



Action Report Social Issues

Tesla
July 12, 2022

Ticker	Exchange	Meeting Date	Record Date	Annual Meeting Location
TSLA	NASDAQ	8-4-2022	6-6-22	Austin, Texas, and webcast

Agenda	
Item	Proposal
1	MGT: Elect Class II directors
2	MGT: Reduce director terms to two years
3	MGT: Eliminate supermajority voting requirements
4	MGT: Increase authorized shares of common stock
5	MGT: Ratify selection of accountants
6	SH: Enable shareholder proxy access
7	SH: Review/report on workplace bias policy
8	SH: Report on board diversity
9	SH: Report on mandatory arbitration
10	SH: Report on climate lobbying
11	SH: Adopt ILO Standards for company operations
12	SH: Report on supply chain human rights risks
13	SH: Report on water use risk

Si2 Briefing [Human Rights, Decent Work, Diversity](#)

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Links [2022 Proxy Statement](#); [2021 10-K and 10-K amended](#); [Exempt Solicitations: Item 9, Item 11](#)

Background This is the third year in a row that investors will vote on proposals at Tesla on arbitration and human rights. Earlier, a 2018 proposal seeking a sustainability report prompted the company's first "Impact Report" in 2019.

Item 7: Workplace Bias Policy

Resolved Clause Shareholders request the Board of Directors of Tesla, Inc. to oversee the preparation of an annual public report describing and quantifying the effectiveness and outcomes of Company efforts to prevent harassment and discrimination against protected classes of employees, including, but not limited to, sexual harassment and racial discrimination. The report should

disclose the Company's progress on relevant metrics and targets, such as:

- the total number and aggregate dollar amount of disputes settled by the company related to abuse, harassment or discrimination based on race, religion, sex, national origin, age, disability, genetic information, service member status, gender identity, or sexual orientation;
- the company's progress toward reducing the average length of time it takes to resolve sexual harassment or discrimination complaints, either through internal processes or through litigation; and
- The total number of pending harassment or discrimination complaints the company is seeking to resolve through internal processes or through litigation.

This report should not include the names of accusers or details of their settlements without their consent and should be prepared at a reasonable cost and omit any information that is proprietary, privileged, or violative of contractual obligations.

Lead Proponent	New York State Common Retirement Fund (NYSCRF)
Vote History	None. This is one of two similar proposals from the proponent going to a vote this year; it earned 32 percent at Starbucks .
Summary	The proponent is concerned about numerous press reports and lawsuits by current and former workers alleging racial/ethnic and/or sexual harassment and discrimination. NYSCRF also flags mandatory arbitration (<i>addressed in Item 9</i>) as a concern, and shareholder lawsuits at other companies. Since the proposal was filed, Tesla shareholders have filed a lawsuit alleging breach of fiduciary duty related to workplace discrimination and harassment. The company argues that it does not tolerate discrimination, harassment, retaliation or any mistreatment, and says it has adequate policies and practices in place to prevent and address violations of its Code of Business Ethics and other policies. Investors will have to decide if they think the requested report will add transparency and help mitigate the risk of future allegations and settlements.

Item 8: Board Diversity

Resolved Clause	<p>Resolved: Shareholders request that Tesla report annually on its policies and practices to help ensure its elected Board of Directors attains racial and gender representation that is better aligned with the demographics of its customers and/or regions in which it operates.</p> <p>The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.</p>
Lead Proponent	Arjuna Capital
Vote History	None
Summary	The proponent cites research about the business case for diverse boards, with enhanced financial results, governance and corporate leadership diversity.

Arjuna believes that Tesla’s board does not adequately represent the diversity of the U.S. population and that it should report on quantifiable board diversity benchmarks and steps to achieve better representation. The company argues its current practice of including “diversity” as one of many considerations for candidates and nominees is sufficient. With a board made up of 25 percent people of color and 25 percent women, Tesla is comparable to its peers. Investors will have to decide if they want greater board diversity.

Item 9: Mandatory Arbitration

Resolved Clause RESOLVED: Shareholders of Tesla, Inc. (“Tesla”) ask the Board of Directors to oversee the preparation of a publicly disclosed report on the impact of the use of mandatory arbitration on Tesla’s brand, employees and workplace culture. The report should evaluate the impact of Tesla’s current use of arbitration on the prevalence of harassment and discrimination in its workplace, on employees’ ability to seek redress, and on consumer perceptions of Tesla as an employer. The report should be prepared at reasonable cost and omit proprietary and personal information.

Lead Proponent Nia Impact Capital

Vote History The proposal is substantially the same as in 2020, when it earned 26.8 percent, and 2021, when it earned 46.4. Numerous proposals this year concern “concealment clauses” more broadly: four earned majorities (at **Apple** (50 percent), **IBM** (64.7 percent), **Twitter** (68.9 percent) and **Sunrun** (98.2 percent with management support). The vote at Digital Realty Trust was 45.6 percent and it earned less than 25 percent at three other companies.

Summary Nia proposes again that the company report on mandatory arbitration. While it is now forbidden by federal law to require arbitration for sexual harassment claims, other arbitration agreements remain. The proponent believes that such agreements are not in the best interest of workers and can mask cultures of harassment and discrimination. The company contends the arbitration provides advantages to employees and says it does not prohibit them from sharing workplace concerns. Investors will have to decide if they think the proposal will help mitigate any risks associated with arbitration, especially considering a growing number of legal cases citing ongoing racial discrimination, centered at the company’s California vehicle factory.

Item 11: ILO Standards

Resolved Clause RESOLVED: the Board of Directors of Tesla, Inc. (“Tesla” or “the company”) to adopt and publicly disclose a policy on its commitment to respect the rights to freedom of association and collective bargaining in its operations, as reflected in the International Labour Organization (ILO) *Declaration on Fundamental Principles and Rights at Work* (“Fundamental Principles”). The policy should:

- Be applicable to Tesla’s direct operations and subsidiaries globally;
- Include a commitment to non-interference when employees exercise their right to form or join trade unions;

- Prohibit any member of management or agent of Tesla from undermining the right to form or join trade unions or pressuring any employee from exercising this right;
- Describe the ongoing due diligence process Tesla will use to identify, prevent, mitigate and account for any violations of these rights, including how it will remedy any misaligned practices.

Lead Proponent SHARE

Vote History None. However, shareholders have put forth other human rights proposals in recent years, two of received about 25 percent support.

Summary The proposal asks for explicit adoption of ILO standards, given how it has handled worker efforts to organize its California factory. The National Labor Relations Board ruled that Tesla violated the law in an organizing campaign but issued no fine. The company argues that the proposal is unnecessary given its explicit endorsement of the UN Declaration of Human Rights, which supports freedom of association and the right to collective bargaining. Investors will have to decide if they think that a more explicit policy commitment to worker rights will prevent illegal behavior and negative attention.

Item 12: Supply Chain Human Rights Standards

Resolved Clause Resolved: Shareholders request that the Board of Directors issue a public report, at reasonable cost and omitting proprietary information, describing if, and how, Tesla’s policies and practices governing the sourcing of battery minerals and progress towards cobalt-free battery goals will put the Company on course to eradicate child labor in all forms from its battery supply chain by 2025. Reporting is requested within one year from Tesla’s 2022 annual meeting.

Lead Proponent Sisters of the Good Shepherd

Vote History A 2021 resolution from the same proponent asked for a report on Tesla’s responsible sourcing practices and how they are implemented; it earned 25.8 percent support, about the same as the 24.8 percent earned by a broader report request about its human rights approach in 2020.

Summary This proposal is part of the Shifting Gears campaign led by Investor Advocates for Social Justice, a member of the Interfaith Center on Corporate Responsibility (ICCR). It aims to encourage more disclosure and accountability on human rights in the supply chains of automotive companies and it has focused on cobalt and child labor. The company contends that its practices and reporting ensure no child labor exists in its supply chain, but the proponent remains skeptical. A lawsuit on the issue was dismissed last November but plaintiffs have appealed.

I. Tesla, Decent Work, Diversity & Human Rights,

Tesla designs, develops and manufactures fully electric vehicles and renewable energy generation and storage systems, and offers related support services. It claims to be the world's first vertically integrated sustainable energy company. The business is divided into two reportable segments:

Financials			
(\$ millions)	2021	2020	% Change
Total Revenue	53,823	31,536	72%
Net Income	5,519	721	665%

- Automotive:** Tesla currently produces several electric vehicles—the Model 3 and S sedans, and the Model X and Y SUVs. New vehicles all will come with technology that can be used with self-driving systems. It has plans for a Cybertruck, a new Roadster, a Semi and what it calls a “lower-cost self-driving vehicle.” The company sells its vehicles directly to customers through a global network and also provides services for them.

Most of the company's vehicles are manufactured in its Fremont, California facility and other locations nearby, but the company started manufacturing in Shanghai, China, in December 2020 and has just opened a factory in Germany. In 2021, the company produced over 930,000 vehicles, and delivered over 936,000. In 2020, the company sold about 500,000 vehicles.

- Energy generation and storage:** Products include lithium-ion batteries, power electronics and integrated storage systems, and solar energy systems for residential and commercial use. The Powerwall, Powerpack and Megapack products include related software. The new Solar Roof product, made in New York state, integrates with Powerwall. Tesla also designs and sells solar energy generation components with options to lease or buy them, including via a subscription service in a few places. It is working to build out a global network of vehicular charging stations.

The company describes an array of financial services for its offerings, including financing and leasing as well as insurance for its vehicles. The energy storage and generation products also can be attained by power purchase agreements (PPAs) with third parties. In 2021, Tesla [applied](#) to become a retail electricity provider in Texas, where it is building a large energy storage facility.

Manufacturing: Aside from the main automotive factory in Fremont, California, Tesla operates what it calls Gigafactories near Reno, Nevada (mainly for batteries), in Buffalo, New York (solar roofs) and in Shanghai, China (vehicles). Its new factory near Berlin, Germany will make vehicles for the European market and another in Austin, Texas, will make the Cybertruck and Semi. Almost all the company's revenue comes from vehicle sales, but production has been slowed by production delays and the coronavirus pandemic; production began in Berlin in March and will commence in Austin later this year.

Employees: As of December 31, 2021, Tesla had 99,290 full-time employees, up from 70,757 in 2021 and about double the 48,016 in 2020. It reports no work stoppages and says in its current 10-K that relations with employees are good, although the National Labor Relations Board (NLRB) concluded in March 2021 that the company violated union organizing rights (*more below*). Critics have raised a variety of concerns about the company's diversity oversight and management, and workplace practices—all of which are articulated in the four pending shareholder resolutions discussed in this report.

Human capital management—The company says in its 10-K, “Our key human capital objectives in managing our business include attracting, developing and retaining top talent while integrating diversity, equity and inclusion principles and practices into our core values.” It describes talent

Investor Pressure

While Tesla vaunts the environmental benefits of its products, it also has been a lightning rod for controversy on social policy. Votes on shareholder resolutions rose from low early levels in 2020 and in 2021 and saw majority support in 2021 with a 56.9 percent vote favoring fuller reporting on how the company handles diversity and inclusion, plus a high vote of 46.4 percent for a report on using mandatory arbitration that appears again this year.

Shareholder Proposals at Tesla					
Topic Area/Proposal	2018	2019	2020	2021	2022
Environmental Issues					
Report on water impacts and policy	wd				
Report on water use risks					pending
Stop using cryptocurrency/minimize e-footprint					omitted
Sustainable Governance					
Adopt board oversight of human capital management				33.8%	
Establish board committee on sustainability		8.8%			
Publish sustainability report	wd	wd			
Report on board diversity					pending
Use ESG metrics in financial reports	wd				
Social Issues					
Adopt ILO standards for company operations					pending
Report on diversity programs				56.9%	
Report on human rights policy implementation			24.8%	25.8%	pending
Report on human rights risk assessment	wd				
Report on mandatory arbitration			26.8%	46.4%	pending
Report on supply chain human rights risks					pending
Review/report on climate change advocacy					pending
Review/report on workplace bias policy					pending
Covered in this report.					

development from hiring through support for additional higher education opportunities, apprenticeships and internships. It seeks “talent” rather than solely an “educational pedigree,” emphasizing the creation of jobs “for capable workers from various backgrounds to learn valuable skills in critical operations such as in manufacturing, vehicle service and energy product installation.” Further:

We also believe that our ability to retain our workforce is dependent on our ability to foster an environment that is sustainably safe, respectful, fair and inclusive of everyone and promotes diversity, equity and inclusion inside and outside of our business. From our outreach to Historically Black Colleges and Universities and Hispanic Serving Institutions to sponsoring employee resource groups across numerous locations, including Asian Pacific Islanders at Tesla, Black at Tesla, Intersectionality, Latinos at Tesla, LGBTQ at Tesla, Veterans at Tesla and Women in Tesla, we engage these networks as key business resources and sources of actionable feedback. We are also working on diversity efforts in our supply chain to expand our outreach and support to small- and large-scale suppliers from underrepresented communities to emphasize this culture with our own employees.

Finally, the company emphasizes in the 10-K that employees are free to discuss all terms and conditions of employment, as well as raise complaints internally and externally. In fact, employees “are asked to immediately report” any conduct that violates Tesla’s policies, something they can do anonymously if preferred. Tesla also conducts regular employee surveys.

Insider ownership: Tesla’s founder and CEO, Elon Musk, [dubbed the company’s “technoking”](#) in March 2021, owns 23.5 percent of Tesla shares. Larry Ellison, founder of **Oracle**, owns another 1.5 percent; Ellison is not running for reelection this year after serving on the board since 2018. Musk’s brother, director Kimbal Musk, owns less than 1 percent of the shares.

Financial results: The company posted a profit for the first time in 2020, and again was profitable this year, as it addressed earlier manufacturing delays; it continues to develop markets for its vehicles and other products. The Covid-19 pandemic and related issues continue to affect Tesla, however, with a continued global shortage of semiconductors. This may affect the company’s production growth.

Risk factors: Tesla’s 10-K notes risks from “legal and regulatory requirements, political uncertainty and social, environmental and economic conditions in numerous jurisdictions,” as well as increased scrutiny and changing expectations from stakeholders regarding ESG practices. But it does not specifically mention discrimination/bias concerns or human rights.

It does say, however, that its success depends on its ability “to attract, hire and retain” employees; those employees may decide to leave because of the competitive labor market or “any negative publicity related” to Tesla. Further, it is “highly dependent” on CEO Elon Musk, who is also CEO and CTO of Space Exploration Technologies (SpaceX).

Musk is often enmeshed in numerous controversies. Many of the controversies can be traced to his Twitter habit; Musk announced he would buy Twitter this spring but the transaction has yet to occur. In 2018, the Securities and Exchange Commission (SEC) sued Musk after he said he planned to take Tesla private and had secured funding to do so, which was not accurate; he reached a settlement in which he paid a \$20 million fine and gave up his post as chair.

Legal proceedings: In the 10-K, Tesla mentions two cases that are noted by proponents of the pending resolutions covered in this report:

- In *Diaz vs. Tesla*, a jury awarded a verdict of \$136.9 million against Tesla. It found in favor of Owen Diaz, a former “contingent” worker at the factory in Fremont. Tesla filed a post-trial motion in November 2021, [to request a new trial](#) or reduce the damages awarded. The judge lowered the award to \$15 million and now Diaz is seeking a new trial.
- The California Department of Fair Employment and Housing filed suit against Tesla in February 2022, alleging “years of ‘rampant racism unchecked’ at Tesla’s Fremont plant.”

Unions: The company views trade unions as a material risk that can result in higher employee costs and increased risk of work stoppages, saying in the 10-K:

Although we work diligently to provide the best possible work environment for our employees, they may still decide to join or seek recognition to form a labor union, or we may be required to become a union signatory. From time to time, labor unions have engaged in campaigns to organize certain of our operations, as part of which such unions have filed unfair labor practice

charges against us with the National Labor Relations Board (the “NLRB”), and they may do so in the future. In September 2019, an administrative law judge issued a recommended decision for Tesla on certain issues and against us on certain others. In March 2021, the NLRB adopted a portion of the recommendation and overturned others. Tesla appealed the decision to the United States Circuit Court for the Fifth Circuit, which is currently pending. Any unfavorable ultimate outcome for Tesla may have a negative impact on the perception of Tesla’s treatment of our employees. Furthermore, we are directly or indirectly dependent upon companies with unionized work forces, such as suppliers and trucking and freight companies. Any work stoppages or strikes organized by such unions could delay the manufacture and sale of our products and may harm our business and operating results.

(In March 2020, the NLRB ruled against the company but imposed no fines. See “Controversies” below.)

Approach to Decent Work, Diversity & Human Rights

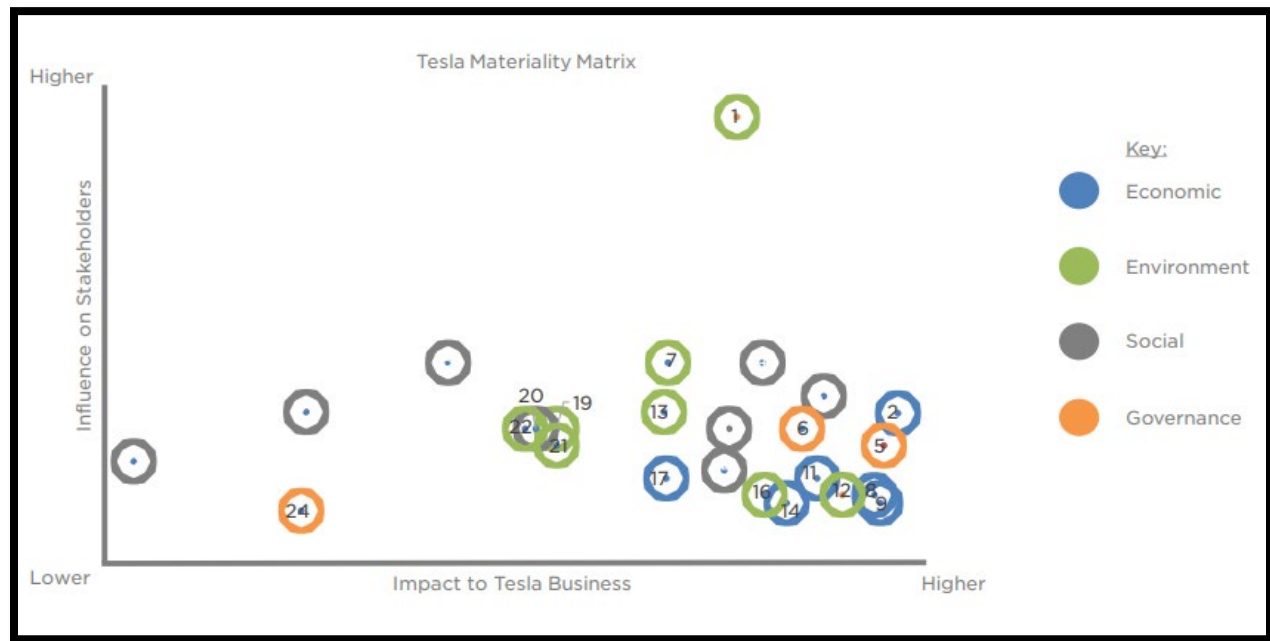
Governance:

Board—The company is governed by an eight-person board, chaired by Robyn Denholm since November 2018 when the SEC forced Elon Musk to give up the post. Denholm’s background is in the tech sector; she is an economist and accountant by training and currently is an operating partner of the venture capital firm Blackbird Ventures. While most other members of the board have backgrounds in finance and technology, there are two notable exceptions:

- The other woman on the board, Kathleen Wilson-Thompson, is an attorney and has been on the board since December 2018. She was an executive vice president and Global Chief of Human Resources at **Walgreens Boots Alliance** until her retirement in January 2021; she also worked in the past in human resources at **Kellogg**.
- A more recent addition to the board is Hiromichi Mizuno, who started his term in April 2020. He brings background in finance as former Chief Investment Officer for Japan’s Government Pension Investment Fund, the world’s largest. He also sits on many business and government advisory boards, which have included the Principles for Responsible Investment, which works on promoting responsible investment in partnership with the UN. This background brings notable outside expertise about handling controversies and reporting. Mizuno has been UN Special Envoy on Innovative Finance and Sustainable Investments since January 2021.

As noted above, Ellison is not standing for re-election this year. The [board](#) will not nominate a replacement, decreasing its size to seven members.

Committees—There are four standing committees—Audit, Compensation, Disclosure Controls, and Nominating and Governance. None of the committees are specifically tasked with oversight of human rights, although the [Audit Committee](#) indicates the committee oversees “guidelines and policies with respect to risk assessment and risk management with the Company’s management.” The [Compensation Committee](#) oversees human capital management, including “how the company recruits, develops and retains diverse talent.” The [Nominating and Governance Committee](#) annually reviews corporate governance matters, including the [Code of Business Ethics](#) and [Corporate Governance Guidelines](#). According to the Guidelines, the full board is responsible for oversight of “management’s performance to ensure that Tesla operates in an effective, efficient and ethical manner.”



Management—The company reports that it has a Sustainability Council, “made up of leaders from across Tesla,” which “collects data and prepares the analysis and content” used in its annual Impact Report. The Sustainability Council also “presents this information to Tesla’s Board of Directors for review.”

The company also reports again this year on its diversity management, reporting that its “Senior Director of People” engages with the board “to ensure our DEI plans are in alignment with Tesla’s strategic objectives.” Further:

We also integrate our talent management and learning and development into the DEI functional scope to ensure equitable talent, career and learning resources are accessible to all employees. The DEI Director reports directly to the Senior Director of People and has regular engagement with company executives across the company to ensure that DEI principles are embedded into our business. The DEI Director is responsible for all of Tesla’s talent management and learning programs.

Codes and Reporting:

Code of Business Ethics—The Code includes a comprehensive anti-discrimination, harassment and retaliation statement covering “race, color, religion, marital status, age, national origin, ancestry, physical or mental disability, medical condition, pregnancy (including childbirth, lactation, or related medical conditions), genetic information, gender, sexual orientation, gender identity or expression, veteran status, or any other protected status.”

Impact Reports—In April 2019, Tesla published its first sustainability disclosure, which it has updated each year, the latest [Impact Report](#) covers 2021 for most data points.

The report starts out with a “Foreword on Impact,” questioning ESG measurements:

Current ESG evaluation methodologies are fundamentally flawed. To achieve acutely-needed change, ESG needs to evolve to measure real-world Impact...

Many ESG ratings evaluate: “Does this ESG issue impact the profitability of the company?” We need a system that evaluates: “Does the growth of this company have a positive impact on the world?”... As the world needs to strive for a substantial positive impact, we won’t be referring to ESG in this report. Instead, we’ll talk about Impact.

In 2021, the report leads with Corporate Governance and then provides a section on People and Culture, with some quantitative metrics on DEI. Other sections include Environmental Impact, Product Impact and Supply Chain.

The company conducted its second materiality analysis in 2021 (see figure above, previous page) and added a detailed appendix with three years of key performance metrics on a variety of ESG issues. It also describes alignment with the UN Sustainable Development Goals (box right).

1. Environmental Management, Reducing Carbon
2. Quality Management- Product Safety
3. Employee Workplace Safety
4. Employee Attraction, Retention, Development
5. Ethical Business Conduct, Integrity, Transparency
6. Data Protection, Cybersecurity
7. Supply Chain Management, Sustainable Materials/Products
8. Customer Satisfaction, Trust and Loyalty
9. Company Brand and Mission
10. Employee Health and Wellness
11. Company's Intellectual Property, Innovation, R&D
12. Renewable Energy
13. Waste Management/Recycling
14. Company Financial Health (Product Sold, Profitability)
15. Employee Compensation and Benefits
16. Air Quality, Reducing Toxic Emissions
17. New Markets, EV, Autonomous Cars
18. Labor Relations
19. Water Management
20. Diversity, Equity and Inclusion
21. Climate Change and Risk Management
22. Biodiversity Preservation, Natural Resource Conservation
23. Human Trafficking, Forced Labor
24. Critical Events, Disaster Relief, Pandemic
25. Community Engagement, Economic Development

Human rights: Included in the Impact Reports are references to Tesla’s [Human Rights Policy](#) and [Supplier Code of Conduct](#). The report endorses the UN Universal Declaration for Human Rights and says Tesla will uphold it “throughout our value chain”—a provision added in July 2021—for “employees, customers, shareholder, suppliers, and the communities in which we operate.” It says this is “an ongoing effort” that requires engagement with external stakeholders.

Workplace—The human rights policy addresses a respectful workplace and equal opportunities, but it does not address freedom of association and collective bargaining.

Supply chain—The policy also lists steps Tesla will take to ensure company and supplier compliance with the policy, including risk evaluation, audits, certifications, disciplinary action including possible contract termination, training and investigations. It says:

Tesla is committed to ensuring that its entire value chain—from raw materials to final production—is free of any form of slave or forced labor, debt bondage or human trafficking. Tesla does not, and will not, tolerate the use of any non-voluntary, including prison, labor of any age in the manufacture of its products and does not, and will not, accept products or services from suppliers that engage in forced labor or human trafficking in any form. Human trafficking and slavery are crimes under state, federal and international law. We do not allow any direct or indirect control tactics including, corporal punishment or the threat of corporal punishment economic, emotional, or familial abuses at our facilities and will not allow it in the facilities of our suppliers. Tesla recognizes that these crimes exist in countries throughout the world and requires our suppliers to help in our efforts to end them regardless of geographic location or place in our value chain.

Conflict minerals: The company posts on its website its [most recent Conflict Minerals Report](#), covering the year ending in December 2021. In last year’s report, the company added a comment that it “considers mining activities that fuel conflict as unacceptable.” It says now:

For all materials used in Tesla products, Tesla requires its suppliers to establish policies, due diligence frameworks and management systems consistent with the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas or the OECD Guidelines for Multinational Enterprises. Tesla’s requirements are designed to accomplish the goal of only sourcing materials from suppliers who behave in accordance with our company mission.

The above policy covers columbite-tantalite (tantalum); cassiterite (tin); gold; wolframite (tungsten); and any derivatives of these materials. But it also “recognizes the potential for abuse for sourcing cobalt, nickel, lithium and mica and describes a requirement for suppliers to use a similar red flag system to identify problems with child or forced labor and negative environmental impacts.

The policy requires suppliers to use due diligence guidelines set out by the Organization for Economic Cooperation and Development (OECD). Tesla is a member of the [Responsible Minerals Initiative \(RMI\)](#) and participates in the Silicon Valley Conflict Minerals and Human Rights Forum. RMI issued [revised cobalt refiner standards](#) on Aug. 19, 2021. Implementation of the revisions was discussed by an RMI project manager in a [February 2022 report](#) published by The Cobalt Institute.

Disclosures—As noted, the annual conflict minerals reports discusses audits of the supply chain for the sourcing of gold, tantalum, tin, or tungsten (known as 3TG). Tesla says it has engaged with automotive Tier 1 suppliers likely to have 3TG exposure and requested Tier 1 suppliers in its solar business to report on possible exposure. The report lists all possible countries from which it may source conflict minerals but does not indicate which are in the Tesla supply chain. It reports that in 2021, 80 percent of smelters it uses conform to conflict minerals auditing and lists those in the Tesla supply chain. It says it expect continued improvements in conformance. Conformance stood at 82 percent for 2020 and 78 percent for 2019.

The Impact Reports have discussed cobalt sourcing, which is not officially a “conflict mineral” but mostly comes from the DRC. Tesla says that it is improving supply chain due diligence for materials beyond 3GT and that it collects detailed information on its cobalt suppliers using monitoring methods set out by the Responsible Minerals Initiative (RMI). It also says that its batteries do not use a significant amount of cobalt because they use more nickel than other types of vehicle batteries. *(See “Controversies” section below for more on a related lawsuit filed in 2019 that was dismissed in November 2021 but on appeal.)*

Employees, diversity and decent work: The Impact Report’s People and Culture section lists diversity, equity and inclusion (DEI) guiding principles:

- *Provide transparency in our DEI programs, identify areas of improvement, celebrate successes and continually iterate and improve our DEI approach*
- *Integrate accountability measures into our business operations*
- *Focus on sustainable solutions that solve problems at the root cause and reimagine new programs with DEI principles embedded in the design*

- *Share knowledge throughout all levels of the organization to aid in personal and professional learning and development*

Tesla describes “regular and transparent” communication with employees, pathways to promotion for all and good pay, and asserts that diversity, equity and inclusion is built into hiring, retention and promotion. Among new managers, executives and directors in 2021, 69 percent were promoted from within the company.

Diversity & inclusion data—Tesla has provided some information on the demographic breakdown of its U.S. workforce and includes some information from its EEO-1 report in the Impact Report. It provides percentages, not hard numbers, however, making it impossible to aggregate any categories (*see below table, top of next page*). Women account for similar shares of the top two levels of leadership and the rest of the workforce. However, white workers are far overrepresented in leadership relative to their share of their total workforce; they displace Black and Hispanic/Latinx workers in leadership.

Overall, Tesla notes that it is a “majority-minority” company, with people of color making up more than half the U.S.

2020 Tesla U.S. Workforce Representation						
	Asian	Black	Hispanic/Latinx	Other	White	Women
First/Mid Officials & Mgrs	15%	5%	12%	31%	63%	22%
Exec/Sr. Officials & Mgrs	23%	3%	4%	36%	66%	21%
Workforce	20%	10%	24%	7%	38%	22%

workforce. Among director-level and above on staff, “non-white” employees account for one-third of the total, only about one-third of 1 percent of all employees.

Starting in 2020, all divisions were to begin conducting quarterly diversity data reviews to identify trends, and work with DEI, HR, and recruiting partners “to create an action plan to attract, develop and retain talent.” Tesla says it has worked to improve diversity and inclusion, including “consistent and fair performance reviews,” virtual trainings on unconscious bias and inclusive interviewing and leadership.

Employee Resource Groups continued during the pandemic, to foster connection even through virtual environments. Additionally, Tesla added formal collaborations between its DEI, supply chain and government affairs teams, and says it will continue work to increase the use of diverse suppliers.

The company compares its U.S. workforce to that of U.S. tech and automotive companies, separately, finding that it generally compares quite favorably in terms of racial/ethnic diversity. It does not compare well for women’s share of the workforce, however.

Tesla concludes, “our journey towards diversity, equity and inclusion is not finished and we continue to develop programs to make sure our employee base reflects the diversity of our country’s population.”

Board diversity—The [Nominating and Governance Committee](#)’s board composition and nominating responsibilities include, but are not limited to:

- *Reviewing and making recommendations to the Board regarding the composition and size of the Board and determining the relevant criteria (including any minimum qualifications) for Board membership including issues of character, integrity, judgment, diversity, age,*

independence, skills, education, expertise, business acumen, business experience, length of service, understanding of the Company's business, other commitments and the like;...

- *Establishing procedures for identifying and evaluating nominees for Director;*
- *Reviewing and recommending candidates for election to the Board at the annual meeting of stockholders or at any special meeting of stockholders at which one or more directors are to be elected, in compliance with the Company's policies and procedures for consideration of Board candidates.*

The company reports again this year on the proportion of its current board by race and ethnicity in the Impact Report, noting 13 percent each for Asian and Black directors and 75 percent White (with rounding errors). This small share of racially/ethnically diverse board members is not that different from the majority of large employers ranked by [JUST Capital](#), which provides U.S. data by sector.

Tesla does slightly better than peer companies in the S&P 500. As research from executive search firm [Spencer Stuart](#) shows, the racial diversity of board members of S&P 500 companies in 2021 is: 11 percent African American, 5 percent Latinx/Hispanic, and 5 percent Asian and less than 1 percent each for American Indian/Native Alaskan and Multiracial. This totals 21 percent people of color.

Tesla's two female directors make up 25 percent of the board. Women's representation on the boards of S&P 500 companies is now 30 percent, [Spencer Stuart notes](#).

Mandatory arbitration: Supporters and opponents of mandatory arbitration's use for employee complaints differ on when it should be used, but they agree arbitration is cheaper than litigation in court. Opponents contend it lowers company costs because: 1) it is faster; 2) plaintiffs succeed less in arbitration relative to in court; and 3) plaintiffs are awarded less in damages. Arbitration can actually add costs in two ways, however, according to the [SEC's investor advocate Rick Fleming](#)—because disputes in arbitration are rarely public, they have limited deterrence effects and it is inefficient for the same claim to be arbitrated on behalf of multiple employees.

While companies may find mandatory arbitration advantageous in many circumstances, evidence suggests that arbitration clauses can suppress [employment discrimination](#) complaints and make long-term solutions harder to reach. [Research](#) by Cynthia Estlund, a professor at New York University, found that fewer employees subject to mandatory arbitration make claims because they have difficulty finding attorneys to represent them, given an [often-biased process](#) and lower recovery amounts.

In a comprehensive review of mandatory arbitration clauses and cases, *The New York Times* [found](#) what amounts to a privatization of the justice system, which can have disastrous consequences for individuals. In a sex discrimination case, the arbitration process effectively blocked one plaintiff's ability to question a witness' changed testimony, to raise potential conflicts of interest (between the arbitrator and her employer), and, importantly, to appeal. The plaintiff was still paying off \$200,000 in legal fees seven years later. The *Times* documented examples of the friendliness between arbitrators and companies, with arbitrators cultivating ties to win more business. One way that the arbitrators cultivate repeat business is to decide in favor of companies.

Controversies

Harassment and discrimination allegations: Nia Impact has highlighted several cases of alleged problems where it says Tesla used arbitration to silence complaints. *The Guardian* [reported](#) in July 2017

on “mounting complaints about gender discrimination” at the Fremont plant, where a complainant was vilified by Tesla in the press and ultimately left. Another case [reported](#) by *The Guardian* in April 2018 involved alleged racial harassment and the company offered a settlement in exchange for silence. Further, temporary employees said they experienced racial slurs and saw swastikas in a bathroom, according to an April 2018 *Los Angeles Times* [report](#). Nia concluded, “Investors do not know how many employees have raised concerns about Tesla’s workplace practices that were addressed only on arbitration, nor do investors know if any employees accepted payment in exchange for silence.” The company’s head of diversity, a Black woman rare in the high tech sector, [left in June 2019](#).

Problems persist. In late 2021, two women filed separate [lawsuits](#) alleging sexual harassment at the Fremont factory, calling it “continuous and pervasive.” One also alleged retaliation from managers after making a complaint about one. Jessica Barraza alleged in November, “The pervasive culture of sexual harassment, which includes a daily barrage of sexist language and behavior, including frequent groping on the factory floor, is known to supervisors and managers and often perpetrated by them...

Tesla critics noted a *New York Times* [column](#) that recounted how, on May 20, 2020, Musk told his 34 million Twitter followers to “take the red pill”—referencing what has become online code signifying support for misogynistic and racist views. Musk later said that he only meant to illustrate his support for free-thinking. But critics of the company have suggested that the “red pill” tweet was another signal that underscored broad concerns about how the company treats its employees.

In 2022, the California Department of Fair Employment and Housing filed a lawsuit after a three-year investigation. [CBS News](#) reported that agency director, Kevin Kish, said:

DFEH found evidence that Tesla’s Fremont factory is a racially-segregated workplace where Black workers are subjected to racial slurs and discriminated against in job assignments, discipline, pay and promotion creating a hostile work environment. The facts of this case speak for themselves. DFEH will continue to take steps to keep workplaces free of harassment and racism.

According to the complaint, Black employees were subjected to racial harassment “throughout the day, every day,” as often as “50-100 times a day,” and heard comments such as: N-word; boy; porch monkey; hood rats; monkey toes; horse hair; N-word out of the hood; from the ghetto; Tesla [was] hiring lazy coons; go back to Africa.

According to the suit, the factory was racially segregated and employees were seen openly displaying Confederate flag tattoos. The area with Black employees was referred to as the “slave ship” or the “plantation.” Black employees were told “monkeys work outside,” according to the lawsuit.

Tesla posted on its blog “[The DFEH’s Misguided Lawsuit](#),” hours before the lawsuit was filed, where it claims that the allegations are old, the company is doing meaningful work on DEI, and the department should work with Tesla rather than sue it. It claims that:

Over the past five years, the DFEH has been asked on almost 50 occasions by individuals who believe they were discriminated against or harassed to investigate Tesla. On every single occasion, when the DFEH closed an investigation, it did not find misconduct against Tesla. It therefore strains credibility for the agency to now allege, after a three-year investigation, that systematic racial discrimination and harassment somehow existed at Tesla.

Also in February, a former worker filed a [lawsuit](#) alleging racial and sexual orientation discrimination, harassment, retaliation and wrongful termination at the Lathrop (Central Valley) megafactory.

Most recently, in June, shareholders filed a [lawsuit](#) against Musk and Tesla's board, alleging that the officers and directors allow a "toxic workplace culture," thus exposing the company to direct liability, and a damaged reputation and goodwill. Fifteen current and former Black workers filed a [lawsuit](#), alleging abuse and harassment at the factories, primarily in Fremont, California. They claim that "standard operating procedures include blatant, open and unmitigated race discrimination." This lawsuit brings to 10 the tally of active cases that allege racial discrimination or sexual harassment, according to the [Guardian](#).

Union organizing: In September 2019, an administrative law judge in California [ruled](#) Tesla violated national labor laws when Elon Musk said on Twitter that employees who joined a union would have to give up their stock options. His tweet read, "Nothing stopping Tesla team at our car plant from voting union. Could do so tmrw if they wanted. But why pay union dues & give up stock options for nothing? Our safety record is 2X better than when plant was UAW & everybody already gets healthcare."

In December 2019, the company [filed](#) objections to the ruling, which it appealed to the NLRB in Washington. In March 2021, the NLRB [ruled](#) that Musk's tweet violated the law and ordered him to delete the three-year-old tweet. It also ordered Tesla to rehire a union organizer it had fired. The NLRB also noted that the company had questioned employees about their union activities and acted against those who supported unionization. However, the board imposed no financial penalties and [CNN called](#) its action "a slap on the wrist."

The United Automobile, Aerospace and Agricultural Implement Workers (UAW) have been trying to organize Tesla in the [Driving a Fair Future at Tesla](#) campaign, urging employees to report safety problems and documents complaints.

Human rights: In December 2019, the human rights group International Rights Advocates [filed suit](#) in U.S. District Court in the District of Columbia against Tesla and four other tech firms on behalf of children injured in cobalt mining in the Democratic Republic of Congo. The other defendants were **Apple, Alphabet, Dell and Microsoft**. CBS News [noted](#) the suit, the first of its kind, claimed to have evidence that the companies knew about child labor in their cobalt supply chain. In its 2019 and 2020 Impact Reports, Tesla does not mention the case, but it continues to refute allegations about child labor in its proxy statement. On Nov. 5, 2021, a U.S. District Court [dismissed the case](#), saying the causal relationship between miner's injuries and the companies was too weak. The [appealed](#) in December.

II. Proponent Positions

Item 7: Workplace Bias Policy

The New York State Common Retirement Fund (NYSCRF) wants annual reports on the effectiveness of anti-harassment and anti-discrimination programs, with quantitative data that can be used to set goals and show progress over time. This report would include pending cases in arbitration and litigation.

NYSCRF contends that the requested information about complaints, legal disputes and settlements is of great interest and material to investors. It points to high-profile lawsuits settled against **Twentieth**

Century Fox, Wynn Resort and Alphabet, where boards were accused of breaching their duties by failing to protect employees from discrimination and harassment.

Despite Tesla’s claims about equitable practices, news reports and lawsuits alleging gender and racial discrimination, harassment and retaliation at the company are reasons for concern, NYSCRF contends. It notes the October 2021 California jury award of \$137 million to a former employee who alleged a racially hostile environment. *(The ultimate outcome remains contested as noted above.)*

Civil rights violations within the workplace can result in substantial costs to companies, including fines and penalties, legal costs, costs related to absenteeism, and reduced productivity, the proposal points out. It notes a company’s failure to properly manage its workforce can damage corporate goodwill, making it more difficult to retain and recruit employees, and jeopardize relationships with customers and partners.

Given that “most Tesla workers are currently bound by mandatory arbitration agreements,” shareholders need the requested report to assess risk and improvements in workforce management, NYSCR concludes.

Item 8: Board Diversity

Arjuna argues for an annual report on policies and practices that would lead to greater racial and diversity on the board, in line with the demographics of its customers and/or regions where the company operates. Such a report could include targets and measures to which they align (customers and/or employees); progress and challenges meeting those targets; and strategies or practices to increase board candidate diversity.

The proponent points to research on greater board diversity leading to increased shareholder value such as higher revenues, higher return on assets, a more diverse workforce, enhanced corporate governance and improved stakeholder relations. The International Monetary Fund found that “substituting one man for one woman on a board is associated with higher Return on Assets,” Arjuna notes. Further, the University of Toronto found that “companies with greater board diversity are less prone to accounting mistakes, business controversies, and poor investment decisions.”

Regulators, legislators and other stakeholders recognize the benefits of board diversity, the proposal notes, which drove Nasdaq to include board diversity in its listing standard, California’s 2018 legislation (*recently ruled unconstitutional*) and has prompted investor opinion solidly in favor of boards reflecting the customer base and broader society according to research from Institutional Shareholder Services.

Tesla does not report the gender or racial/ethnic composition of the board, Arjuna asserts, although since the proposal was submitted the company has reported 25 percent of the board is Asian and Black, and 25 percent female. (This compares to the U.S. population being 51 percent women and 42 percent minorities, according to Arjuna’s data.)

In conclusion, the proponent argues that a Tesla board that is more diverse in gender and race/ethnicity will “minimize business risk, maximize opportunity, and increase shareholder value.”

Item 9: Mandatory Arbitration

Nia Impact’s proposal about mandatory arbitration is in its third year, having earned 46.4 percent last year and 26.8 percent in 2020. It continues to contend that using mandatory arbitration affects the company’s brand, employees and workplace culture. The resolved clause, slightly different than 2020 and 2021, adds brand/consumer perceptions and asks that the company:

...evaluate the impact of Tesla’s current use of arbitration on the prevalence of harassment and discrimination in its workplace, on employees’ ability to seek redress, and on consumer perception of Tesla as an employer.

Tesla “requires employees to agree to arbitrate employment-related claims,” it says, and these remain private and prevents employees from accessing the courts. This also can hide problems from other employees and may enable “serial harassers.”

The proposal asserts that toleration of harassment and discrimination “invites legal, brand, financial, and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism, and challenges in attracting and retaining talent.”

Nia points to the California Department of Fair Employment and Housing’s lawsuit against Tesla that is based on hundreds of complaints of racism, discrimination and retaliation after a three-year investigation.

Adding to risks for companies is “a changing regulatory landscape,” Nia cautions. It points to the passage of the federal [Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act](#), as well as the California prohibition on retaliation against employees who refuse to sign arbitration agreements. Nia concludes that “ongoing use of employee arbitration creates a long-tail risk for Tesla.”

Other companies that have never required or have ceased mandatory arbitration include **Adobe, Airbnb, Google, IBM, Intel, Microsoft, Salesforce** and **Uber**. For Google, “arbitration was identified as a key aspect of a “culture of concealment” in its \$310 million misconduct settlement.”

Nia says Tesla must guard its valuable brand against association with racist, sexist or other discriminatory behaviors. Finally, it says investors want to know that Tesla will continue to innovate effectively by “effective human capital management systems.”

Exempt Solicitation: Nia Impact Capital expanded on its arguments in a [filing at the SEC](#) on July 7, summarizing its arguments for the proposal:

- 1) *Significant concerns have been raised about workplace conditions at Tesla*
- 2) *Use of arbitration may perpetuate poor workplace practices for employees*
- 3) *Poor workplace practices may harm Tesla’s financial and workplace performance*
- 4) *Tesla is increasingly an outlier from its peers with regard to human capital management*

Item 11: ILO Standards

SHARE asks the company to adopt and disclose a policy commitment to respect freedom of association and collective bargaining in its own operations. These “fundamental human rights” are protected under national and international legal standards, including the UN Universal Declaration of Human Rights and the International Labour Organization Fundamental Principles.

Tesla does not have any formal policy commitments to respect freedom of association in its own operations, despite clear articulation of such standards for its suppliers, the proposal notes. CEO Elon Musk recently [issued](#) a “public invitation” for unions to hold an election at its California factory, without interference; but this comes after negative media over Tesla’s illegal behavior in a 2019 union election.

Fundamentally, the proponent argues, workers’ ability to organize and bargain collectively is important human right “that can be a net positive for companies and investors.” SHARE says other companies, like **Amazon** and **Starbucks**, have suffered from regulatory enforcement actions after they allegedly interfered in unionization efforts. It concludes shareholders deserve transparency about Tesla’s policies and practices related to domestic labor rights.

Exempt Solicitation: SHARE reiterated its position in a [July 5 exempt solicitation](#), saying the company has repeatedly interfered with union rights, does not make any explicit commitments to support them, and therefore exposes shareholders to material risks.

Item 12: Supply Chain Standards

The Sister of the Good Shepherd, a member of the Interfaith Center on Corporate Responsibility, wants a public report on the company’s sourcing of materials for its batteries, and the extent to which its move away from cobalt will help it eliminate child labor from its supply chain by 2025. The Sisters have filed similar proposals in each of the two previous years, earning about 25 percent support.

This year, the proposal notes that cobalt used in EVs comes from mining companies that face allegations of problems with child labor and poor working conditions, which it says are material risks to the company. It notes that the DRC [supplies 70 percent](#) of the world’s cobalt and child labor is well documented in artisanal mines.” Further, the ILO “recognizes cobalt mining as hazardous work and one of the worst forms of child labor, as children work with sharp tools in mines at risk of collapse.” Despite the “urgent” need to end child labor, “voluntary corporate actions have failed to eradicate hazardous child labor from cobalt mining,” the proposal observes.

The proposal asserts risks connected to cobalt use are “financial, legal, and reputational,” pointing to the lawsuit noted in Section I above that was dismissed last November. The proposal notes that defendants “did not challenge the fact that child labor is occurring in their cobalt supply chains but argued that conduct by their suppliers is out of their control, which conflicts with Tesla’s policies that the company claims prohibit its suppliers from using child labor.” The proponents say the company is undermining its responsibility by this argument and notes an appeal filed in December.

The Sisters of the Good Shepherd says that the current efforts to address cobalt by Tesla “fail to demonstrate that its cobalt supply chain is free of child labor,” and argue that it need to have *requirements*, not just “expectations,” which should be “binding, enforceable, and regularly monitored for compliance with national and international laws prohibiting child labor and the company’s own policies.” If the company does not take this step, even if it phases out cobalt, it still we be exposed to human rights risks from other critical materials, in the proponents’ view.

As Tesla aims to phase out cobalt in its electric vehicle batteries and seeks to position itself as a socially responsible company, the company remains exposed to human rights risks in the supply chains for other critical transition minerals, citing a [recent paper on EV materials](#).

III. Management Positions

Item 7: Workplace Bias Policy

Management argues that the request report on workplace bias is unnecessary. Tesla does not tolerate any mistreatment of employees in the workplace or in “work-related situations,” it says. The relevant policies and practices are codified in the Code of Business Ethics and Employee Guidebook and overseen by the Compensation Committee of the board, the company points out.

Every employee must review and acknowledge the Code of Business Ethics and Policy Against Discrimination & Harassment in the Workplace, as well as “participate in an in-depth and interactive anti-harassment and anti-discrimination training,” now part of new hire orientation, the board points out. In addition, in 2021 the board says Tesla “redoubled” efforts towards a safe and inclusive workplace with its “Respectful Recharge” program: employees receive “additional training on workplace expectations, consequences for violating Tesla’s policies and avenues to raise concerns without fear of retaliation.”

Employees can complain via multiple methods: directly to management, Human Resources or Employee Relations, and/or a hotline. Management says it promptly investigates any complaints of discrimination and harassment; consequences for perpetrators can include termination of employment. “Employee Relations partners” conduct these impartial investigations, the board says.

Item 8: Board Diversity

Management opposes the resolution and says the proxy statement already details candidate criteria, with diversity as one of the crucial factors. Two of the three most recently added directors are diverse in terms of gender, race ethnicity, and the chair is a woman, the board points out. Moreover, Tesla now has disclosed board diversity data for two consecutive years.

The Nominating and Corporate Governance committee conducts an annual evaluation of board effectiveness, which includes an assessment of composite skills and experiences. New candidates should “increase our Board diversity in a way that supports the current and anticipated needs of the Company,” Tesla says

Item 9: Mandatory Arbitration

As it did previously, Tesla says the resolution about mandatory arbitration includes “inaccurate and unsupported assertions regarding arbitration and its alleged impact on workplace conditions at Tesla,” concluding a report is not justified.

Tesla already has “taken steps to amend the standard arbitration clause” with new hires to comply with the federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, the board points out, even though it continues to believe that arbitration is the “best method” for resolving workplace disputes.

The company’s current arbitration policy does not limit remedies, the statement of opposition says, regardless of how the claim is handled. Employees also may discuss arbitration results publicly if trade secrets and proprietary information are excluded. “Arbitration does nothing to silence alleged victims,” given Tesla’s workplace practices generally, as well as specifically around complaints and arbitration.

Management argues that arbitration is efficient, with experienced jurists: “The overall expediency benefits both parties with a fair resolution and a speedier return to their respective priorities without miring them in lengthy litigation.” This avoids the possible extra costs and delays, and the “risk of jury verdicts that are untethered to the evidence.” It adds, “Broken judicial systems may benefit plaintiff’s lawyers, but they do not benefit stockholders.”

Moreover, there is no “connection between arbitration and workplace culture,” management asserts. It has a zero-tolerance policy for harassment of any kind, and an Employee Relations team that responds to all complaints. The company has “designed its workplace and policies to provide all employees with a respectful and safe working environment by not tolerating any discrimination, harassment, retaliation or any other mistreatment at work, whether based on a legally protected status or otherwise.” In contrast, the proponent’s proposal reflects a one-size-fits-all goal to end all employee arbitration without considering this specific to Tesla.

Item 11: ILO Standards

Management opposes the resolution, arguing that its endorsement of the UN Universal Declaration for Human Rights implicitly means that it respects freedom of association and collective bargaining throughout its operations and among suppliers. It calls its commitment to human rights “deeply ingrained in our values.” It says:

We have more than 100,000 employees worldwide, and we comply with all applicable local laws related to freedom of association and collective bargaining, and respect internationally recognized human rights in all the areas we operate. In Germany, where we have just opened Gigafactory Berlin, we have established a works council which advocates for employees and acts similarly to a union. In the US, we share information with employees on their rights under the National Labor Relations Act and we provide manager training on employee rights, including the freedom of association. These actions speak for themselves.

The board says the resolution would require Tesla to “to create and maintain a policy framework and additional administrative bureaucracy” that will add nothing to its human rights commitments. Employees already have the option to lodge anonymous complaints internally or externally and “They are also free to discuss wages, benefits and terms of employment,” according to the board. It concludes the company “has created a culture of safety and meaningful engagement with employees, and highly competitive compensation programs, including equity options for all employees.” It characterizes its efforts a promoting a “healthy culture.”

Item 12: Supply Chain Standards

Tesla opposes the resolution. The board notes that the proposal is similar to a previous filing from the Sisters of the Good Shepherd that did not receive majority support.

The board says the annual Tesla Impact Report describes the company’s approach to human rights and child labor. It and argues that the basis for the proposal is flawed because it rests on the court case dismissed in November—that the company is allegedly not making effort to find and eliminate child labor in its supply chain.

The board says it does, in fact, protect human rights in its procurement efforts, broadly and specifically with regard to cobalt, having set up a supply chain due diligences management system aligned with OECD guidance:

We are one of the few downstream companies that publicly report through our Impact Report on how we follow each of the five steps set out in the Guidance, including how we identify (including through audits) and mitigate risks (for its part, the OECD has identified reporting on risk mitigation as being very weak across the industry). As stated in the Impact Report, in the event that modern slavery, child labor or human trafficking is identified in our supply chain and has not been remediated by the supplier within a reasonable time frame, Tesla will transition away from that supplier.

The company's use of OECD guidelines and its Impact Report assessment shows "no evidence to date of Tesla causing, contributing to or being linked to child labor, modern slavery or human trafficking in our supply chain," the board asserts. Because Tesla source cobalt directly from mines, it is more confident than other users that it does not violate its standards and does not buy from artisanal and small-scale miners where the child labor risk is most acute: "Rather, we source our cobalt from industrial mines, where no child labor has been identified to date," Tesla explains.

Tesla also audits mines and refiners in its supply chain and reviews third-party audit results from the Responsible Minerals Initiative. It says, "In 2021, 83% of refiners and mine sites in Tesla's battery supply chain either underwent or committed to undergo independent external sustainability audits against" RMI standards, in addition to the company's own audits.

Further, the company in 2021 sent a delegation to the DRC for an assessment of environmental and social conditions, to better "understand the importance of [artisanal mining] for local livelihoods." It points to its support and leadership in the Fair Cobalt Alliance (FCA), which has developed "referral system for children engaged in mining activities, including child labor notification protocol, remediation solution packages, and guidelines for case managers on remediation steps, and trainings related to child rights." It says the company support the FCA even though it has not found any child labor in its own supply chain because "we understand that child labor is an existing challenge in the DRC that requires structural solutions."

The board reassures investors that its supply chain does not use child labor and concludes its current policies and reports "already provide robust and transparent information on these matters."

IV. Analysis

Si2's [Decent Work](#) Briefing Paper gives background on mandatory arbitration, and some workforce diversity issues; the Briefing Paper on [Diversity](#) covers the issue as it relates to both the workplace and board; and the Briefing Paper on [Human Rights](#) discusses human rights standards. What follows is specific to Tesla and the pending proposals.

Tesla is known for its ground-breaking electric vehicles and earns almost all its revenue from its automotive segment. It has experienced rapid growth as its automobile production comes online, increasing employees to 99,000 at the end of 2021, up from 71,000 the year before. Employees work in factories in California, New York, China and Germany, and a new plant in Texas coming online this year.

While the company says its relations with employees are good, anti-union activity prompted an adverse ruling from the National Labor Relations Board (NLRB) in March 2021 and the company cites trade union activity as a material risk. There have been numerous complaints about racism and misogyny at its main vehicle production site in California, cited by the proponents, including one that prompted a \$137 million verdict in 2021, since reduced to \$15 million. Also, in June 2022 shareholders filed a lawsuit alleging that management and the board have allowed a “toxic workplace culture.” CEO Elon Musk is a lightning rod for criticism, from both investors and company critics, despite the company’s undisputed game-changing role as a sustainable energy company.

The company posted its first profit in 2020, repeating that in 2021.

Governance: Tesla has an eight-person board of directors, chaired by a woman, Robyn Denholm. Mizuno brings to the board expertise on responsible investment issues given his experience on the board of the UN Principles for Responsible Investment and current position as UN Special Envoy on Innovative Finance and Sustainable Investments.

Last year the company started reporting on its board composition by race and ethnicity. This year it discloses a combined 25 percent representation for Asian and Black members, and 25 percent representation for women.

One board committee now has explicit responsibility for oversight of human capital management, but no committee has explicit responsibility for human rights issues. The Nominating and Governance Committee oversees the Code of Business Ethics and Corporate Governance Guidelines.

Policies and disclosure: Several years ago, the company started producing what has become an annual sustainability report. The Impact Report initially focused on environmental issues but now includes more about supply chain policies and “People and Culture,” including some data on DEI.

The corporate governance part of the website for investors includes links to committee charters, the Impact Reports and the Code of Business Ethics. It is harder to find the comprehensive webpage with the human rights policy, supplier code of conduct, and more.

Human rights policy change—Tesla initially addressed human rights only for its supply chain, through its Human Rights and Conflict Minerals Policies and Supplier Code of Conduct but updated its Human Rights Policy in July 2021 to say that the policy applies to “its entire value chain—from raw materials to final production,” regarding forced labor and human trafficking.

As required by U.S. law, Tesla publishes an annual report on its use of conflict minerals. It also releases comparable information on its cobalt supply chain and describes its work with industry groups and implementation of revised guidelines from August 2021, in a report published this February. It asserts additional cobalt supply monitoring ensures that no child labor is used, which the proponent questions. In November 2021, a federal judge dismissed a lawsuit against Tesla and other tech companies about child labor and cobalt, saying a link could not be proved, but the plaintiffs have appealed.

Diversity and inclusion—The company now discloses information on its U.S. workforce representation by race, ethnicity and gender. It reports it is a “majority minority” company. The top ranks of leaders as detailed in the EEO-1 report are 63 percent to 66 percent White, while the workforce overall is only 38 percent White, with Asian workers accounting for 20 percent, Black workers 10 percent and Hispanic/Latinx workers 24 percent. Women account for one-quarter or less of leadership and the workforce.

The company appears to be making more efforts to improve diversity management and starting in 2020 says it directed division heads to conduct quarterly reviews to identify and resolve problems.

Notably absent from the Impact Report is any explicit discussion of sexual harassment, although the Code of Business Ethics does include a comprehensive anti-discrimination statement. The Code says about all misconduct:

Each of us has a responsibility to maintain trust and protect Tesla’s reputation. You must report violations of this Code, company policy, or the law to your manager, HR Partner, Compliance or Internal Audit. If you prefer to report another way, the Integrity Line is available 24 hours a day, 7 days a week, allowing you to report concerns anonymously, where allowed by law, and without fear of retaliation.

The company’s materiality analysis rates diversity and inclusion as twentieth on a list of 25 factors most important to stakeholders. It is ranked moderately important to the business. The analysis rates workplace safety as third, employee attraction, retention, development as fourth, and ethical business conduct, integrity, transparency as fifth most important to stakeholders.

Item 7 –Workplace Bias Policy

Key Point at Issue

- Is Tesla’s reporting on harassment and discrimination adequate?

The company has made headlines in recent years, up through June, about allegations and verdicts related to racial/ethnic and gender harassment and discrimination. While some allegations are indeed old, as Tesla argues, current workers also are alleging such workplace bias. Lawsuits and allegations prompted a June 2022 shareholder [lawsuit](#) against officers and directors for “fostering an environment of discrimination and harassment,” exactly the type of lawsuit that the proponent had warned about.

Voting Considerations

Voting in favor—Investors who are concerned about the litany of complaints and lawsuits about sexual harassment and racial discrimination may think this record merits more extensive disclosure and they are likely to vote in favor of the proposal. They may think Tesla and shareholders would benefit from more data about the effectiveness of its current policies and practices to prevent and address harassment and discrimination.

Voting against—Shareholders who think policies and practices related to harassment and discrimination adequately address potential problems may decide to vote against. They might agree that Tesla is making serious efforts to resolve and prevent its issues and a wait-and-see approach is best.

Item 8 – Report on Board Diversity

Key Point at Issue

- Are the company’s current policies and practices sufficient to improve and/or maintain gender diversity and racial diversity on the board?

The Nominating and Governance Committee considers diversity as one of many factors when considering candidates. It does not, however, disclose a quantifiable target for diverse board representation.

The current board consists of eight members but will decrease to seven as Tesla does not plan to replace Larry Ellison, a White man. This means representation will increase to 29 percent people of color, and 29 percent women.

However, the SOC Investment Group has asked the SEC to investigate Tesla, given that Ellison was an independent director who joined the board as part of a settlement with the SEC in 2018. According to [CNBC](#), SOC Investment Group argues removing Ellison would violate the terms of the settlement.

Investors will have to decide if they would like to see additional steps from the company, such as nominating a new, diverse independent director, and if the requested report is the right vehicle to help ensure that happens.

Voting Considerations

Voting in favor—Shareholders who would like to see more specific, measurable strategies and goals for board diversity may be inclined to support the proposal. They may also think the current criteria and policies for recommending nominees will only maintain that status quo — a predominantly White, male board governing a majority-minority company.

Voting against—Shareholders who think the company’s current board diversity efforts and/or the actual representation are sufficiently diverse, and those who think that current policies show a commitment to diversity both on the board and more generally, are likely to vote against.

Item 9 – Mandatory Arbitration

Key Point at Issue

- Should Tesla reexamine its reliance on mandatory arbitration to resolve employee complaints?

As has been the case for three years, the battle lines between the proponent and company remain clearly drawn on mandatory arbitration. This proposal nearly passed last year, with 46.4 percent support. Nia Impact Capital again wants to know how mandatory arbitration affects employees and workplace culture, as well as the company’s brand. Tesla argues using mandatory arbitration is cheaper and more expedient and produces better outcomes for all parties; it disputes the premise of the proposal by saying no evidence supports the case for ending arbitration for employee complaints. Nia sets out many reasons to the contrary, discussing evidence that sexual harassment and racial misconduct can be obscured by arbitration and fester, producing greater problems in the end. It notes the misconduct case against **Alphabet** (Google) that resulted in a \$310 million settlement.

Investors will have to weigh the starkly different views the proponent and the company have about mandatory arbitration. Tesla appears to be out of step with many leading companies, and the recommendations of 50 state attorneys general, in its insistence that mandatory arbitration provides the best outcomes for all stakeholders when it comes to sexual harassment and other workplace complaints.

In addition, the Silenced No More Act went into [effect](#) in California January 1, 2022, which forbids confidentiality requirements (“concealment clauses”) related to any employee settlements agreements,

for any protected class of workers/complaints. This means that while Tesla can still use mandatory arbitration, it cannot enforce confidentiality on those settlements, something it already claims not to do.

Voting Considerations

Votes in favor—Shareholders who are bothered by the lack of disclosure about complaints, as well as the multiple lawsuits filed by current and former employees, are likely to support the proposal. They will be joined by those concerned that the company's use of arbitration could mask discrimination cases and a problematic culture, despite the company's statements. Those who believe the company could better recruit and retain employees if it adopts more transparent employment policies and practices also may vote in favor.

Votes against—Shareholders who support the company's broad commitment to diversity, equity and inclusion generally may be untroubled by its use of mandatory arbitration and think that recent moves to more transparency in several areas show it takes problems seriously. They may view complaints that have surfaced as anecdotal and agree that mandatory arbitration is an expeditious way to handle complaints.

Item 11 – Adopt ILO Standards

Key Point at Issue

- Should Tesla adopt and disclose a policy that more explicitly guarantees freedom of association to its own employees, particularly in its U.S. operations?

The NLRB found in 2021 that the company had violated U.S. law in 2018 and said one fired organizer should be rehired, but it did not impose any fines. The company's concern about unionization posing a material risk was partly substantiated by a proposed federal requirement that would have disqualified Tesla vehicles from electric car tax credits, although this provision has not been implemented.

Voting Considerations

Voting in favor—Shareholders concerned with human rights generally may vote in favor, given the company's recent record with worker rights in the United States. They may not think current disclosures from the company are enough and they may be concerned about the NLRB ruling and the long-term impacts of the company's opposition to unionization.

Votes against—Shareholders who believe that the current policy is sufficient and think issues with worker organizing have been addressed will vote against the proposal. They might think that the incidents around union activity in California are old, and do not point to widespread problems.

Item 12: Supply Chain Standards

Key Point at Issue

- Do investors need more information about how Tesla implements its human rights policy, especially with regard to child labor and cobalt sourcing?

The Sisters of the Good Shepherd are in their third year seeking more information on human rights in Tesla's the supply chain, but their focus has persistently raised concerns about alleged child labor problems in the Tesla supply chain in the Democratic Republic of Congo (DRC). Tesla cites its participation in industry efforts to address human rights problems in DRC mining and points to its monitoring and reporting practices as proof that no children are involved in procuring minerals it uses. Investors will have to decide if they want more details.

Voting in favor—Shareholders concerned with human rights generally may vote in favor, given the abundant challenges in the cobalt supply chain. They may not think current disclosures from the company are enough and they may be concerned about the lawsuit alleging child labor (now on appeal), despite Tesla's response that it is not implicated and that its practices are adequate.

Voting against—Shareholders who believe the company has adequately addressed human rights risks in the supply chain may not support the proposal. They may think the company's work on its own supply, and efforts with other companies, provide sufficient assurance.

Resources

- 2022 Proxy Statement
https://www.sec.gov/Archives/edgar/data/0001318605/000156459022024064/tsla-def14a_20220804.htm
- 2021 Form 10-K
 - Initial filing (February 2022):
<https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000095017022000796/tsla-20211231.htm>
 - Amended filing (April 2022):
https://www.sec.gov/ix?doc=/Archives/edgar/data/1318605/000156459022016871/tsla-10ka_20211231.htm
- Exempt Solicitations
 - Item 9: mandatory arbitration, Nia Impact Capital, July 7, 2022
<https://www.sec.gov/Archives/edgar/data/0001318605/000121465922008675/o76221px14a6g.htm>
 - Item 11: ILO standards, SHARE, July 5, 2022
<https://www.sec.gov/Archives/edgar/data/0001318605/000121465922008643/o75222px14a6g.htm>
- Tesla Impact Reports
 - 2021: https://www.tesla.com/ns_videos/2021-tesla-impact-report.pdf
 - 2020: https://www.tesla.com/ns_videos/2020-tesla-impact-report.pdf
 - 2019: https://www.tesla.com/ns_videos/2019-tesla-impact-report.pdf

- Human Rights Policy
<https://www.tesla.com/legal/additional-resources>
- Conflict Minerals Report
<https://www.tesla.com/sites/default/files/about/legal/2021-conflict-minerals-report.pdf>
- Code of Business Conduct and Ethics
https://tesla-cdn.thron.com/static/XT8QBO_business-code-of-ethics_SHJXZD.pdf