

TESLA, INC.

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 02/23/18

Address	3500 DEER CREEK RD PALO ALTO, CA, 94304
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, D.C. 20549

FORM S-8
REGISTRATION STATEMENT
Under
The Securities Act of 1933

Tesla, Inc.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

91-2197729
(I.R.S. Employer
Identification Number)

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

Tesla, Inc. 2010 Equity Incentive Plan
(Full title of the plan)

Elon Musk
Chief Executive Officer
Tesla, Inc.
3500 Deer Creek Road
Palo Alto, California 94304
(650) 681-5000
(Name, address and telephone number, including area code, of agent for service)

Copies to:

Larry W. Sonsini
Mark B. Baudler
Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
(650) 493-9300

Todd A. Maron
M. Yun Huh
Tesla, Inc.
3500 Deer Creek Road
Palo Alto, California 94304
(650) 681-5000

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company, or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” and “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer Accelerated filer
 Non-accelerated filer (do not check if a smaller reporting company) Smaller reporting company
 Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, \$0.001 par value per share	5,333,333(2)	\$328.26(3)	\$1,750,719,891	\$217,964.63

- (1) Pursuant to Rule 416(a) of the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Registrant’s common stock that become issuable under the 2010 Equity Incentive Plan, as amended (2010 Plan) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant’s outstanding shares of common stock.
- (2) Represents 5,333,333 additional shares of common stock available for issuance as a result of the annual evergreen increase for 2017 pursuant to the 2010 Plan.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(h) under the Securities Act. The offering price per share and aggregate offering price are based upon the average of the high and low prices of the Registrant’s common stock on February 15, 2018, as reported on the Nasdaq Global Select Market.

EXPLANATORY NOTE

Registration of Additional Securities

2010 Equity Incentive Plan

The Tesla, Inc. 2010 Equity Incentive Plan, as amended (the 2010 Plan), includes an evergreen provision that provides that the total number of shares reserved for issuance under the 2010 Plan will be increased as of the first day of each fiscal year in an amount equal to the least of (i) 5,333,333 shares, (ii) four percent (4%) of the outstanding shares of common stock on the last day of the immediately preceding fiscal year, or (iii) such number of shares determined by our Board of Directors. On June 29, 2010, August 2, 2012, March 7, 2013, August 8, 2014, February 24, 2016 and March 1, 2017, we filed with the Securities and Exchange Commission Registration Statements on Form S-8, Registration Nos. 333-167874, 333-183033, 333-187113, 333-198002, 333-209696, and 333-216376, respectively (the Prior Registration Statements), relating to shares of our common stock reserved for issuance under the 2010 Plan. We are filing this Registration Statement on Form S-8 to register an additional 5,333,333 shares of our common stock under the 2010 Plan as a result of the evergreen increase for 2017 as determined by our Board of Directors.

2010 Employee Stock Purchase Plan

The Tesla, Inc. 2010 Employee Stock Purchase Plan, as amended (2010 ESPP), includes an evergreen provision that provides that the total number of shares reserved for issuance under the 2010 ESPP will be increased as of the first day of each fiscal year in an amount equal to the least of (i) 1,000,000 shares, (ii) one percent (1%) of the outstanding shares of common stock on such date, or (iii) an amount determined by our Board of Directors. We registered shares of our common stock reserved for issuance under the 2010 ESPP pursuant to the Prior Registration Statements, Registration Nos. 333-167874, 333-183033 and 333-187113. Our Board of Directors determined not to increase the number of shares reserved for issuance under the 2010 ESPP for 2017, and consequently no additional shares are being reserved for issuance under the 2010 ESPP pursuant to this Registration Statement on Form S-8.

In accordance with Instruction E of Form S-8, the contents of the Prior Registration Statements are hereby incorporated by reference in this Registration Statement on Form S-8.

PART I

The Registrant is not filing or including in this Registration Statement the information called for in Part I of Form S-8 (by incorporation, by reference or otherwise) in accordance with the rules and regulations of the Securities and Exchange Commission.

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Securities and Exchange Commission (SEC) allows the Registrant to “incorporate by reference” the information the Registrant files with the SEC, which means that the Registrant can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this Registration Statement, and later information filed with (rather than furnished to) the SEC will update and supersede this information. The Registrant hereby incorporates by reference into this Registration Statement the following documents previously filed with the SEC:

- (1) The Registrant’s Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed with the SEC on February 23, 2018;
- (2) All other reports filed by the Registrant with the SEC pursuant to Sections 13(a) or 15(d) of the Securities Exchange Act of 1934 (the Exchange Act) since the end of the fiscal year covered by the Registrant’s Annual Report referred to in (1) above; and
- (3) The description of the Registrant’s Common Stock contained in its registration statement on Form 8-A (File No. 001-34756) filed with the SEC on May 27, 2010, including any amendment or report filed for the purpose of updating such description.

All documents filed by the Registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934 on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold, or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be part hereof from the date of filing of such documents. Notwithstanding the foregoing, the Registrant is not incorporating by reference any documents, portions of documents, exhibits or other information that is deemed to have been furnished to, rather than filed with, the SEC.

Item 8. Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
4.1	Specimen common stock certificate of Registrant (which is incorporated herein by reference to Exhibit 4.1 to the Registrant’s Annual Report on Form 10-K, filed with the SEC on March 1, 2017)
4.2	2010 Equity Incentive Plan, as amended (which is incorporated herein by reference to Exhibit 10.4 to the Registrant’s Annual Report on Form 10-K, filed with the SEC on February 23, 2018)
4.3	Form of Stock Option Agreement under the 2010 Equity Incentive Plan, as amended (which is incorporated herein by reference to Exhibit 10.6 to the Registrant’s Annual Report on Form 10-K, filed with the SEC on March 1, 2017)
4.4	Form of Restricted Stock Unit Agreement under the 2010 Equity Incentive Plan, as amended (which is incorporated herein by reference to Exhibit 10.7 to the Registrant’s Annual Report on Form 10-K, filed with the SEC on March 1, 2017)
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati, Professional Corporation
23.1*	Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm
23.2*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm
23.3*	Consent of Wilson Sonsini Goodrich & Rosati, Professional Corporation (contained in Exhibit 5.1 hereto)
24.1*	Power of Attorney (contained on signature page hereto)

* Filed herewith.

Item 9. Undertakings.

A. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective Registration Statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the Registration Statement or any material change to such information in the Registration Statement.

Provided, however, that paragraphs (A)(1)(i) and (A)(1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Fremont, State of California, on February 22, 2018.

TESLA, INC.

By: /s/ Deepak Ahuja
Deepak Ahuja
Chief Financial Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints Elon Musk and Todd Maron and each of them, as his true and lawful attorney in fact and agent with full power of substitution, for him in any and all capacities, to sign any and all amendments to this Registration Statement on Form S-8 (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney in fact, proxy and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney in fact, proxy and agent, or his substitute, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-8 has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Elon Musk</u> Elon Musk	Chief Executive Officer and Director (Principal Executive Officer)	February 22, 2018
<u>/s/ Deepak Ahuja</u> Deepak Ahuja	Chief Financial Officer (Principal Financial Officer)	February 22, 2018
<u>/s/ Eric Branderiz</u> Eric Branderiz	Chief Accounting Officer (Principal Accounting Officer)	February 22, 2018
<u>/s/ Brad W. Buss</u> Brad W. Buss	Director	February 22, 2018
<u>/s/ Robyn Denholm</u> Robyn Denholm	Director	February 22, 2018
<u>/s/ Ira Ehrenpreis</u> Ira Ehrenpreis	Director	February 22, 2018
<u>/s/ Antonio J. Gracias</u> Antonio J. Gracias	Director	February 22, 2018
<u>/s/ James Murdoch</u> James Murdoch	Director	February 22, 2018
<u>/s/ Kimbal Musk</u> Kimbal Musk	Director	February 22, 2018
<u>/s/ Linda Johnson Rice</u> Linda Johnson Rice	Director	February 22, 2018
<u>Stephen T. Jurvetson</u>	Director	

February 22, 2018

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

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

We have examined the Registration Statement on Form S-8 (the "Registration Statement") to be filed by Tesla, Inc., a Delaware corporation, with the Securities and Exchange Commission on or about the date hereof, in connection with the registration under the Securities Act of 1933, as amended (the "Securities Act"), of an aggregate of 5,333,333 shares of your common stock, par value \$0.001 per share (the "Shares"), reserved for issuance pursuant to the 2010 Equity Incentive Plan (the "Plan"). As your legal counsel, we have reviewed the actions taken and are familiar with the actions proposed to be taken by you in connection with the issuance, sale and payment of consideration for the Shares to be issued under the Plan.

It is our opinion that the Shares, when issued and sold in the manner referred to in the Plan and pursuant to the agreements that accompany the Plan, will be legally and validly issued, fully paid and nonassessable.

We consent to the use of this opinion as an exhibit to the Registration Statement, and further consent to the use of our name wherever appearing in the Registration Statement and any amendments thereto. In giving such consent, we do not consider that we are "experts" within the meaning of such term as used in the Securities Act, or the rules and regulations of the Securities and Exchange Commission issued thereunder, with respect to any part of the Registration Statement, including this opinion as an exhibit or otherwise.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

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

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated February 22, 2018 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in Tesla, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2017.

/s/ PricewaterhouseCoopers LLP

San Jose, California
February 22, 2018

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in this Registration Statement on Form S-8 pertaining to the Tesla, Inc. 2010 Equity Incentive Plan of our report dated March 1, 2017, with respect to the consolidated financial statements of SolarCity Corporation included in its Annual Report (Form 10-K) for the year ended December 31, 2016, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Los Angeles, California
February 22, 2018