Twitter, there appears to be a direct link, with one analyst calling the Twitter deal an "albatross" that hangs over Tesla.³¹ Other analysts indicated that:

Tesla's stock has taken a hit lately for a variety of reasons, including decreasing investor confidence in Musk to run the company effectively. Many have complained that Musk is, at best, distracted by his recent purchase and takeover of Twitter, a social media platform on which the executive has lately been airing his politics even more than usual. ... Drops in Tesla shares also followed massive stock sales by Musk who needed liquid cash to finance the \$44 billion Twitter deal.³²

Questions

Whatever legal issues Mr. Musk may face, the Tesla Board has independent legal obligations that it must fulfill. Despite widespread concerns about Mr. Musk's acquisition of Twitter while serving as CEO of Tesla, it remains unclear whether the Tesla Board – which has key decision-making authority within the company – is adequately governing the company or if it has established clear rules and policies to address the risks to Tesla posed by Mr. Musk's dual roles. I therefore ask that you provide answers to the following questions no later than January 3, 2022.

1. What specific guardrails and oversight has the Board put in place to ensure that Mr. Musk is meeting his fiduciary and management responsibilities at Tesla while also running operations at Twitter?
2. What protections has the Board put in place to protect Tesla from conflicts of interest created by Mr. Musk's acquisition of Twitter? How are these protections enforced?
3. Are there any formal or informal agreements between Tesla and Twitter, or between Mr. Musk and Twitter? What is the nature of these agreements?

²⁹ Yahoo Finance, "Tesla has lost almost \$700 billion of market value in the past year - the equivalent of 3 Disneys, 4 Nikes, or 6 Starbucks," Theron Mohamed, November 22, 2022, <https://finance.yahoo.com/news/tesla-lost-almost-700-billion-121558314.html>.

³⁰ Ford's stock value has declined by approximately 10 percent during this time period, and GM's has remained approximately the same. Yahoo Finance, "General Motors Company (GM)," <https://finance.yahoo.com/quote/GM/history/>; Yahoo Finance, "Ford Motor Company (F)," <https://finance.yahoo.com/quote/F/history/>.

³¹ The Street, "Tesla Sentiment, Fundamentals Affected By Musk's Twitter Purchase - Morgan Stanley Survey," Martin Baccardax, November 29, 2022, <https://www.thestreet.com/markets/tesla-sentiment-fundamentals-affected-by-musks-twitter-purchase>.

³² TechCrunch, "What It Would Mean for Tesla to Buy Back Shares," Rebecca Bellan, November 23, 2022, <https://techcrunch.com/2022/11/23/what-it-would-mean-for-tesla-to-buy-back-shares/>.

4. What provisions has the Board put in place to address the conflicts of interest regarding advertising policy? What guarantees are in place to ensure that Tesla does not overpay for advertising on Twitter? What guarantees are in place to ensure Mr. Musk does not offer more favorable advertising rates to Tesla's competitors?
5. What is the Board's evaluation of the consequences of the public's association of Tesla's CEO with his decisions at Twitter regarding hate speech, re-platforming Nazis, virulent sexism, climate misinformation, and sharply increased use of racist language?
6. In order to avoid the apparent conflicts of interest, has the Board received any formal or informal assurances from Mr. Musk that he will shape Twitter's operations or algorithms to advance Tesla's interests?
7. In order to avoid antitrust violations, what assurances has the Board received from Mr. Musk that he will **not** shape Twitter's operations or algorithms to advance Tesla's interests?
8. Has the Board reviewed Mr. Musk's activities as Tesla CEO to ensure that Tesla's resources are not appropriated for the benefit of Twitter? If so, has the Board identified any concerns and taken any action to protect Tesla?
9. What are the results of the Board's review of Mr. Musk's use of Tesla employees to benefit Twitter? How many and what Tesla employees were used by Mr. Musk for the benefit of Twitter, how were they reimbursed, and how did they apportion their time between the two companies? Were employee policies violated? Were any Tesla employees terminated or threatened with job loss for refusing to work on non-Tesla related issues? Has the Board taken any actions to ward off any similar employee raids in the future?
10. Did Board members have any specific concerns about Mr. Musk's sale of Tesla stock to fund the Twitter purchase or his ongoing use of Tesla stock as collateral for debt incurred in the Twitter purchase?³³ What actions has the Board taken to protect Tesla shareholders in the event that Mr. Musk is forced to sell additional Tesla stock due to margin calls or the need to pay Twitter debt?
11. Tesla is currently being sued by its shareholders for compensating Mr. Musk with billions in Tesla stock.³⁴ Are there any provisions in Mr. Musk's employment contract that prevent him from selling additional shares of Tesla in quantities that would further lower the stock price and injure shareholders?

³³ New York Times, "Why Musk's Twitter Bid Has Shaken Tesla Investors," Peter Eavis and Jack Ewing, May 6, 2022, <https://www.nytimes.com/2022/05/06/business/elon-musk-tesla-twitter.html>.

³⁴ CNN Business, "Elon Musk's \$50 billion payday trial: Tesla CEO testifies in his own defense," Matt McFarland, November 16, 2022, <https://www.cnn.com/2022/11/16/business/tesla-elon-musk-testimony-lawsuit/index.html#:~:text=The%20lawsuit%20alleges%20that%20Musk's,best%20interest%20of%20Tesla%20shareholders.>

12. Has the Board explored other possible conflicts of interest, misappropriation of resources, or other concerns created by Mr. Musk’s position as CEO of Tesla and his role in other corporations, including Neuralink, SpaceX, and The Boring Company?³⁵

Mr. Musk’s acquisition of Twitter and his simultaneous management of both Twitter and Tesla raise significant legal questions about conflicts of interest, compliance with labor laws, and misappropriation of corporate resources. As you know, it is the legal obligation of Tesla’s Board to ensure that its CEO is meeting all his legal responsibilities and serving as an effective leader. I am writing you so that I can better understand how you are dealing with these challenging circumstances so that I can evaluate current laws and current law enforcement in this area.

Thank you for your prompt reply.

Sincerely,



Elizabeth Warren
United States Senator

³⁵ Business Insider, “Elon Musk now owns Twitter. Here are the busy billionaire's 4 other companies and what they all do,” Hannah Towey, October 28, 2022, <https://www.businessinsider.com/elon-musk-companies-tesla-spacex-boring-co-neuralink-twitter-2022-4>.