

August 8, 2024

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

Dear Dr. Denholm:

I write to you with ongoing concern<sup>1</sup> that Tesla's Board of Directors appears to be failing to meet its fiduciary duties to Tesla's shareholders by neglecting to address company CEO Elon Musk's apparent conflicts of interest. Mr. Musk has long juggled various enterprises in addition to Tesla, as he leads several private companies, including SpaceX, Neuralink, The Boring Company,<sup>2</sup> and X Corp.<sup>3</sup> However, recent reporting indicates that Mr. Musk may not be adequately addressing his competing priorities. Regardless of his personal pursuits and his vast personal wealth, Mr. Musk has legal responsibilities to Tesla—a publicly traded company—and its shareholders. The Tesla Board must act to ensure that Mr. Musk is meeting all of these responsibilities. In the event that the Board fails to meet this duty, I am requesting additional information to understand whether intervention by the Securities and Exchange Commission (SEC) or other regulatory agencies may be necessary.

### **Mr. Musk's Diversion of Critical Computer Chips Appears to Represent a Misappropriation of Corporate Resources**

In June 2024, reports indicated that Mr. Musk redirected scarce artificial intelligence (AI)-related resources from the publicly traded Tesla to one of his privately held companies, X Corp. An internal Nvidia memo from December 2023 noted that Mr. Musk was "prioritizing X H100 GPU cluster deployment at X versus Tesla by redirecting 12k of shipped H100 GPUs originally slated for Tesla to X instead."<sup>4</sup> GPUs, or graphics processing units, are critical to the development of AI

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<sup>1</sup> Letter from Senator Elizabeth Warren to Tesla Chair Dr. Denholm, December 18, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.12.18%20Letter%20to%20Tesla%20Board%20on%20Musk%20Concerns.pdf>.

<sup>2</sup> Tesla, "Elon Musk," <https://www.tesla.com/elon-musk>.

<sup>3</sup> See Wall Street Journal, "X CEO Linda Yaccarino Contends With Pitfalls of Sharing Power With Elon Musk," Alexa Corse, Suzanne Vranica, and Angel Au-Yeung, July 30, 2024, <https://www.wsj.com/tech/linda-yaccarino-elon-musk-x-power-divide-cbc8b6d8> (reporting that Ms. Linda Yaccarino does not have the final say at X Corp., despite serving as CEO, due to Mr. Musk's involvement in running the company).

<sup>4</sup> CNBC, "Elon Musk ordered Nvidia to ship thousands of AI chips reserved for Tesla to X and xAI," Lora Kolodny, June 4, 2024, <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.

technologies and have become a highly sought-after commodity in recent years.<sup>5</sup> As technology companies scramble to acquire valuable resources and cement their positions in the AI race, some must now wait years for GPUs.<sup>6</sup>

Tesla, which relies on Nvidia's GPUs to train its self-driving technology, has similarly felt the squeeze. Mr. Musk has commented on the sharp increase in demand, stating that "[i]t seems like everyone and their dog is buying GPUs at this point," and affirmatively declaring that two of his companies, Tesla and X, "are certainly buying GPUs."<sup>7</sup> During a 2023 earnings call with Tesla shareholders, he went as far as to say that Tesla would "take Nvidia hardware as fast as Nvidia w[ould] deliver it."<sup>8</sup> Against this backdrop, Mr. Musk's decision to prioritize Nvidia GPUs for X over Tesla raises a glaring conflict of interest between his financial interest in the former company and his fiduciary duties toward the latter.

Mr. Musk has attributed the GPU diversion to logistical difficulties. In a post on X in June, he claimed that "Tesla had no place to send the Nvidia chips to turn them on, so they would have just sat in a warehouse."<sup>9</sup> Such an explanation would be plausible if it were not blatantly contradictory of many of Mr. Musk's other statements. During Tesla's first-quarter earnings call in April of this year, Mr. Musk doubled down on his 2023 remark about the company's appetite for Nvidia GPUs, stating that Tesla would increase the number of Nvidia chips it uses from 35,000 to 85,000 by the end of 2024.<sup>10</sup> As some Tesla shareholders have pointed out themselves, "[a]midst great competitive pressure and falling profits, why would Tesla order Nvidia's expensive and highly sought-after GPUs if it had no use for them?"<sup>11</sup>

With the diversion to X, Tesla will not receive its GPUs for months, which will "likely add[] to delays in setting up the supercomputers Tesla says it needs to develop autonomous vehicles and humanoid robots."<sup>12</sup> It therefore appears that Mr. Musk has betrayed his duty to Tesla's shareholders, either by knowingly prioritizing one of his private companies over Tesla, or by exaggerating the extent of Tesla's AI projects to boost investor confidence—or both. This betrayal is particularly egregious when considering that Mr. Musk has long framed AI as a core component

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<sup>5</sup> New York Times, "U.S. Clears Way for Antitrust Inquiries of Nvidia, Microsoft and OpenAI," David McCabe, June 5, 2024, <https://www.nytimes.com/2024/06/05/technology/nvidia-microsoft-openai-antitrust-doj-ftc.html>.

<sup>6</sup> New York Times, "The Desperate Hunt for the A.I. Boom's Most Indispensable Prize," Erin Griffith, August 16, 2023, <https://www.nytimes.com/2023/08/16/technology/ai-gpu-chips-shortage.html>.

<sup>7</sup> Financial Times, "Elon Musk plans artificial intelligence start-up to rival OpenAI," Madhumita Murgia, Tim Bradshaw, Tabby Kinder, & Richard Waters, April 14, 2023, <https://www.ft.com/content/2a96995b-c799-4281-8b60-b235e84aefe4>.

<sup>8</sup> Yahoo! Finance, "Tesla CEO Elon Musk: 'We're using a lot of Nvidia hardware,'" Daniel Howley, July 20, 2023, <https://finance.yahoo.com/news/tesla-ceo-elon-musk-were-using-a-lot-of-nvidia-hardware-174620935.html>.

<sup>9</sup> Post on X by Elon Musk, June 4, 2024, <https://x.com/elonmusk/status/1798007748728365503>.

<sup>10</sup> CNBC, "Elon Musk ordered Nvidia to ship thousands of AI chips reserved for Tesla to X and xAI," Lora Kolodny, June 4, 2024, <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.

<sup>11</sup> Cleveland Bakers v. Elon Musk, No. 2024-0646, Complaint, p. 50 (Del. Ch. June 13, 2024), <https://s3.documentcloud.org/documents/24747977/2024-06-13-e-filed-verified-stockholder-derivative-complaint-tesla-xai.pdf>.

<sup>12</sup> CNBC, "Elon Musk ordered Nvidia to ship thousands of AI chips reserved for Tesla to X and xAI," Lora Kolodny, June 4, 2024, <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.

of Tesla’s business, if not *the* core component. Most notably, in January 2024, Mr. Musk publicly declared, “Tesla is an AI/robotics company that appears to many to be a car company.”<sup>13</sup> Separately, the company’s chief financial officer has stated that Tesla’s “single most important priority” is investing in AI and AI-related technologies.<sup>14</sup> This framing seems to have paid off for the company. By promising unique AI technologies, such as full self-driving in its cars and even humanoid robots,<sup>15</sup> Tesla has been able to distance itself from competitors. With stock “worth more than that of Ford, General Motors, Toyota, Volkswagen and Stellantis combined,” Tesla is valued more like a major technology company than a traditional car manufacturer.<sup>16</sup> However, given that Tesla’s value may be contingent upon its AI capabilities, Mr. Musk’s recent actions do not appear to serve the interests of shareholders.

### **The Founding of xAI Creates an Unavoidable Conflict of Interest for Mr. Musk**

While the diversion of valuable Nvidia GPUs away from Tesla already starkly contravenes the priorities he set out for the company, Mr. Musk has taken a number of other steps that also appear to directly undermine Tesla’s success. In July 2023, Mr. Musk announced the launch of his new startup xAI.<sup>17</sup> It quickly became apparent that this move represented by what all accounts appears to be a conflict of interest for Mr. Musk, as a group of Tesla shareholders responded by filing a lawsuit against Mr. Musk and members of Tesla’s board.<sup>18</sup> In their complaint, the shareholders explain that, “[g]iven the unique dynamics of the burgeoning AI industry—including extraordinarily intense competition for talent and resources—Tesla and xAI are clear competitors.”<sup>19</sup>

Interestingly, the shareholders’ assertion is supported by Mr. Musk’s own past statements and actions. After co-founding OpenAI years ago, Mr. Musk resigned from that company’s board in 2018.<sup>20</sup> At the time, Mr. Musk attributed the decision to the fact that Tesla was developing Autopilot, an AI-powered driver-assistance technology,<sup>21</sup> and had thus started competing with OpenAI for talent.<sup>22</sup> According to leaders at OpenAI, Mr. Musk had sought “absolute control”

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<sup>13</sup> Post on X by Elon Musk, January 3, 2024, <https://x.com/elonmusk/status/1742423298217033776>.

<sup>14</sup> Cleveland Bakers v. Elon Musk, No. 2024-0646, Complaint, p. 2 (Del. Ch. June 13, 2024), <https://s3.documentcloud.org/documents/24747977/2024-06-13-e-filed-verified-stockholder-derivative-complaint-tesla-xai.pdf>. See also p. 21 (Tesla executives stating that Tesla’s AI work is “the thing that has order of magnitude potential market cap improvement for Tesla,” and that AI success at the company would have “the potential to make Tesla the most valuable company in the world by far”).

<sup>15</sup> Wall Street Journal, “What Elon Musk’s AI Startup Means for Tesla’s AI Ambitions,” Tim Higgins, July 22, 2023, <https://www.wsj.com/articles/elon-musk-tesla-xai-artificial-intelligence-1db53628>.

<sup>16</sup> TechCrunch, “Tesla’s margins remind us that it’s an automaker, not a tech company,” Rebecca Bellan, July 21, 2023, <https://techcrunch.com/2023/07/21/tesla-earnings-stock-price-down/>.

<sup>17</sup> Post on X by Elon Musk, July 12, 2023, <https://x.com/elonmusk/status/1679164661869182976>.

<sup>18</sup> TechCrunch, “Tesla shareholders sue Musk for starting competing AI company,” Rebecca Bellan and Sean O’Kane, June 13, 2024, <https://techcrunch.com/2024/06/13/tesla-shareholders-sue-musk-for-starting-competing-ai-company/>.

<sup>19</sup> Cleveland Bakers v. Elon Musk, No. 2024-0646, Complaint, pp. 3-4 (Del. Ch. June 13, 2024), <https://s3.documentcloud.org/documents/24747977/2024-06-13-e-filed-verified-stockholder-derivative-complaint-tesla-xai.pdf>.

<sup>20</sup> TechCrunch, “Elon Musk wants to build AI to ‘understand the true nature of the universe,’” Kyle Wiggers, July 12, 2023, <https://techcrunch.com/2023/07/12/elon-musk-wants-to-build-ai-to-understand-the-true-nature-of-the-universe/>.

<sup>21</sup> New York Times, “Elon Musk Ramps Up A.I. Efforts, Even as He Warns of Dangers,” Cade Metz, Ryan Mac, and Kate Conger, April 27, 2023, <https://www.nytimes.com/2023/04/27/technology/elon-musk-ai-openai.html>.

<sup>22</sup> Post on X by Elon Musk, February 16, 2019, <https://x.com/elonmusk/status/1096989482094518273>.

over the company before leaving, and when that failed, to “merg[e] OpenAI into Tesla.”<sup>23</sup> It was only after both of these proposals were rejected that Mr. Musk left the startup, stating that “he planned to build an AGI competitor within Tesla.”<sup>24</sup> These events indicate that Mr. Musk was aware that remaining in a leadership position at OpenAI would create a conflict of interest for him as Tesla further developed its own AI products. Ironically, while he resolved this issue at the time by departing from OpenAI, he has since created a seemingly greater conflict by founding xAI as a competitor to both OpenAI and Tesla.

This apparent conflict of interest is exacerbated by the fact that Mr. Musk appears to treat Tesla and xAI as interconnected entities. His diversion of Nvidia GPUs alone is glaring cause for concern,<sup>25</sup> but it is only one occurrence in a larger pattern of behavior.

Similar to computer chips, talent has been a crucial commodity in the AI sector. Mr. Musk himself has remarked that “[t]he talent war for AI is the craziest talent war [he’s] ever seen.”<sup>26</sup> In fact, some have suggested that this “war” may have been the primary driver behind the founding of xAI, as Mr. Musk previously observed that “some of the world’s best AI engineers and scientists [] were willing to join a startup, but they were not willing to join a large ... relatively established company like Tesla.”<sup>27</sup> Thus, it appears that Mr. Musk may have strategically founded xAI not only in spite of potential competition with Tesla, but *because* of it. While it may be difficult to measure how the establishment of xAI has affected AI hiring generally, there are at least several known instances of Mr. Musk “poaching” Tesla employees for his startup.<sup>28</sup> The most public case involves Tesla machine learning scientist Ethan Knight,<sup>29</sup> whom Mr. Musk admitted had originally planned to join OpenAI,<sup>30</sup> thereby highlighting the tension between the various companies in the AI industry. These sorts of occurrences have led some Tesla shareholders to conclude that Mr. Musk has been ignoring the distinction between Tesla engineers and xAI engineers, simply “treat[ing] them as one and the same.”<sup>31</sup>

Beyond this, Mr. Musk seems to anticipate further entanglement between his companies. Just last month, he posted a poll on X asking if Tesla should invest \$5 billion into xAI—qualifying that it

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<sup>23</sup> OpenAI, Editorial, “OpenAI and Elon Musk,” March 5, 2024, <https://openai.com/index/openai-elon-musk/>.

<sup>24</sup> *Id.*

<sup>25</sup> Cleveland Bakers v. Elon Musk, No. 2024-0646, Complaint, pp. 48-49 (Del. Ch. June 13, 2024), <https://s3.documentcloud.org/documents/24747977/2024-06-13-e-filed-verified-stockholder-derivative-complaint-tesla-xai.pdf> (arguing that GPUs are crucial to developing AI models and thus “place[] Tesla and xAI in direct competition with one another”).

<sup>26</sup> Post on X by Elon Musk, April 3, 2024, <https://x.com/elonmusk/status/1775644544853221599>.

<sup>27</sup> Wall Street Journal, “What Elon Musk’s AI Startup Means for Tesla’s AI Ambitions,” Tim Higgins, July 22, 2023, <https://www.wsj.com/articles/elon-musk-tesla-xai-artificial-intelligence-1db53628>.

<sup>28</sup> See Futurism, “Elon Musk is Poaching Tesla Engineers for xAI. Wait, What?,” Noor Al-Sibai, April 5, 2024, <https://futurism.com/the-byte/elon-musk-poaching-tesla-xai>.

<sup>29</sup> See CNBC, “Elon Musk ordered Nvidia to ship thousands of AI chips reserved for Tesla to X and xAI,” Lora Kolodny, June 4, 2024, <https://www.cnbc.com/2024/06/04/elon-musk-told-nvidia-to-ship-ai-chips-reserved-for-tesla-to-x-xai.html>.

<sup>30</sup> Post on X by Elon Musk, April 3, 2024, <https://x.com/elonmusk/status/1775608815901454380>.

<sup>31</sup> Cleveland Bakers v. Elon Musk, No. 2024-0646, Complaint, p. 32 (Del. Ch. June 13, 2024), <https://s3.documentcloud.org/documents/24747977/2024-06-13-e-filed-verified-stockholder-derivative-complaint-tesla-xai.pdf>.

was “just to test the waters”<sup>32</sup>—after stating on an earnings call that he was “certainly supportive” of Tesla investing in xAI if shareholders were.<sup>33</sup> The initial announcement for xAI also stated that the company would “work with ... Tesla[] to ‘make progress towards [its] mission,’”<sup>34</sup> which some have speculated would mean using Tesla’s computing resources to train xAI’s language model.<sup>35</sup> This prospect seems to have been key in securing funding for the startup, as some investors believe Tesla provides “valuable data that could ... give [xAI] a leg up over competitors.”<sup>36</sup> However, while the cross-pollination between Tesla and xAI appears to have greatly benefitted Mr. Musk and his new startup, Tesla shareholders allege it has come at their expense. As they write, “[o]n information and belief, Musk has already or intends to have xAI harvest data from Tesla without appropriately compensating Tesla,” and “[n]one of this would be necessary if Musk properly created xAI as a subsidiary of Tesla.”<sup>37</sup>

Given Mr. Musk’s repeated framing of Tesla as an “AI company,” his competing priorities could greatly jeopardize the company’s future success. Some analysts have made clear that their assessments of Tesla hinge on its continued AI development, with one noting that “[a]ny change of organizational or legal structure that impedes Tesla’s ability to participate in the development of AI could be detrimental to the ... investment thesis.”<sup>38</sup> Shareholders have already gotten a preview of this dynamic, as Mr. Musk has threatened to halt AI development at Tesla if he does not receive voting control that is nearly double his actual ownership stake at the company.<sup>39</sup> Since threatening to divert his attention to his other, privately-held companies, Mr. Musk has won a shareholder vote to reincorporate Tesla in Texas and award him with a \$56 billion pay package.<sup>40</sup>

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<sup>32</sup> Post on X by Elon Musk, July 23, 2024, <https://x.com/elonmusk/status/1815907844434112999>.

<sup>33</sup> CNBC, “Elon Musk wants Tesla to invest \$5 billion into his newest startup, xAI—if shareholders approve,” Lora Kolodny, July 24, 2024, <https://www.cnbc.com/2024/07/24/elon-musk-wants-tesla-to-invest-5-billion-into-his-newest-startup-xai-if-shareholders-approve.html>.

<sup>34</sup> TechCrunch, “Elon Musk wants to build AI to ‘understand the true nature of the universe,’” Kyle Wiggers, July 12, 2023, <https://techcrunch.com/2023/07/12/elon-musk-wants-to-build-ai-to-understand-the-true-nature-of-the-universe/>.

<sup>35</sup> Financial Times, “Elon Musk plans artificial intelligence start-up to rival OpenAI,” Madhumita Murgia, Tim Bradshaw, Tabby Kinder, & Richard Waters, April 14, 2023, <https://www.ft.com/content/2a96995b-c799-4281-8b60-b235e84aefe4>.

<sup>36</sup> Wall Street Journal, “Elon Musk’s xAI Valued at \$24 Billion After Latest Fundraising Round,” Berber Jin, Meghan Bobrowsky, and Kimberley Kao, May 27, 2024, <https://www.wsj.com/tech/ai/elon-musks-xai-will-raise-6-billion-in-latest-fundraising-round-fcdd722d>.

<sup>37</sup> Cleveland Bakers v. Elon Musk, No. 2024-0646, Complaint, p. 45 (Del. Ch. June 13, 2024), <https://s3.documentcloud.org/documents/24747977/2024-06-13-e-filed-verified-stockholder-derivative-complaint-tesla-xai.pdf>.

<sup>38</sup> Wall Street Journal, “Tesla Was Once About Climate Change, Driverless Cars, AI. Now What?,” Tim Higgins, February 10, 2024, <https://www.wsj.com/business/autos/tesla-has-long-been-a-hope-stock-but-what-are-investors-hoping-for-now-7031171f>.

<sup>39</sup> See Post on X by Elon Musk, January 15, 2024, <https://x.com/elonmusk/status/1746999488252703098>. See also Reuters, “Tesla turns to Musk’s small shareholder fans to back \$56 billion payday,” Ross Kerber, June 10, 2024, <https://www.reuters.com/business/autos-transportation/tesla-turns-musks-small-shareholder-fans-back-56-billion-payday-2024-06-10/> (noting that Mr. Musk currently has a 13% stake in Tesla).

<sup>40</sup> Reuters, “Elon Musk wins Tesla shareholder approval for \$56 billion pay package,” Hyunjoon Jin, Ross Kerber, and Akash Sriram, June 14, 2024, <https://www.reuters.com/business/autos-transportation/musk-says-both-tesla-shareholder-resolutions-passing-by-wide-margins-2024-06-13/>.

## The Tesla Board Has Neglected its Corporate Governance Duties

These mounting harms to shareholders are made possible by a lack of corporate oversight and accountability from the Tesla Board of Directors. As Tesla shareholders assert, the Board “has done *nothing* as Musk has diverted value, personnel, data, and resources from Tesla to xAI.”<sup>41</sup> To the contrary, the Board seems to have been actively making misrepresentations to shareholders and the general public to attempt to conceal Mr. Musk’s wrongdoing. Despite Mr. Musk already acknowledging that he had indeed requested for the Nvidia GPUs to be diverted,<sup>42</sup> you have claimed that “it’s not true.”<sup>43</sup>

I have raised these concerns on numerous occasions in recent years. In December 2022, I wrote to you to ask how the Tesla Board was addressing actions by Mr. Musk that did not appear to be in the best interest of Tesla and its shareholders.<sup>44</sup> This included Mr. Musk’s orchestration of a debt-ridden deal to buy Twitter, his funneling of Tesla resources to Twitter, and more.<sup>45</sup> As I made clear in that letter, “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.”<sup>46</sup> However, I never received a response to my letter, and it appears the Board has not made any efforts to improve its oversight of Mr. Musk, as it is once again neglecting its fundamental corporate governance duties. In the wake of your failure to respond, I asked the SEC to investigate these matters in July 2023,<sup>47</sup> and again in March 2024, following new allegations of misbehavior by Mr. Musk.<sup>48</sup> The status of any SEC action is unclear.

Shareholders have echoed the concerns I raised to you and to the SEC. In *Tornetta v. Musk*,<sup>49</sup> a Delaware Chancery Court case that resulted in the initial rescission of Mr. Musk’s \$56 billion pay package,<sup>50</sup> Chancellor Kathaleen McCormick noted that “[t]he process leading to the approval of

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<sup>41</sup> Cleveland Bakers v. Elon Musk, No. 2024-0646, Complaint, p. 46 (Del. Ch. June 13, 2024), <https://s3.documentcloud.org/documents/24747977/2024-06-13-e-filed-verified-stockholder-derivative-complaint-tesla-xai.pdf>.

<sup>42</sup> See Post on X by Elon Musk, June 4, 2024, <https://x.com/elonmusk/status/1798007748728365503>.

<sup>43</sup> CNBC Television, “Watch CNBC’s full interview with Tesla board chair Robyn Denholm,” June 6, 2024, <https://www.cnbc.com/video/2024/06/06/watch-cnbc-full-interview-with-tesla-board-chair-robyn-denholm.html>.

<sup>44</sup> Letter from Senator Elizabeth Warren to Tesla Chair Dr. Denholm, December 18, 2022, <https://www.warren.senate.gov/imo/media/doc/2022.12.18%20Letter%20to%20Tesla%20Board%20on%20Musk%20Concerns.pdf>.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 1.

<sup>47</sup> Letter from Senator Elizabeth Warren to SEC Chair Gary Gensler, July 17, 2023, <https://www.warren.senate.gov/imo/media/doc/Letter%20to%20SEC%20asking%20for%20investigation%20into%20Tesla%20-%20FINAL1.pdf>.

<sup>48</sup> Letter from Senator Elizabeth Warren to SEC Chair Gary Gensler, March 21, 2024, <https://www.warren.senate.gov/imo/media/doc/2024.03.20%20Letter%20to%20SEC%20re%20Elon%20Musk%20Investigation.pdf>.

<sup>49</sup> 310 A.3d 430 (Del. Ch. 2024).

<sup>50</sup> American Bar Association, “Del. Court of Chancery Orders Rescission of Musk’s \$55.8B Tesla Compensation Plan,” [https://www.americanbar.org/groups/business\\_law/resources/business-law-today/2024-march/del-court-chancery-orders-rescission-musks-tesla-compensation-plan/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-march/del-court-chancery-orders-rescission-musks-tesla-compensation-plan/).

Musk’s compensation plan was deeply flawed,<sup>51</sup> and that Mr. Musk “enjoyed thick ties with the directors” on Tesla’s compensation committee.<sup>52</sup> Some Tesla directors themselves have reached a similar conclusion, with one individual leaving the board due to the fact that he “found the board to operate more like a family company with fiefdoms, rather than a public company with stringent rules and regulations.”<sup>53</sup>

This “family company” environment has enabled an ongoing pattern of ineffective oversight at Tesla. Rather than working to ensure that the company complies with legal requirements, the Board has allowed for “self-regulation” by Mr. Musk.<sup>54</sup> For example, you have knowingly allowed Mr. Musk to bypass proper approval procedures for his Tesla-related communications,<sup>55</sup> contravening terms of the company’s 2018 settlement with the SEC.<sup>56</sup> Some have also reported that board meetings are treated as “informal, family-style occasions” with merely “softball questions” for Mr. Musk.<sup>57</sup> This blurring of collegiality with the legitimate business interests of Tesla and the responsibilities of the Board has deteriorated to a point where some directors “feel there is an expectation to consume drugs with [Mr. Musk] because they think refraining could upset the billionaire.”<sup>58</sup>

### **Tesla Shareholders Have Suffered From a Lack of Oversight at the Company**

The Tesla Board’s lack of independence and accountability mechanisms has not only failed to prevent shareholder harm in relation to Mr. Musk’s founding of xAI, but also in many other cases. One glaring example is the lack of proper oversight of the use of Tesla employee time and company resources. This explains why the SEC has had to open investigations centered around questions like whether Tesla used company funds for “Project 42”—a secret project to build a “dramatic glass-walled building” as a house for Mr. Musk.<sup>59</sup>

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<sup>51</sup> Richard J. Tornetta v. Elon Musk, No. 2018-0408, Post-Trial Opinion, p. 3 (Del. Ch. January 30, 2024), <https://courts.delaware.gov/Opinions/Download.aspx?id=359340>.

<sup>52</sup> *Id.* at 2.

<sup>53</sup> Wall Street Journal, “The Money and Drugs That Tie Elon Musk to Some Tesla Directors,” Kirsten Grind, Emily Glazer, Rebecca Elliott, and Coulter Jones, February 3, 2024, <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>54</sup> See Richard J. Tornetta v. Elon Musk, No. 2018-0408, Post-Trial Opinion, p. 95 (Del. Ch. January 30, 2024), <https://courts.delaware.gov/Opinions/Download.aspx?id=359340>.

<sup>55</sup> *Id.* at pp. 94-95 (explaining that Mr. Musk “waits for some unspecified period of time” to hear back from Tesla’s in-house lawyers before making public social media posts and does not necessarily obtain explicit approval of communications).

<sup>56</sup> *Id.* at 92.

<sup>57</sup> Wall Street Journal, “The Money and Drugs That Tie Elon Musk to Some Tesla Directors,” Kirsten Grind, Emily Glazer, Rebecca Elliott, and Coulter Jones, February 3, 2024, <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>58</sup> *Id.*

<sup>59</sup> Business Today, “What is Elon Musk’s secret glass house ‘Project 42’ and what is its Tesla connection,” Pranav Dixit, September 1, 2023, <https://www.businesstoday.in/technology/news/story/what-is-elon-musk-secret-glass-house-project-42-and-what-is-its-tesla-connection-396520-2023-09-01>.

Shareholders have raised many similar concerns:

- Last year, seventeen major Tesla investors wrote an open letter asking the Tesla Board to remove directors with close ties to Mr. Musk, and to either limit Mr. Musk’s commitments or to announce a Tesla CEO succession plan.<sup>60</sup>
- Leo KoGuan, who has “invested more money into Tesla than anyone in the world,” recently described the company as “a family business masquerading as a public company to benefit only one person with his few friends and family.”<sup>61</sup>
- When the Board was considering electing JB Straubel as a director, some shareholders objected, pointing out that his presence would mean at least five of the eight members of the Tesla Board would lack independence.<sup>62</sup> Despite this, Mr. Straubel was ultimately elected.<sup>63</sup>
- It was also a Tesla shareholder who initiated the challenge to Mr. Musk’s pay package in the Delaware Court of Chancery.<sup>64</sup>

Although Tesla shareholders recently voted to ratify Mr. Musk’s massive pay package, a group of institutional investors concurrently asserted that “Tesla is suffering from a material governance failure,” and that the Board took the same flawed approach to its 2024 evaluation of Mr. Musk’s pay package as it did to the 2018 ratification of his pay package.<sup>65</sup>

## Questions

Mr. Musk’s founding of xAI and his simultaneous management of numerous other companies raise significant legal questions about conflicts of interest and misappropriation of corporate resources. As you know, it is the legal obligation of Tesla’s Board to ensure that Tesla’s CEO is meeting all of his legal responsibilities and serving as an effective leader. However, in recent years, the Tesla Board has allowed Mr. Musk’s apparent conflicts of interest to proliferate, thereby exposing shareholders to harm. In doing so, the Board appears to be neglecting its duty to adequately govern the company and refusing to establish clear policies to address the risks to Tesla posed by Mr. Musk’s multiple apparent conflicts of interest.

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<sup>60</sup> Letter from Tesla investors to Tesla directors Ms. Denholm and Mr. Ehrenpreis, April 21, 2023, [https://static1.squarespace.com/static/5d374de8aae9940001c8ed59/t/644298578c858b5963c7a411/1682085975961/TSLA+23\\_Board+letter\\_FINAL.pdf](https://static1.squarespace.com/static/5d374de8aae9940001c8ed59/t/644298578c858b5963c7a411/1682085975961/TSLA+23_Board+letter_FINAL.pdf).

<sup>61</sup> Electrek, “Tesla’s biggest investor: ‘it’s a family business masquerading as a public company,’” Fred Lambert, January 30, 2024, <https://electrek.co/2024/01/30/tesla-biggest-investor-family-business-masquerading-public-company/>.

<sup>62</sup> Wall Street Journal, “The Money and Drugs That Tie Elon Musk to Some Tesla Directors,” Kirsten Grind, Emily Glazer, Rebecca Elliott, and Coulter Jones, February 3, 2024, <https://www.wsj.com/tech/elon-musk-tesla-money-drugs-board-61af9ac4>.

<sup>63</sup> *Id.*

<sup>64</sup> See American Bar Association, “Del. Court of Chancery Orders Rescission of Musk’s \$55.8B Tesla Compensation Plan,” [https://www.americanbar.org/groups/business\\_law/resources/business-law-today/2024-march/del-court-chancery-orders-rescission-musks-tesla-compensation-plan/](https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-march/del-court-chancery-orders-rescission-musks-tesla-compensation-plan/).

<sup>65</sup> Letter from Amalgamated Bank et al. to Tesla shareholders, May 20, 2024, <https://www.sec.gov/Archives/edgar/data/1517047/000121465924009655/z520241px14a6g.htm>.



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. I ask that you provide answers to the following questions no later than August 23, 2024:

1. Are the reports regarding Mr. Musk’s decision to divert chips from Tesla to X accurate?
  - a. Has the Board conducted an investigation of this matter?
  - b. If so, what were the findings with regard to whether Mr. Musk’s actions were consistent with his fiduciary responsibilities as Tesla CEO?
  - c. Did the Board take any action as a result of Mr. Musk’s actions?
2. What protections has the Board put in place to protect Tesla from conflicts of interest created by Mr. Musk’s founding of xAI? How are these protections enforced?
3. What action, if any, did the Board take after Mr. Musk threatened to “build [AI] products outside of Tesla”?<sup>66</sup>
4. 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 his other companies, including xAI and X?
5. Has the Board reviewed Mr. Musk’s activities as Tesla CEO to ensure that Tesla’s resources are not appropriated for the benefit of xAI? If so, has the Board identified any concerns and taken any action to protect Tesla?
6. Has the Board reviewed Mr. Musk’s use of Tesla employees to benefit xAI? How many and which Tesla employees were used by Mr. Musk for the benefit of xAI, 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 poaching in the future?
7. What protections has the Board put in place to protect Tesla from conflicts of interest created by Mr. Musk’s acquisition of X? How are these protections enforced?
8. Are there any formal or informal agreements between Tesla and xAI? What is the nature of these agreements?
9. Are there any formal or informal agreements between Tesla and X? What is the nature of these agreements?

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<sup>66</sup> Post on X by Elon Musk, January 15, 2024, <https://x.com/elonmusk/status/1746999488252703098>.

10. 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?

Thank you for your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Warren", written over a horizontal line.

Elizabeth Warren  
United States Senator