

Tesla, Inc.
Form S-4
February 20, 2019
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As filed with the Securities and Exchange Commission on February 20, 2019

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-4
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)

3711
(Primary Standard Industrial
Classification Code Number)

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

Edgar Filing: Tesla, Inc. - Form S-4

3500 Deer Creek Road

Palo Alto, California 94304

(650) 681-5000

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Elon Musk

Chief Executive Officer

Tesla, Inc.

3500 Deer Creek Road

Palo Alto, California 94304

(650) 681-5000

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

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Approximate date of commencement of proposed sale of the securities to the public: February 20, 2019, the date on which the preliminary prospectus and tender offer materials are filed and sent to securityholders. The offer cannot, however, be completed prior to the time this Registration Statement becomes effective. Accordingly, any actual sale or purchase of securities pursuant to the offer will occur only after this Registration Statement is effective, subject to the conditions to the transactions described herein.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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

Large accelerated filer
Non-accelerated filer

Accelerated filer
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.

If applicable, place an in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be	Proposed maximum	Proposed maximum	Amount of registration fee
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	registered	offering price	aggregate
		per share	offering price
Common stock, par value \$0.001 per share	961,611 shares ⁽¹⁾	N/A	\$235,674,520.50 ⁽²⁾ \$28,563.76 ⁽³⁾

- (1) Represents the maximum number of shares of Tesla, Inc. (Tesla) common stock estimated to be issuable upon consummation of the exchange offer and the subsequent merger described herein, calculated by totaling (A) 887,965, which is the product obtained by multiplying 0.0193 which represents the maximum fraction of a share of Tesla common stock issuable for each share of Maxwell Technologies, Inc. (Maxwell) common stock to be exchanged in the offer and the subsequent merger by 46,008,549, which is the number of shares of common stock of Maxwell outstanding as of February 11, 2019 and (B) 73,646, which is the maximum number of Tesla shares issuable in respect of Maxwell equity awards outstanding as of February 11, 2019.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457 under the Securities Act on the basis of the market value of the shares of Maxwell common stock to be cancelled in the offer and the subsequent merger described herein, computed in accordance with Rule 457(f)(1) and Rule 457(f)(3). The proposed maximum aggregate offering price of the securities being registered was calculated based on the product of (i) \$4.70, the average of the high and low sales prices per share of Maxwell common stock on February 12, 2019, as reported by the Nasdaq Global Market, and (ii) 50,143,515 (which represents the estimated maximum number of shares of Maxwell common stock that may be exchanged in the offer and the subsequent merger described herein for the offer consideration, including (x) shares underlying Maxwell equity awards outstanding as of February 11, 2019, and (y) shares underlying Maxwell equity awards that are expected to be granted between February 11, 2019 and the closing of the offer and the subsequent merger described herein in accordance with the merger agreement described herein. In accordance with Rule 416, this Registration Statement also covers an indeterminate number of additional shares of Maxwell securities as may be issuable as a result of stock splits, stock dividends or similar transactions.
- (3) The amount of the filing fee, calculated in accordance with Rule 457(c) and Rule 457(f) under the Securities Act, equals 0.0001212 multiplied by the proposed maximum offering price.

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

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The information in this document is not complete and may change. The registrant may not complete the offer and issue these securities until the registration statement filed with the U.S. Securities and Exchange Commission is effective. This document is not an offer to sell these securities, and the registrant is not soliciting an offer to buy these securities, in any state or jurisdiction in which such offer is not permitted.

PRELIMINARY AND SUBJECT TO CHANGE, DATED FEBRUARY 20, 2019

Offer by

CAMBRIA ACQUISITION CORP.

a direct wholly-owned subsidiary of

TESLA, INC.

to Exchange Each Outstanding Share of Common Stock of

MAXWELL TECHNOLOGIES, INC.

for

\$4.75 in Fair Market Value of Shares of Common Stock of Tesla

(subject to the minimum as described in this

prospectus/offer to exchange and the related letter of transmittal)

THE OFFER AND THE WITHDRAWAL RIGHTS WILL EXPIRE AT 11:59 P.M., EASTERN TIME, AT THE END OF MARCH 19, 2019, UNLESS EXTENDED OR TERMINATED.

Tesla, Inc. (Tesla), a Delaware corporation, through its direct wholly-owned subsidiary Cambria Acquisition Corp., a Delaware corporation (the Offeror), is offering, upon the terms and subject to the conditions set forth in this document and in the accompanying letter of transmittal, to exchange each outstanding share of common stock of Maxwell Technologies, Inc., a Delaware corporation (Maxwell), par value \$0.10 per share (Maxwell common stock and such shares of Maxwell common stock, Maxwell shares), that has been validly tendered and not validly withdrawn in the offer for a fraction of a share of Tesla's common stock, par value \$0.001 per share (Tesla common stock and such shares of Tesla common stock, Tesla shares) equal to the quotient obtained by dividing \$4.75 by the volume weighted average of the daily volume weighted average of the trading price of one (1) share of Tesla common stock as reported on the Nasdaq Global Select Market for the five (5) consecutive trading days ending on and including the second trading day immediately preceding the expiration of the offer, subject to the minimum, plus cash in lieu of any fractional shares of Tesla common stock, without interest and less any applicable withholding taxes. In the event that the Tesla common stock price is equal to or less than \$245.90, the minimum will apply and each share of Maxwell

common stock validly tendered and not validly withdrawn in the offer will be exchanged for 0.0193 of a share of Tesla common stock.

We refer to this as the offer consideration.

The Offeror's obligation to accept for exchange Maxwell shares validly tendered (and not validly withdrawn) pursuant to the offer is subject to the satisfaction or waiver by the Offeror of certain conditions, including the condition that, prior to the expiration of the offer, there have been validly tendered and not validly withdrawn a number of Maxwell shares that, upon the consummation of the offer, together with Maxwell shares then owned by Tesla and the Offeror (if any), would represent at least a majority of the aggregate voting power of the Maxwell shares outstanding immediately after the consummation of the offer (which we refer to as the minimum tender condition), as more fully described under the section entitled The Offer Conditions of the Offer.

The offer is being made pursuant to an Agreement and Plan of Merger (which we refer to as the merger agreement), dated as of February 3, 2019, among Tesla, the Offeror and Maxwell. A copy of the merger agreement is attached to this document as Annex A.

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The purpose of the offer is for Tesla to acquire control of, and ultimately the entire equity interest in, Maxwell. The offer is the first step in Tesla's plan to acquire all of the outstanding Maxwell shares. If the offer is completed and as a second step in such plan, Tesla intends to promptly consummate a merger of the Offeror with and into Maxwell, with Maxwell surviving the merger (the "merger"), subject to the terms and conditions of the merger agreement. The purpose of the merger is for Tesla to acquire all Maxwell shares that it did not acquire in the offer. In the merger, each outstanding Maxwell share that was not acquired by Tesla or the Offeror will be converted into the right to receive the offer consideration. Upon the consummation of the merger, the Maxwell business will be held in a wholly-owned subsidiary of Tesla, and the former Maxwell stockholders will no longer have any direct ownership interest in the surviving corporation. If the offer is completed, the merger will be consummated pursuant to Section 251(h) of the General Corporation Law of the State of Delaware (the "DGCL"), and accordingly no stockholder vote will be required to complete the merger. The board of directors of Maxwell unanimously: (i) determined that the terms of the merger agreement and the transactions contemplated by the merger agreement, including the offer, the merger and the issuance of Tesla shares in connection therewith, are fair to, and in the best interests of, Maxwell and its stockholders; (ii) determined that it is in the best interests of Maxwell and its stockholders and declared it advisable to enter into the merger agreement; and (iii) approved the execution and delivery by Maxwell of the merger agreement, the performance by Maxwell of its covenants and agreements contained in the merger agreement and the consummation of the offer, the merger and the other transactions contemplated by the merger agreement upon the terms and subject to the conditions contained in the merger agreement. The board of directors of Maxwell has also resolved to recommend that the stockholders of Maxwell accept the offer and tender their shares of Maxwell common stock to the Offeror pursuant to the offer.

The Tesla board of directors also determined that the merger agreement and the transactions contemplated by the merger agreement, including the offer and the merger and the issuance of Tesla shares in the offer and merger, are advisable and fair to, and in the best interests of, Tesla and its stockholders, and approved the execution and delivery by Tesla of the merger agreement.

Tesla common stock is listed on the Nasdaq Global Select Market under the symbol "TSLA" and Maxwell common stock is listed on the Nasdaq Global Market under the symbol "MXWL".

The offer and the merger, taken together, are intended to qualify as a reorganization for U.S. federal income tax purposes. Holders of Maxwell shares should read the section entitled "Material U.S. Federal Income Tax Consequences" for a more detailed discussion of certain U.S. federal income tax consequences of the offer and the merger to holders of Maxwell shares.

For a discussion of certain factors that Maxwell stockholders should consider in connection with the offer, please read the section of this document entitled Risk Factors beginning on page 23.

You are encouraged to read this entire document and the related letter of transmittal carefully, including the annexes and information referred to or incorporated by reference in this document.

Neither Tesla nor the Offeror has authorized any person to provide any information or to make any representation in connection with the offer other than the information contained or incorporated by reference in this document, and if any person provides any information or makes any representation of this kind, that information or representation must not be relied upon as having been authorized by Tesla or the Offeror.

Neither the U.S. Securities and Exchange Commission (the SEC) nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this document. Any representation to the contrary is a criminal offense.

The date of this preliminary prospectus/offer to exchange is February 20, 2019.

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This document incorporates by reference important business and financial information about Tesla, Maxwell and their respective subsidiaries from documents filed with the SEC that have not been included in or delivered with this document. This information is available without charge at the SEC's website at www.sec.gov, as well as from other sources. See the section entitled "Where to Obtain More Information."

You can obtain the documents incorporated by reference in this document by requesting them in writing or by telephone at the following address and telephone number:

Tesla, Inc.

3500 Deer Creek Road

Palo Alto, California 94304

Attention: Investor Relations

(650) 681-5000

In addition, if you have questions about the offer or the merger, or if you need to obtain copies of this document and the letter of transmittal or other documents incorporated by reference in this document, you may contact the information agent for this transaction. You will not be charged for any of the documents you request.

The Information Agent for the offer is:

1290 Avenue of the Americas, 9th Floor

New York, NY 10104

Stockholders Call Toll Free: (888) 643-8150

If you would like to request documents, please do so by March 13, 2019, in order to receive them before the expiration of the offer.

Information included in this document relating to Maxwell, including but not limited to the descriptions of Maxwell and its business and the information in the sections entitled "The Offer," "Maxwell's Reasons for the Offer and the Merger," "Recommendation of the Maxwell Board of Directors," "The Offer," "Opinion of Maxwell's Financial Advisor" and "The Offer," "Interests of Certain Persons in the Offer and the Merger," also appears in the Solicitation/Recommendation Statement on Schedule 14D-9 dated the date of this document and filed by Maxwell with the SEC (the "Schedule 14D-9"). The Schedule 14D-9 is being mailed to holders of Maxwell shares as of the date of this document.

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QUESTIONS AND ANSWERS ABOUT THE OFFER AND THE MERGER

Below are some of the questions that you as a holder of Maxwell shares may have regarding the offer and the merger and answers to those questions. You are urged to carefully read the remainder of this document and the related letter of transmittal and the other documents to which we have referred because the information contained in this section and in the Summary is not complete. Additional important information is contained in the remainder of this document and the related letter of transmittal. See the section entitled Where to Obtain More Information. As used in this document, unless otherwise indicated or the context requires, Tesla or we refers to Tesla, and its consolidated subsidiaries; the Offeror refers to Cambria Acquisition Corp., a direct wholly-owned subsidiary of Tesla; and Maxwell refers to Maxwell and its consolidated subsidiaries.

Who is offering to buy my Maxwell shares?

Tesla, through the Offeror, its direct wholly-owned subsidiary, is making this offer to exchange Tesla common stock for Maxwell shares. Tesla's mission is to accelerate the world's transition to sustainable energy. Tesla designs, develops, manufactures, leases and sells high-performance fully electric vehicles, solar energy generation systems and energy storage products. Tesla also offers maintenance, installation, operation and other services related to its products. Tesla's production vehicle fleet includes its Model S premium sedan and its Model X sport utility vehicle, which are its highest-performance vehicles, and its Model 3, a lower priced sedan designed for the mass market. Tesla continues to enhance its vehicle offerings with enhanced Autopilot options, Internet connectivity and free over-the-air software updates to provide additional safety, convenience and performance features. In addition, Tesla also has several future electric vehicles in its product pipeline, including Model Y, Tesla Semi, a pickup truck and a new version of the Tesla Roadster. Tesla leases and sells retrofit solar energy systems and sells renewable energy and energy storage products to its customers, and is ramping its Solar Roof product that combines solar energy generation with attractive, integrated styling. Tesla's energy storage products, which it manufactures at Gigafactory 1, consist of Powerwall, mostly for residential applications, and Powerpack, for commercial, industrial and utility-scale applications.

On February 3, 2019, Tesla, the Offeror and Maxwell entered into an Agreement and Plan of Merger (the merger agreement).

What are the classes and amounts of Maxwell securities that Tesla is offering to acquire?

Tesla is seeking to acquire all issued and outstanding shares of Maxwell common stock, par value \$0.10 per share.

What will I receive for my Maxwell shares?

Tesla, through the Offeror, is offering to exchange each outstanding share of Maxwell common stock that has been validly tendered and not validly withdrawn in the offer for a fraction of a share of Tesla common stock, par value \$0.001 per share, equal to the quotient obtained by dividing \$4.75 by the volume weighted average of the daily volume weighted average of the trading price of one (1) share of Tesla common stock as reported on the Nasdaq Global Select Market for the five (5) consecutive trading days ending on and including the second trading day immediately preceding the expiration of the offer (the Tesla trading price), subject to the minimum, plus cash in lieu of any fractional shares of Tesla common stock, without interest and less any applicable withholding taxes (referred to herein as the offer consideration). In the event that the Tesla common stock price is equal to or less than \$245.90, the minimum will apply and each share of Maxwell common stock validly tendered and not validly withdrawn in the offer will be exchanged for 0.0193 of a share of Tesla common stock and may result in less than \$4.75 in value. Accordingly, the actual number of shares and the value of Tesla common stock delivered to Maxwell will depend on

the Tesla stock price, and the value of the shares of Tesla common stock delivered for each such share of Maxwell common stock may be less than \$4.75. If you do not tender your shares into the offer but the merger is completed (pursuant to Section 251(h) of the DGCL without a

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stockholder vote), you will also receive the offer consideration in exchange for your shares of Maxwell common stock.

What will happen to my Maxwell stock options?

Any option to purchase shares of Maxwell common stock granted under Maxwell's 2005 Omnibus Equity Incentive Plan (the "2005 Plan") or Maxwell's 2013 Omnibus Equity Incentive Plan (the "2013 Plan") that remains outstanding as of the effective time of the merger (the "effective time") will be treated in accordance with the merger agreement.

Pursuant to the merger agreement, at the effective time, each Maxwell option that is outstanding, unexercised and unexpired as of immediately prior to the effective time (other than former service provider options (defined below)) shall be assumed by Tesla and converted into and become an option to acquire shares of Tesla common stock (each, an "adjusted option"), on the same terms and conditions as were applicable under the Maxwell option as of immediately prior to the effective time, except that: (x) the number of shares of Tesla common stock subject to the adjusted option as of the effective time will be determined by multiplying the number of shares of Maxwell common stock subject to the corresponding Maxwell option immediately prior to the effective time, by the offer consideration, with any fractional shares in the resulting product rounded down to the nearest whole share, and (y) the per share exercise price for each share of Tesla common stock that may be acquired upon exercise of the adjusted option as of the effective time will be determined by dividing the per share exercise price of the Maxwell option as in effect immediately prior to the effective time, by the offer consideration, with any fractional cent in the resulting quotient rounded up to the nearest whole cent. Each adjusted option otherwise shall be subject to the same terms and conditions applicable to the corresponding Maxwell option under the applicable Maxwell Equity Plan (defined below in the immediately following question and answer) and the agreements evidencing the Maxwell options thereunder, including vesting terms.

Each Maxwell option that (i) is outstanding, unexercised and unexpired as of immediately prior to the effective time, (ii) either is vested as of immediately prior to the effective time or by its terms accelerates vesting as a result of the merger and (iii) is held by a former service provider of Maxwell or any Maxwell subsidiary as of immediately prior to the effective time (each, a "former service provider option") shall not be treated in the same manner. At the effective time, without any action on the part of Tesla, Maxwell or the holder of the former service provider option, each former service provider option shall be cancelled and converted into the right to receive a number of shares of Tesla common stock determined as: (i) (A) the number of shares of Maxwell common stock subject to the former service provider option immediately prior to the effective time, multiplied by (B) the offer consideration, *minus* (ii) (A) the aggregate exercise or purchase price for all shares of Maxwell common stock subject to such former service provider option divided by (B) the Tesla trading price, with any resulting fractional share rounded down to the nearest whole share.

See the section entitled "Merger Agreement Treatment of Maxwell Equity Awards."

What will happen to my Maxwell restricted stock units?

Any restricted stock unit award granted under the 2005 Plan and 2013 Plan (together, the "Maxwell Equity Plans"), whether vesting thereof is based on service, performance, stock performance or other conditions (each such restricted stock unit award and any Inducement RSUs, as defined further below, a "Maxwell RSU award") that remains outstanding as of the effective time of the merger will be treated in accordance with the merger agreement.

At the effective time, each Maxwell RSU award (other than any former service provider RSUs (defined below)) that is outstanding immediately prior to the effective time, without any action on the part of Tesla, Maxwell or the holder thereof, shall be assumed by Tesla and converted automatically into and become a restricted stock unit covering

shares of Tesla common stock (each, an adjusted RSU), on the same terms and conditions as were

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applicable under the Maxwell RSU award as of immediately prior to the effective time, except that the number of shares of Tesla common stock subject to the adjusted RSU as of the effective time will be determined by multiplying the number of shares of Maxwell common stock subject to the corresponding Maxwell RSU award immediately prior to the effective time, by the offer consideration, with any fractional shares in the resulting product rounded down to the nearest whole share. Each adjusted RSU otherwise shall be subject to the same terms and conditions applicable to the corresponding Maxwell RSU award under the applicable Maxwell Equity Plan and any agreements evidencing the Maxwell RSU awards thereunder, including vesting terms.

Each Maxwell RSU award that (i) is outstanding, unexercised, and unexpired as of immediately prior to the effective time, (ii) either is vested as of immediately prior to the effective time or by its terms accelerates vesting as a result of the merger and (iii) is held by a former service provider of Maxwell or any Maxwell subsidiary as of immediately prior to the effective time (each, a former service provider RSU, and together with a former service provider option, a former service provider award) shall not be treated in the same manner. At the effective time, without any action on the part of Tesla, Maxwell or the holder of the former service provider RSU, each former service provider RSU shall be cancelled and converted into the right to receive a number of shares of Tesla common stock determined as: (i) (A) the number of shares of Maxwell common stock subject to the former service provider RSU immediately prior to the effective time, multiplied by (B) the offer consideration, with any resulting fractional share rounded down to the nearest whole share.

See the section entitled Merger Agreement Treatment of Maxwell Equity Awards.

What will happen to the Maxwell Employee Stock Purchase Plan?

Maxwell shall take all actions with respect to the Maxwell 2004 Employee Stock Purchase Plan (the ESPP) that are necessary to provide that: (i) with respect to any offering periods in effect as of February 3, 2019 (the Current ESPP Offering Period), no employee who is not a participant in the ESPP as of the date hereof may become a participant in the ESPP and no participant may increase his or her contributions or payroll deductions under the ESPP after the date hereof; (ii) subject to the consummation of the merger, the ESPP shall terminate effective immediately prior to the effective time; (iii) if the Current ESPP Offering Period terminates prior to the effective time, then the ESPP shall be suspended and no new offering period shall be commenced under the ESPP prior to the termination of the merger agreement; and (iv) if any Current ESPP Offering Period is still in effect at the effective time, then the last day of such Current ESPP Offering Period shall be accelerated to a date before the effective date as specified by the Maxwell board of directors or its designated committee.

See the section entitled Merger Agreement Treatment of Maxwell Equity Awards.

Will I have to pay any fee or commission to exchange my shares of Maxwell common stock?

If you are the record owner of your shares of Maxwell common stock and you tender these shares in the offer, you will not have to pay any brokerage fees, commissions or similar expenses. If you own your shares of Maxwell common stock through a broker, dealer, commercial bank, trust company or other nominee and your broker, dealer, commercial bank, trust company or other nominee tenders your Maxwell shares on your behalf, your broker or such other nominee may charge a fee for doing so. You should consult your broker, dealer, commercial bank, trust company or other nominee to determine whether any charges will apply.

Why is Tesla making this offer?

The purpose of the offer is for Tesla to acquire control of, and ultimately the entire equity interest in, Maxwell. The offer is the first step in Tesla's plan to acquire all of the outstanding Maxwell shares, and the merger is the second step in such plan.

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In the offer, if a sufficient number of Maxwell shares are tendered into the offer prior to the expiration time of the offer such that Tesla and the Offeror will own at least a majority of the aggregate voting power of the Maxwell shares outstanding immediately after the consummation of the offer, subject to the satisfaction or waiver of the other conditions to the offer, Tesla and the Offeror will accept for exchange, and exchange, the shares tendered in the offer. Then, thereafter and as the second step in Tesla's plan to acquire all of the outstanding Maxwell shares, Tesla intends to promptly consummate a merger of the Offeror with and into Maxwell, with Maxwell surviving the merger (the merger), subject to the terms and conditions of the merger agreement. The purpose of the merger is for Tesla to acquire all remaining Maxwell shares that it did not acquire in the offer. Upon consummation of the merger, the Maxwell business will be held in a wholly-owned subsidiary of Tesla, and the former stockholders of Maxwell will no longer have any direct ownership interest in the surviving corporation. If the offer is completed, the merger will be consummated pursuant to Section 251(h) of the DGCL, and accordingly no stockholder vote will be required to consummate the merger.

What does the Maxwell board of directors recommend?

The board of directors of Maxwell unanimously: (i) determined that the terms of the merger agreement and the transactions contemplated by the merger agreement, including the offer, the merger and the issuance of Tesla shares in connection therewith, are fair to, and in the best interests of, Maxwell and its stockholders; (ii) determined that it is in the best interests of Maxwell and its stockholders and declared it advisable to enter into the merger agreement; and (iii) approved the execution and delivery by Maxwell of the merger agreement, the performance by Maxwell of its covenants and agreements contained in the merger agreement and the consummation of the offer, the merger and the other transactions contemplated by the merger agreement upon the terms and subject to the conditions contained in the merger agreement. The board of directors of Maxwell has also resolved to recommend that the stockholders of Maxwell accept the offer and tender their shares of Maxwell common stock to the Offeror pursuant to the offer.

See the section entitled "The Offer Maxwell's Reasons for the Offer and the Merger; Recommendation of the Maxwell Board of Directors" for more information. A description of the reasons for this recommendation is also set forth in Maxwell's Solicitation/Recommendation Statement on Schedule 14D-9 (the "Schedule 14D-9"), which has been filed with the U.S. Securities and Exchange Commission (the "SEC") and is being mailed to you and other stockholders of Maxwell together with this document.

What are the most significant conditions of the offer?

The offer is conditioned upon, among other things, the following:

Minimum Tender Condition Maxwell stockholders having validly tendered and not validly withdrawn in accordance with the terms of the offer and prior to the expiration of the offer a number of shares of Maxwell common stock that, upon the consummation of the offer, together with any shares of Maxwell common stock then owned by Tesla and the Offeror, would represent at least a majority of the aggregate voting power of the Maxwell shares outstanding immediately after the consummation of the offer (the "minimum tender condition");

Regulatory Approvals Any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") and the approval of the competition authority of the Federal Republic of Germany (the "Bundeskartellamt") having been granted or the relevant waiting period having

expired;

Effectiveness of Form S-4 The registration statement on Form S-4, of which this document is a part, having become effective under the Securities Act of 1933, as amended (the Securities Act), and not being the subject of any stop order or proceeding seeking a stop order;

No Legal Prohibition No governmental entity of competent jurisdiction having (i) enacted, issued or promulgated any law that is in effect as of immediately prior to the expiration of the offer or (ii) issued

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or granted any order or injunctions (whether temporary, preliminary or permanent) that is in effect as of immediately prior to the expiration of the offer, which, in each case, has the effect of restraining or enjoining or otherwise prohibiting the consummation of the offer or the merger;

Listing of Tesla Shares The Tesla shares to be issued in the offer and the merger having been approved for listing on the Nasdaq Global Select Market, subject to official notice of issuance;

No Maxwell Material Adverse Effect There not having occurred any change, effect, development, circumstance, condition, fact, state of facts, event or occurrence since the date of the merger agreement that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the financial condition, business, assets or operations of Maxwell and its subsidiaries, taken as a whole (with such term as defined in the merger agreement and described in the section entitled *Merger Agreement Material Adverse Effect*), and that is continuing as of immediately prior to the expiration of the offer;

Accuracy of Maxwell's Representations and Warranties The representations and warranties of Maxwell contained in the merger agreement being true and correct as of the expiration date of the offer, subject to specified materiality standards; and

Maxwell's Compliance with Covenants Maxwell having performed or complied in all material respects with the covenants and agreements required to be performed or complied with by it under the merger agreement prior to the expiration of the offer.

The offer is subject to certain other conditions set forth below in the section entitled *The Offer Conditions of the Offer*. The conditions to the offer are for the sole benefit of Tesla and the Offeror and may be asserted by Tesla or the Offeror regardless of the circumstances giving rise to any such condition or may be waived by Tesla or the Offeror, by express and specific action to that effect, in whole or in part at any time and from time to time, in each case, prior to the expiration of the offer. However, certain specified conditions (including all the conditions noted above other than the conditions related to a material adverse effect of Maxwell, accuracy of Maxwell's representations and Maxwell's compliance with covenants) may not be waived by Tesla or the Offeror without the consent of Maxwell (which may be granted or withheld in its sole discretion). There is no financing condition to the offer.

How long will it take to complete the proposed transaction?

The transaction is expected to be completed in the second quarter of Tesla's fiscal year 2019, ending June 30, 2019, subject to the satisfaction or waiver of the conditions described in the sections entitled *The Offer Conditions of the Offer* and *Merger Agreement Conditions of the Merger*.

How long do I have to decide whether to tender my Maxwell shares in the offer?

The offer is scheduled to expire at 11:59 p.m., Eastern time, at the end of March 19, 2019, unless extended or terminated in accordance with the merger agreement. Any extension, delay, termination, waiver or amendment of the offer will be followed as promptly as practicable by public announcement thereof to be made no later than 9:00 a.m., Eastern time, on the next business day after the previously scheduled expiration date. During any such extension, all Maxwell shares previously tendered and not validly withdrawn will remain subject to the offer, subject to the rights of

a tendering stockholder to withdraw such stockholder's shares. Expiration date means 11:59 p.m., Eastern time, at the end of March 19, 2019, unless and until the Offeror has extended the period during which the offer is open, subject to the terms and conditions of the merger agreement, in which event the term expiration date means the latest time and date at which the offer, as so extended by the Offeror, will expire.

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Under the merger agreement, unless Maxwell consents otherwise (which may be granted or withheld in its sole discretion) or the merger agreement is terminated:

the Offeror must extend the offer for any period required by any law, or any rule, regulation, interpretation or position of the SEC or its staff or the Nasdaq Stock Market LLC (Nasdaq) applicable to the offer, or to the extent necessary to resolve any comments of the SEC or its staff applicable to the offer or the offer documents or the registration statement on Form S-4 of which this document is a part;

in the event that any of the conditions to the offer (other than the minimum tender condition, and other than any such conditions that by their nature are to be satisfied at the expiration of the offer) have not been satisfied or waived in accordance with the merger agreement as of any then-scheduled expiration of the offer, the Offeror must extend the offer for successive extension periods of up to 10 business days each (or for such longer period as may be agreed by Tesla and Maxwell) in order to permit the satisfaction or valid waiver of the conditions to the offer (other than the minimum tender condition); however, if any then-scheduled expiration of the offer occurs on or before July 3, 2019, then the Offeror may not extend the offer beyond 11:59 p.m., Eastern time, on July 3, 2019; and

if as of any then-scheduled expiration of the offer each condition to the offer (other than the minimum tender condition, and other than any such conditions that by their nature are to be satisfied at the expiration of the offer (if such conditions would be satisfied or validly waived were the expiration of the offer to occur at such time)) has been satisfied or waived in accordance with the merger agreement and the minimum tender condition has not been satisfied, the Offeror may, and at the request in writing of Maxwell must, extend the offer for up to four successive extension periods of up to 10 business days each (with the length of each such period being determined in good faith by Tesla) (or for such longer period as may be agreed by Tesla and Maxwell); however, in no event will the Offeror be required to extend the expiration of the offer for more than 40 business days in the aggregate for these reasons, or July 3, 2019, whichever is earlier.

The Offeror is not required to extend the offer beyond July 3, 2019, which we refer to as the outside date.

Upon the terms and subject to the satisfaction or waiver of the conditions of the offer (including, if the offer is extended or amended, the terms and conditions of any extension or amendment), promptly after the expiration of the offer, the Offeror will accept for payment, and will pay for, all Maxwell shares validly tendered and not validly withdrawn prior to the expiration of the offer.

Any decision to extend the offer will be made public by an announcement regarding such extension as described under the section entitled The Offer Extension, Termination and Amendment of Offer.

How do I tender my Maxwell shares?

To validly tender your Maxwell shares represented by physical certificates into the offer, stockholders must deliver the certificates representing such shares, together with a properly completed and duly executed letter of transmittal, along with any required signature guarantees and any other required documents for Maxwell shares, to Computershare Trust Company, N.A., the depositary and exchange agent (the exchange agent) for the offer and the merger, not later than the expiration date. The letter of transmittal is enclosed with this document.

To validly tender Maxwell shares in electronic book-entry form, Maxwell stockholders must deliver an agent's message in connection with a book-entry transfer and any other required documents for tendered Maxwell shares to the exchange agent, not later than the expiration date.

If your shares of Maxwell common stock are held in street name (*i.e.*, through a broker, dealer, commercial bank, trust company or other nominee), these shares of Maxwell common stock may be tendered by your nominee by book-entry transfer through The Depository Trust Company. To validly tender such shares held in street name, Maxwell stockholders should instruct such nominee to do so prior to the expiration of the offer.

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We are not providing for guaranteed delivery procedures and therefore you must allow sufficient time for the necessary tender procedures to be completed during normal business hours of The Depository Trust Company prior to the expiration date. Tenders received by the exchange agent after the expiration date will be disregarded and of no effect. In all cases, you will receive your consideration for your tendered Maxwell shares only after timely receipt by the exchange agent of certificates for such Maxwell shares (or of a confirmation of a book-entry transfer of such shares) and a properly completed and duly executed letter of transmittal, together with any other required documents.

For a complete discussion of the procedures for tendering your Maxwell shares, see the section entitled "The Offer Procedure for Tendering."

Until what time can I withdraw tendered Maxwell shares?

You may withdraw your previously tendered Maxwell shares at any time until the offer has expired and, if the Offeror has not accepted your Maxwell shares for payment by March 19, 2019, you may withdraw them at any time on or after that date until the Offeror accepts shares for payment. If you validly withdraw your previously tendered Maxwell shares, you will receive shares of the same class of Maxwell common stock that you tendered. Once the Offeror accepts your tendered Maxwell shares for payment upon or after expiration of the offer, however, you will no longer be able to withdraw them. For a complete discussion of the procedures for withdrawing your Maxwell shares, see the section entitled "The Offer Withdrawal Rights."

How do I withdraw previously tendered Maxwell shares?

To withdraw previously tendered Maxwell shares, you must deliver a written notice of withdrawal with the required information to the exchange agent at any time at which you have the right to withdraw shares. If you tendered Maxwell shares by giving instructions to a broker, dealer, commercial bank, trust company or other nominee, you must instruct such broker, dealer, commercial bank, trust company or other nominee to arrange for the withdrawal of your Maxwell shares and such broker, dealer, commercial bank, trust company or other nominee must effectively withdraw such Maxwell shares at any time at which you have the right to withdraw shares. If you validly withdraw your previously tendered Maxwell shares, you will receive shares of the same class of Maxwell common stock that you tendered. For a discussion of the procedures for withdrawing your Maxwell shares, including the applicable deadlines for effecting withdrawals, see the section entitled "The Offer Withdrawal Rights."

When and how will I receive the offer consideration in exchange for my tendered Maxwell shares?

The Offeror will exchange all validly tendered and not validly withdrawn Maxwell shares promptly after the expiration date of the offer, subject to the terms thereof and the satisfaction or waiver of the conditions to the offer, as set forth in the section entitled "The Offer Conditions of the Offer." The Offeror will deliver the consideration for your validly tendered and not validly withdrawn shares through the exchange agent, which will act as your agent for the purpose of receiving the offer consideration from the Offeror and transmitting such consideration to you. In all cases, you will receive your consideration for your tendered Maxwell shares only after timely receipt by the exchange agent of certificates for such Maxwell shares (or of a confirmation of a book-entry transfer of such shares) (as described in the section entitled "The Offer Procedure for Tendering") and a properly completed and duly executed letter of transmittal, together with any other required documents.

Why does the cover page to this document state that this offer is preliminary and subject to change, and that the registration statement filed with the SEC is not yet effective? Does this mean that the offer has not commenced?

No. Completion of this document and effectiveness of the registration statement are not necessary to commence this offer. The offer was commenced on the date of the initial filing of the registration statement on Form S-4 of which this document is a part. Tesla and the Offeror cannot, however, accept for exchange any Maxwell shares

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tendered in the offer or exchange any shares until the registration statement is declared effective by the SEC and the other conditions to the offer have been satisfied or waived (subject to the terms and conditions of the merger agreement).

What happens if I do not tender my Maxwell shares?

If, after consummation of the offer, Tesla and the Offeror own a majority of the aggregate voting power of the outstanding Maxwell shares, Tesla intends to promptly complete the merger after the consummation of the offer, subject to the terms and conditions of the merger agreement.

Upon consummation of the merger, each Maxwell share that has not been tendered and accepted for exchange in the offer will be converted in the merger into the right to receive the offer consideration. See the section entitled "Merger Agreement Exchange of Maxwell Certificates or Book-Entry Shares for the Offer Consideration."

Does Tesla have the financial resources to complete the offer and the merger?

Yes. The offer consideration will consist of Tesla shares. Tesla will pay cash for any fractional shares from cash on-hand and currently available to Tesla. The offer and the merger are not conditioned upon any financing arrangements or contingencies.

If the offer is completed, will Maxwell continue as a public company?

No. Tesla is required, on the terms and subject to the satisfaction or waiver of the conditions set forth in the merger agreement, to consummate the merger promptly following the acceptance of Maxwell shares in the offer. If the merger takes place, Maxwell will no longer be publicly traded. Even if for some reason the merger does not take place, if Tesla and the Offeror purchase all Maxwell shares validly tendered and not validly withdrawn, there may be so few remaining stockholders and publicly held shares that Maxwell shares will no longer be eligible to be traded through the Nasdaq Global Market or other securities exchanges, there may not be an active public trading market for Maxwell shares and Maxwell may no longer be required to make filings with the SEC or otherwise comply with the SEC rules relating to publicly held companies.

Will the offer be followed by a merger if all Maxwell shares are not tendered in the offer?

Yes, unless the conditions to the merger are not satisfied or waived in accordance with the merger agreement. If the Offeror accepts for payment all Maxwell shares validly tendered and not validly withdrawn pursuant to the offer, and the other conditions to the merger are satisfied or waived in accordance with the merger agreement, the merger will take place promptly thereafter. If the merger takes place, Tesla will own 100% of the equity of Maxwell, and all of the remaining Maxwell stockholders, will have the right to receive the offer consideration.

Since the merger will be governed by Section 251(h) of the DGCL, no stockholder vote will be required to consummate the merger in the event that the offer is consummated. Tesla is required, on the terms and subject to the satisfaction or waiver of the conditions set forth in the merger agreement, to consummate the merger as promptly as practicable following the consummation of the offer. As such, Tesla does not expect there to be a significant period of time between the consummation of the offer and the consummation of the merger.

Have any stockholders of Maxwell already agreed to tender their shares in the Offer?

Yes, concurrently with the execution of the merger agreement, on February 3, 2019, (i) Maxwell board members Richard Bergman, Steven Bilodeau, Jörg Buchheim, Franz Fink, Burkhard Göschel, Ilya Golubovich, John Mutch and I2BF Energy Limited and (ii) Maxwell officers Franz Fink, David Lyle and Emily Lough ((i)-(ii) collectively the supporting stockholders) entered into a tender and support agreements with Tesla and

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the Offeror (the support agreement). Subject to the terms and conditions of the support agreement, the supporting stockholders agreed, among other things, to:

cause all of such supporting stockholder s Maxwell shares to be validly and irrevocably tendered into the offer as promptly as practicable, but in no event later than five (5) business days after the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of the offer, or, where permissible, waived by the Offeror, assuming that all Maxwell shares to be tendered by the supporting stockholders are in fact validly tendered and not validly withdrawn in the offer; and

certain restrictions on encumbering or transferring such Maxwell shares.

The support agreement terminates upon certain events, including the termination of the merger agreement in accordance with its terms.

The shares of Maxwell common stock subject to the support agreement represent approximately 7.65% of the shares of Maxwell common stock outstanding as of February 3, 2019.

For more information regarding the support agreement, see the section entitled Other Transaction Agreements Support Agreement, and the support agreement, which is filed as Exhibit 99.6 to this document.

Do the officers and directors of Maxwell have interests in the offer and the merger that are different from stockholders generally?

You should be aware that some of the officers and directors of Maxwell may be deemed to have interests in the offer and the merger that are different from, or in addition to, your interests as a Maxwell stockholder. These interests may include, among others, Maxwell option agreements and Maxwell RSU award agreements that certain officers and directors have entered into with Maxwell under the applicable Maxwell Equity Plan that provide for vesting acceleration in connection with the completion of the merger, agreements that certain officers have entered into with Maxwell that provide for the vesting acceleration of Maxwell options and Maxwell RSU awards in the event the executive officer experiences a qualifying termination of employment within a specified period in connection with a change in control of Maxwell, payments of severance benefits to certain officers under Maxwell s Severance and Change in Control Plan or pursuant to employment agreements that certain officers have entered into with Maxwell, and certain indemnification obligations. See the sections entitled The Offer Interests of Certain Persons in the Offer and the Merger and Merger Agreement Employee Matters below for more information.

As of February 11, 2019, the directors and executive officers of Maxwell and their affiliates beneficially owned approximately 3,897,048 Maxwell shares, representing approximately 8.41% of the aggregate voting power of the Maxwell shares outstanding as of February 11, 2019.

Concurrently with the execution of the merger agreement, on February 3, 2019, (i) Maxwell board members Richard Bergman, Steven Bilodeau, Jörg Buchheim, Franz Fink, Burkhard Göschel, Ilya Golubovich, John Mutch and I2BF Energy Limited and (ii) Maxwell officers Franz Fink, David Lyle and Emily Lough, entered into a tender and support agreement with Tesla and the Offeror, solely in their capacities as stockholders of Maxwell. For more information regarding the support agreement, see the section entitled Other Transaction Agreements Support Agreement, and such support agreement, which is filed as Exhibit 99.6 to this document.

See also the section entitled **Item 3 Past Contacts, Transactions, Negotiations and Agreements** in the Schedule 14D-9, which has been filed with the SEC and is being mailed to you and other stockholders of Maxwell together with this document.

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What are the U.S. federal income tax consequences of receiving Tesla stock in exchange for my Maxwell shares in the offer or the merger?

Each of Tesla and Maxwell intends the offer and the merger, taken together, to qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the Code). However, completion of the offer and the merger is not conditioned upon receipt of an opinion from counsel that the offer and the merger qualify as a reorganization, and the offer and merger will occur even if they do not so qualify.

Assuming the offer and the merger, taken together, qualify as a reorganization, in general, the material U.S. federal income tax consequences to U.S. Holders (as defined herein) of Maxwell shares are expected to be as follows:

Each Maxwell stockholder should not generally recognize gain or loss upon the exchange of Maxwell shares for Tesla shares pursuant to the offer and merger, except to the extent of cash received in lieu of a fractional share of Tesla common stock as described below;