

## CLIENT ALERT

### Navigating Compensation Governance

## Tesla Shareholders Ratify Musk's Option Grant

**By a wide margin, Tesla's shareholders ratified Elon Musk's multi-billion-dollar option grant.**

**Whether ratification has the effect of reinstating Musk's Court-rescinded option grant is not clear.**

**Tesla shareholders also approved the Company's proposal to change its state of incorporation from Delaware to Texas.**

### Shareholders Ratify Musk's Option Grant, Now What

The Musk saga continues, with shareholders first approving Mr. Musk's multi-billion-dollar option grant in 2018, then a Delaware court judge rescinding the option grant on January 30, 2024 and now shareholders ratifying the rescinded option grant on June 13, 2024.

Shareholders overwhelmingly ratified Musk's 2018 option grant at Tesla's June 13, 2024 annual shareholder meeting with 77% of the votes cast supporting. It is notable that large shareholders including BlackRock and Vanguard supported the ratification. This was despite opposition by several large institutional shareholders, such as Amalgamated Bank, California Public Employees Retirement System, the New York City Comptroller, Norwegian Sovereign Wealth Fund and the California's State Teachers Retirement System. The ratification passed by a slightly smaller percentage than the initial vote for the option grant in 2018.

As part of the ratification proposal, Tesla indicated that shareholder ratification would have the following implications:

- Any wrongs found by the Delaware Court in connection with the 2018 option grant would be cured (including disclosure deficiencies, procedural deficiencies and breaches of fiduciary duty)
- The Court-rescinded 2018 option grant to Musk would be restored
- The restoration of the 2018 grant would undermine the rationale supporting plaintiff's attorney's \$5 billion fee request and would justify a substantial reduction by the Court of such requested fees

Tesla notes that shareholder ratification may be subject to legal challenge and that it could not predict with "certainty" the treatment of the ratification under Delaware law.

There are varying views on the impact of the second ratification vote. Some have opined that the vote will be subject to judicial review, because it does not override the Delaware Court's ruling or address all procedural and

substantive deficiencies. Others claim that it gives Tesla a compelling argument to persuade a court to overturn the Delaware Court's prior ruling.

## Shareholders Approve Tesla's Texas Incorporation

The undercard of Tesla's proxy proposals (and one with perhaps greater significance) included the Company's proposal to change its state of incorporation from Delaware to Texas. Shareholders enthusiastically supported this proposal, with approximately 87% of the votes cast in favor of the change in the Company's state of incorporation. It is highly unusual for a company to leave the historically business friendly state of incorporation, Delaware, for another jurisdiction. Some commentators believe this may herald a new era when Texas ultimately supplants Delaware as the go to jurisdiction for business incorporations and business litigation. That remains to be seen.

The **Client Update** is prepared by Meridian Compensation Partners' Governance and Regulatory Team led by Donald Kalfen. Questions regarding this Client Update or executive compensation technical issues may be directed to Donald Kalfen at 847-347-2524 or [dkalfen@meridiancp.com](mailto:dkalfen@meridiancp.com).

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