

TESLA, INC.

FORM 8-K (Current report filing)

Filed 03/30/17 for the Period Ending 03/27/17

Address	3500 DEER CREEK RD PALO ALTO, CA 94070
Telephone	650-681-5000
CIK	0001318605
Symbol	TSLA
SIC Code	3711 - Motor Vehicles and Passenger Car Bodies
Industry	Auto & Truck Manufacturers
Sector	Consumer Cyclical
Fiscal Year	12/31

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d)
of The Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported)

March 27, 2017

Tesla, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-34756
(Commission
File Number)

91-2197729
(IRS Employer
Identification No.)

3500 Deer Creek Road
Palo Alto, California 94304
(Address of principal executive offices, including zip code)

(650) 681-5000
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01 **Entry into a Material Definitive Agreement**

The information set forth in Item 8.01 of this Current Report on Form 8-K under the headings “Additional Note Hedge Transactions” and “Additional Warrant Transactions” is incorporated by reference into this Item 1.01.

Item 2.03 **Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant**

The information set forth in Item 8.01 of this Current Report on Form 8-K is incorporated by reference into this Item 2.03.

Item 3.02 **Unregistered Sales of Equity Securities**

The information set forth in Item 8.01 of this Current Report on Form 8-K under the heading “Additional Warrant Transactions” is incorporated by reference into this Item 3.02.

Item 8.01 **Other Events**

On March 27, 2017, Goldman, Sachs & Co., Deutsche Bank Securities Inc., Citigroup Global Markets Inc. and Morgan Stanley & Co. LLC, as representatives of the underwriters (the “Underwriters”) of Tesla, Inc.’s (the “Company”) previously consummated public offering of its 2.375% Convertible Senior Notes due March 15, 2022 (the “Notes”), notified the Company of the Underwriters’ exercise in full of their option to purchase an additional \$127.5 million aggregate principal amount of the Notes (the “Option Notes”). The Option Notes were sold pursuant to a Registration Statement on Form S-3 (File No. 333-211437) (the “Registration Statement”) and a related prospectus, including the related prospectus supplement, filed with the Securities and Exchange Commission. On March 30, 2017, the Company issued the Option Notes. The Option Notes were issued pursuant to a supplemental indenture, dated as of March 22, 2017 (the “Fourth Supplemental Indenture”), supplementing the indenture, dated as of May 22, 2013, by and between the Company and U.S. Bank National Association, as trustee. A description of the terms of the Fourth Supplemental Indenture is set forth under Item 8.01 of the Current Report on Form 8-K filed by the Company on March 22, 2017 in connection with the closing of the offering of the Notes and is incorporated by reference into this Item 8.01.

The legal opinion as to the legality of the Option Notes sold is being filed as Exhibit 5.1 to this Current Report on Form 8-K and is incorporated herein and into the Registration Statement by reference.

Additional Note Hedge Transactions

On March 27, 2017, in connection with the exercise by the Underwriters of their option to purchase the Option Notes, the Company entered into additional note hedge transactions with each of Goldman, Sachs & Co., Deutsche Bank Securities Inc., Citigroup Global Markets Inc., Morgan Stanley & Co. LLC, Barclays Capital Inc. or their respective affiliates (the “Hedge Counterparties”), pursuant to call option confirmations in substantially the form of Exhibit 10.1 to this Current Report on Form 8-K, which is incorporated herein by reference. The additional note hedge transactions are expected generally to reduce the potential dilution to the common stock of the Company, par value \$0.001 per share (the “Common Stock”), and/or offset potential cash payments in excess of the principal amount upon any conversion of the Option Notes in the event that the market value per share of the Common Stock, as measured under the terms of the additional note hedge transactions, is greater than the strike prices of the additional note hedge transactions (which correspond to the initial conversion price of the Notes and are subject to certain adjustments substantially similar to those contained in the Notes). On March 30, 2017, at the closing of the offering of the Option Notes, the Company paid an aggregate amount of approximately \$26.6 million to the Hedge Counterparties for the additional note hedge transactions.

Additional Warrant Transactions

On March 27, 2017, in connection with the exercise by the Underwriters of their option to purchase the Option Notes, the Company entered into additional warrant confirmations with the Hedge Counterparties in substantially the form of Exhibit 10.2 to this Current Report on Form 8-K, which is incorporated herein by reference, pursuant to which the Company issued certain warrants (the “Additional Warrants”). The Additional Warrants allow the Hedge Counterparties to acquire, subject to anti-dilution adjustments, up to approximately 0.8 million shares of Common Stock at a strike price of \$655.00 per share in respect of Additional Warrants relating to the Option Notes, which is also subject to adjustment. The Additional Warrants would separately have a dilutive effect to the extent that the market value per share of the Common Stock exceeds the strike price of the Additional Warrants

unless, subject to the terms of the warrant confirmations, the Company elects to cash settle the Warrants. The Additional Warrants were issued pursuant to the exemption provided by Section 4(a)(2) of the Securities Act of 1933, as amended. The Additional Warrants are separate transactions, entered into by the Company with the Hedge Counterparties, and are not part of the terms of the Option Notes. Holders of the Option Notes will not have any rights with respect to the Additional Warrants. On March 30, 2017, at the closing of the offering of the Option Notes, the Company received aggregate proceeds of approximately \$6.9 million from the sale of the Additional Warrants to the Hedge Counterparties.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
10.1	Form of Call Option Confirmation (incorporated herein by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on March 22, 2017).
10.2	Form of Warrant Confirmation (incorporated herein by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on March 22, 2017).
23.1	Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TESLA, INC.

By: /s/ Deepak Ahuja

Deepak Ahuja
Chief Financial Officer

Date: March 30, 2017

EXHIBIT INDEX

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Palo Alto, CA 94304-1050

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March 30, 2017

Tesla, Inc.
3500 Deer Creek Road,
Palo Alto, California 94304

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to Tesla, Inc., a Delaware corporation (the "Company"), in connection with the filing by the Company with the Securities and Exchange Commission (the "Commission") on May 18, 2016 of a registration statement on Form S-3 (the "Registration Statement"), under the Securities Act of 1933, as amended (the "Act"), that is automatically effective under the Act pursuant to Rule 462(e) promulgated thereunder. The Registration Statement relates to, among other things, the proposed issuance and sale, from time to time, by the Company of debt securities (the "Debt Securities") and shares of the Company's common stock (the "Common Stock"), \$0.001 par value per share (the "Company Common Stock" and together with the Debt Securities, the "Securities"), each with an indeterminate amount as may at various times be issued at indeterminate prices, in reliance on Rule 456(b) and Rule 457(r) under the Act. The Debt Securities and the Common Stock are to be sold from time to time as set forth in the Registration Statement, the prospectus contained therein, and the supplements to the prospectus.

Pursuant to the Registration Statement, the Company has issued and sold \$127,500,000 of Convertible Senior Notes due 2022 (the "Notes"), all of which will be sold to the Note Underwriters (as defined below) pursuant to that certain Underwriting Agreement, dated as of March 16, 2017 (the "Underwriting Agreement"), by and among the Company and Goldman, Sachs & Co., Deutsche Bank Securities Inc., Citigroup Global Markets Inc. and Morgan Stanley & Co. LLC, as representatives of the several underwriters named in Schedule I thereto (the "Note Underwriters").

The Notes have been issued in the form set forth in the Indenture, dated May 22, 2013 (the "Base Indenture"), by and between the Company and U.S. Bank National Association, as trustee (the "Trustee"), and the Fourth Supplemental Indenture dated March 22, 2017 (together with the Base Indenture, the "Indenture"), by and between the Company and the Trustee. The Notes are initially convertible into up to 389,309 shares of Common Stock (such number of shares of Common Stock issuable upon conversion of the Notes referred to herein as, the "Conversion Shares").

We have examined the Registration Statement, together with the exhibits thereto and the documents incorporated by reference therein; the base prospectus, dated May 18, 2016, together with the documents incorporated by reference therein, filed with the Registration Statement relating to the offering of the Notes (the "Prospectus"); the preliminary prospectus supplement, dated March 15, 2017,

AUSTIN BEIJING BOSTON BRUSSELS HONG KONG LOS ANGELES NEW YORK PALO ALTO
SAN DIEGO SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, DC WILMINGTON, DE

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in the form filed with the Commission pursuant to Rule 424(b) of the Securities Act relating to the offering of the Notes; the final prospectus supplement, dated March 16, 2017, in the form filed with the Commission pursuant to Rule 424(b) of the Securities Act relating to the offering of the Notes (together with the Prospectus, the "Prospectus Supplement"); the Indenture and the Notes. In addition, we have examined originals or copies, certified or otherwise identified to our satisfaction, of such other instruments, documents, certificates and records which we have deemed relevant and necessary for the basis of our opinion hereinafter expressed. In such examination, we have assumed: (i) the authenticity of original documents and the genuineness of all signatures; (ii) the conformity to the originals of all documents submitted to us as copies; (iii) the truth, accuracy and completeness of the information, representations and warranties contained in the instruments, documents, certificates and records we have reviewed; (iv) the Underwriting Agreement has been duly authorized and validly executed and delivered by the parties thereto (other than the Company); (v) that the shares of Common Stock will be issued and sold in compliance with applicable U.S. federal and state securities laws and in the manner stated in the Registration Statement and the Prospectus Supplement; and (vi) the legal capacity of all natural persons. As to any facts material to the opinions expressed herein that were not independently established or verified, we have relied upon oral or written statements and representations of officers and other representatives of the Company.

We express no opinion herein as to the laws of any state or jurisdiction, other than the Federal laws of the United States of America, the laws of the State of New York and the General Corporation Law of the State of Delaware (the "DGCL"), as such are in effect on the date hereof, and we have made no inquiry into, and we express no opinion as to, the statutes, regulations, treaties, common laws or other laws of any other nation, state or jurisdiction.

We express no opinion as to (i) the effect of any bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium or other similar laws relating to or affecting the rights of creditors generally, (ii) rights to indemnification and contribution which may be limited by applicable law or equitable principles, or (iii) the effect of general principles of equity, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing, the effect of judicial discretion and the possible unavailability of specific performance, injunctive relief or other equitable relief, and the limitations on rights of acceleration, whether considered in a proceeding in equity or at law.

Based on the foregoing, we are of the opinion that:

1. The Notes have been validly issued and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, and entitled to the benefits of the Indenture.
2. When the applicable conversion right has been duly exercised in accordance with the terms of the Notes and the Indenture, and the Conversion Shares have been issued and delivered upon such exercise in accordance with the terms of the Notes and the Indenture, the Conversion Shares will be validly issued, fully paid and nonassessable.

Tesla, Inc.
March 30, 2017
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We hereby consent to the filing of this opinion as an exhibit to the above-referenced Registration Statement and to the use of our name wherever it appears in the Registration Statement, the Prospectus, the Prospectus Supplement, and in any amendment or supplement thereto. In giving such consent, we do not believe that we are “experts” within the meaning of such term as used in the Act or the rules and regulations of the Commission issued thereunder with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

/s/ Wilson Sonsini Goodrich & Rosati, P.C.

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation