

Tesla, Inc.
Form 8-K
March 22, 2017

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 16, 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.)

Edgar Filing: Tesla, Inc. - Form 8-K

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))

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 Supplemental Indenture Relating to Convertible Senior Notes, Note Hedge Transactions and 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 under the heading Supplemental Indenture Relating to Convertible Senior Notes 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 Warrant Transactions is incorporated by reference into this Item 3.02.

Item 8.01 Other Events

On March 22, 2017, Tesla, Inc. (the Company) closed its previously announced underwritten public offerings of (1) 1,536,259 shares of common stock of the Company, par value \$0.001 per share (the Common Stock), which includes 200,381 shares sold pursuant to the underwriters (the Underwriters) option to purchase additional shares, which was exercised in full on March 20, 2017; and (2) \$850.0 million aggregate principal amount of the Company's 2.375% Convertible Senior Notes due March 15, 2022 (the Notes), in each case pursuant to a Registration Statement on Form S-3 (File No. 333-211437) (the Registration Statement) and a related prospectus, together with the related prospectus supplements for the underwritten public offerings of the Common Stock and the Notes, filed with the Securities and Exchange Commission.

In connection with these offerings, the legal opinion as to the legality of the Common Stock and the 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.

Supplemental Indenture Relating to Convertible Senior Notes

On March 22, 2017, the Company entered into a Fourth Supplemental Indenture relating to the issuance by the Company of the Notes (the Supplemental Indenture) supplementing the Indenture, dated May 22, 2013 (the Base Indenture), and together with the Supplemental Indenture, the Indenture), by and between the Company and U.S. Bank National Association, as trustee (the Trustee). The Notes will bear interest at a rate of 2.375% per year, payable semi-annually in arrears on March 15 and September 15 of each year, commencing September 15, 2017. The Notes will mature on March 15, 2022, unless, in each case, earlier repurchased by the Company or converted pursuant to their respective terms.

The initial conversion rate of the Notes is 3.0534 shares of Common Stock per \$1,000 principal amount of the Notes (which is equivalent to an initial conversion price of approximately \$327.50 per share). The conversion rate for the Notes will be subject to adjustment upon the occurrence of certain specified events but will not be adjusted for accrued and unpaid interest. In addition, upon the occurrence of a make-whole fundamental change (as defined in the Supplemental Indenture), the Company will, in certain circumstances, increase the conversion rate by a number of additional shares for a holder that elects to convert the Notes in connection with such make-whole fundamental

change.

Prior to the close of business on the business day immediately preceding December 15, 2021, the Notes will be convertible only under the following circumstances: (1) during any calendar quarter commencing after June 30, 2017 (and only during such calendar quarter), if the last reported sale price of the Common Stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each trading day; (2) during the five business day period after any five consecutive trading day period in

which the trading price per \$1,000 principal amount of the Notes for each trading day of such period was less than 98% of the product of the last reported sale price of Common Stock and the conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events. On or after December 15, 2021, until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert the Notes at any time. Upon conversion, the Notes will be settled in cash, shares of Common Stock or a combination thereof, at the Company's election.

The Company may not redeem the Notes prior to the maturity date; however, upon the occurrence of a fundamental change (as defined in the Supplemental Indenture), holders may require the Company to purchase all or a portion of the Notes for cash at a price equal to 100% of the principal amount of the Notes to be purchased plus any accrued and unpaid interest to, but excluding, the fundamental change purchase date.

The Notes will be the Company's senior unsecured obligations and will rank senior in right of payment to any of the Company's indebtedness that is expressly subordinated in right of payment to the Notes, will rank equally in right of payment with any of the Company's unsecured indebtedness that is not so subordinated, including the Company's outstanding 1.50% Convertible Senior Notes due 2018, 0.25% Convertible Senior Notes due 2019 and 1.25% Convertible Senior Notes due 2022, will be effectively junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness and will be structurally subordinated to all indebtedness and other liabilities of the Company's subsidiaries.

Each of the following events is considered an event of default with respect to the Notes, which may result in the acceleration of the maturity of the Notes:

- (1) a default in any payment of interest on the Notes when due and payable and the default continues for a period of 30 days;
- (2) a default in the payment of principal of the Notes when due and payable at the stated maturity, upon any required purchase, upon declaration of acceleration or otherwise;
- (3) a failure by the Company to comply with its obligation to convert the Notes upon exercise of a holder's conversion right for a period of five business days;
- (4) a failure by the Company to comply with its obligations under the Indenture with respect to consolidation, merger and sale of assets of the Company;
- (5) failure by the Company to give a fundamental change notice at the time, in the manner, and with the contents under the Indenture when due;
- (6) the Company's failure for 60 days after written notice from the Trustee or the holders of at least 25% in principal amount of the Notes then outstanding has been received to comply with any of the Company's other agreements contained in the Global Note (as defined below) or the Indenture;

- (7) a default by the Company or any significant subsidiary (as defined in the Supplemental Indenture) with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$150 million (or its foreign currency equivalent) in the aggregate of the Company and/or any such subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal of any such debt when due and payable at its stated maturity, upon required purchase, upon declaration of acceleration or otherwise, and such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within 30 days after written notice from the Trustee or the holders of at least 25% in principal amount of the Notes (provided, however, that if any such failure or acceleration referred to in (i) or (ii) above shall cease or be cured, waived, rescinded or annulled, then the event of default by reason thereof shall be deemed not to have occurred); and
- (8) certain events of bankruptcy, insolvency, or reorganization of the Company or any significant subsidiary.

If an event of default occurs with respect to the Notes, and is continuing (other than an event of default described in clause (8) above with respect to the Company (and not with respect to a significant subsidiary)), the Trustee by notice to the Company, or the holders of at least 25% in principal amount of the outstanding Notes, by notice to the Company and the Trustee, may declare 100% of the principal of and accrued and unpaid interest on all the Notes to be due and payable; upon such a declaration, such principal and any accrued and unpaid interest will be due and payable immediately, subject to certain limitations in the case of an event of default relating to certain failures by the Company to make certain filings required by it to be made with the Trustee or the Securities and Exchange Commission pursuant to the Trust Indenture Act of 1939, as amended, or the Securities Exchange Act of 1934, as amended, respectively. Upon an event of default described in clause (8) above with respect to the Company, 100% of the aggregate principal amount and accrued and unpaid interest on the Notes will automatically be due and payable immediately.

The summary of the foregoing transactions is qualified in its entirety by reference to the text of the Base Indenture, the Supplemental Indenture, and the Form of 2.375% Convertible Senior Note due March 15, 2022 included in the Supplemental Indenture (the Global Note), which are filed as Exhibits 4.1, 4.2 and 4.3, respectively, with this Current Report on Form 8-K and are incorporated herein and into the Registration Statement by reference.

Note Hedge Transactions

On March 16, 2017, in connection with the offering of the Notes, the Company entered into 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 filed as Exhibit 10.1 to this Current Report on Form 8-K and which is incorporated herein by reference. The note hedge transactions are expected generally to reduce the potential dilution to the Common Stock and/or offset potential cash payments in excess of the principal amount upon any conversion of the Notes in the event that the market value per share of the Common Stock, as measured under the terms of the note hedge transactions, is greater than the strike prices of the note hedge transactions (which corresponds to the initial conversion prices of the Notes and is subject to certain adjustments substantially similar to those contained in the Notes). On March 22, 2017, at the closing of the Offering, the Company paid an aggregate amount of approximately \$177.5 million to the Hedge Counterparties for the note hedge transactions.

If the Underwriters exercise their options to purchase additional Notes pursuant to the underwriting agreement dated March 16, 2017 relating to the offering of the Notes (the Notes Underwriting Agreement), the Company expects to enter into additional note hedge transactions, in substantially the form filed as Exhibit 10.1 to this Current Report on Form 8-K, with the Hedge Counterparties with respect to such additional Notes.

Warrant Transactions

On March 16, 2017, in connection with the offering of the Notes, the Company entered into warrant confirmations with the Hedge Counterparties in substantially the form filed as Exhibit 10.2 to this Current Report on Form 8-K and which is incorporated herein by reference, pursuant to which the Company issued certain warrants (the Warrants). The Warrants allow the Hedge Counterparties to acquire, subject to anti-dilution adjustments, up to approximately 5.2 million shares of Common Stock at a strike price of \$655.00 per share in respect of Warrants, which is also subject to adjustment. The 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 Warrants unless, subject to the terms of the warrant confirmations, the Company elects to cash settle the Warrants. The Warrants were issued pursuant to the exemption provided by Section 4(a)(2) of the Securities Act of 1933, as amended. The Warrants are separate transactions, entered into by the Company with the Hedge Counterparties, and are not part of the terms of the Notes. Holders of the Notes will not have any rights with respect to the Warrants. On March 22, 2017, at the closing of the offering of the Notes, the Company received aggregate proceeds of approximately \$46.0 million from the sale of the Warrants to the Hedge

Counterparties.

If the Underwriters exercise their options to purchase additional Notes pursuant to the Notes Underwriting Agreement and the Company enters into additional note hedge transactions with the Hedge Counterparties, the Company expects to enter into additional corresponding warrant confirmations, in substantially the form filed as Exhibits 10.2 to this Current Report on Form 8-K, with the Hedge Counterparties.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit

No.	Description
4.1	Indenture, dated as of May 22, 2013, by and between Tesla Motors, Inc. and U.S. Bank National Association (filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed on May 22, 2013).
4.2	Fourth Supplemental Indenture, dated as of March 22, 2017, by and between Tesla, Inc. and U.S. Bank National Association.
4.3	Form of 2.375% Convertible Senior Note Due March 15, 2022 (included in Exhibit 4.2).
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
10.1	Form of Call Option Confirmation.
10.2	Form of Warrant Confirmation.
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 22, 2017

EXHIBIT INDEX

Exhibit

No.	Description
4.1	Indenture, dated as of May 22, 2013, by and between Tesla Motors, Inc. and U.S. Bank National Association (filed as Exhibit 4.1 to the Company's Current Report on Form 8-K filed on May 22, 2013).
4.2	Fourth Supplemental Indenture, dated as of March 22, 2017, by and between Tesla, Inc. and U.S. Bank National Association.
4.3	Form of 2.375% Convertible Senior Note Due March 15, 2022 (included in Exhibit 4.2).
5.1	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
10.1	Form of Call Option Confirmation.
10.2	Form of Warrant Confirmation.
23.1	Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1).