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Appendices 11H and 1J: SEC AND RELATED DOCUMENTS REGARDING THE PROPOSED ACQUISITION IN 2022 OF TWITTER, INC. BY AFFILIATES OF ELON R. MUSK

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**APPENDIX 11H TO PROFESSOR THOMPSON’S BOOK *MERGERS,
ACQUISITIONS AND TENDER OFFERS*, AND
APPENDIX 1J TO PROFESSOR THOMPSON’S FORTHCOMING BOOK
CORPORATE VALUATION IN M&A
BOTH PUBLISHED BY THE PRACTICING LAW INSTITUTE**

**APPENDICES 11H AND 1J: *SEC AND RELATED DOCUMENTS REGARDING
THE PROPOSED ACQUISITION IN 2022 OF TWITTER, INC. BY AFFILIATES
OF ELON R. MUSK*¹**

**BY
PROFESSOR SAMUEL C. THOMPSON, JR., PENN STATE LAW
JULY 25, 2022**

**THIS APPENDIX CONTAINS DOCUMENTS REFLECTING DEVELOPMENTS
IN THIS CASE THROUGH JULY 23, 2022, AND THIS DOCUMENT WILL BE
UPDATED PERIODICALLY TO REFLECT NEW DEVELOPMENTS**

[This appendix contains excerpts from various documents, including the draft proxy statement, relating to the proposed acquisition by an affiliate of Elon Musk of Twitter, Inc. The merger agreement was signed on April 25, 2022, and the draft proxy statement was filed with the SEC on May 12, 2022. Mr. Musk gave notice of termination of the merger agreement on July 12, 2022, and on that date, Twitter filed a lawsuit in the Delaware Chancery Court seeking “specific performance” of the merger agreement. As indicated in the July 22, 2022 earnings release by Twitter, “[o]n July 19, 2022, Twitter’s request for an expedited trial was granted, and the trial is being scheduled for October 2022.” More will be added to this appendix, which was prepared on July 23, 2022, as this case develops.]

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¹ I thank Will Schroeder, a second year student at the Penn State Law for his assistance in the preparation of this appendix.

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§ I APRIL 25, 2022, TWITTER PRESS RELEASE ANNOUNCING THE MERGER

On April 25, 2022, Twitter, Inc. (“Twitter”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with X Holdings I, Inc. (“Parent”), X Holdings II, Inc., a wholly owned subsidiary of Parent (“Acquisition Sub”), and, solely for the purpose of certain provisions of the Merger Agreement, Elon R. Musk. The Merger Agreement provides that, subject to the terms and conditions set forth in the Merger Agreement, Acquisition Sub will merge with and into Twitter (the “Merger”), with Twitter surviving the Merger and becoming a wholly owned subsidiary of Parent (the “Surviving Corporation”). Parent is wholly owned by Mr. Musk.

Twitter’s Board of Directors (the “Board”) unanimously determined that the transactions contemplated by the Merger Agreement, including the Merger, are in the best interests of Twitter and its stockholders, and approved the Merger Agreement and the transactions contemplated by the Merger Agreement. The Board also unanimously resolved to recommend that Twitter’s stockholders vote to adopt and approve the Merger Agreement and the Merger.

Under the Merger Agreement, at the effective time of the Merger, each issued and outstanding share of Twitter’s common stock (subject to certain exceptions set forth in the Merger Agreement) will be canceled and converted into the right to receive \$54.20 in cash, without interest (the “Merger Consideration”). [The aggregate consideration was approximately \$44 billion.] * * *

The Merger Agreement contains customary representations, warranties and covenants made by each of Twitter, Parent, Acquisition Sub and, for purposes of certain provisions, Mr. Musk, including, among others, covenants by Twitter regarding the conduct of its business prior to the closing of the Merger. * * *

Either Twitter or Parent may terminate the Merger Agreement if, among certain other circumstances, (1) the Merger has not been consummated on or before October 24, 2022, which date will be extended for six months if the closing conditions related to applicable antitrust and foreign investment clearances and the absence of any applicable law or order making illegal or prohibiting the Merger have not been satisfied as of such date; or (2) Twitter’s stockholders fail to adopt the Merger Agreement. Twitter may terminate the Merger Agreement in certain additional limited circumstances, including to allow Twitter to enter into a definitive agreement for a competing acquisition proposal that constitutes a

Superior Proposal (as defined in the Merger Agreement). Parent [Musk] may terminate the Merger Agreement in certain additional limited circumstances, including prior to the adoption of the Merger Agreement by Twitter's stockholders if the Board recommends that Twitter's stockholders vote against the adoption of the Merger Agreement or in favor of any competing acquisition proposal.

Upon termination of the Merger Agreement under specified limited circumstances, Twitter will be required to pay Parent a termination fee of \$1.0 billion. Specifically, this termination fee is payable by Twitter to Parent because (1) Twitter terminates the Merger Agreement to allow Twitter to enter into a definitive agreement for a competing acquisition proposal that constitutes a Superior Proposal; or (2) Parent terminates the Merger Agreement because the Board recommends that Twitter's stockholders vote against the adoption of the Merger Agreement or in favor of any competing acquisition proposal. This termination fee will also be payable by Twitter to Parent in the event that, generally, (1) a competing acquisition proposal for 50% or more of the stock or consolidated assets of Twitter has been publicly announced and not withdrawn, (2) the Merger Agreement is terminated because Twitter's stockholders fail to adopt the Merger Agreement or because Twitter materially breaches the Merger Agreement, and (3) within twelve months of such termination of the Merger Agreement, Twitter enters into a definitive agreement providing for a competing acquisition proposal for 50% or more of the stock or consolidated assets of Twitter and such acquisition is subsequently consummated.

Upon termination of the Merger Agreement under other specified limited circumstances, Parent will be required to pay Twitter a termination fee of \$1.0 billion. Specifically, this termination fee is payable by Parent to Twitter if the Merger Agreement is terminated by Twitter because (1) the conditions to Parent's and Acquisition Sub's obligations to consummate the Merger are satisfied and the Parent fails to consummate the Merger as required pursuant to, and in the circumstances specified in, the Merger Agreement; or (2) Parent or Acquisition Sub's breaches of its representations, warranties or covenants in a manner that would cause the related closing conditions to not be satisfied. Mr. Musk has provided Twitter with a limited guarantee in favor of Twitter (the "Limited Guarantee"). The Limited Guarantee guarantees, among other things, the payment of the termination fee payable by Parent to Twitter, subject to the conditions set forth in the Limited Guarantee.

Pursuant to an equity commitment letter dated April 25, 2022, and subject to the terms thereof, Mr. Musk committed to provide Parent, at the effective time of the Merger, with an equity contribution of up to approximately \$21 billion. Pursuant to a debt commitment letter dated April 25, 2022, and subject to the terms and conditions set forth therein, the commitment parties party thereto committed to provide to Acquisition Sub, at the effective time of the Merger, debt financing of approximately \$13 billion. Pursuant to a margin loan commitment letter dated April 25, 2022, and subject to the terms and conditions set forth therein, the commitment parties party thereto committed to provide to X Holdings III, LLC, a Delaware limited liability company wholly owned by Mr. Musk, at the effective time of the Merger, margin loan financing of approximately \$12.5 billion, the proceeds of which will be distributed or otherwise made available to Acquisition Sub.

The Merger Agreement also provides that Twitter, on one hand, or Parent and Acquisition Sub, on the other hand, may specifically enforce the obligations under the Merger Agreement, except that Twitter may only cause Mr. Musk's equity financing commitment to be funded in circumstances where the conditions to Parent's and Acquisition Sub's obligations to consummate the Merger are satisfied and the debt and margin loan financing is funded or available. As described above, if the conditions to Parent's and Acquisition Sub's obligations to complete the Merger are satisfied and Parent fails to consummate the Merger as required pursuant to the Merger Agreement, including because the equity, debt and/or margin loan financing is not funded, Parent will be required to pay Twitter a termination fee of \$1.0 billion.

§ II MAY 17, 2022, DRAFT PROXY STATEMENT DISCUSSION OF GENERAL PROVISIONS OF THE DEAL

A. LETTER TO SHAREHOLDERS

To the Stockholders of Twitter, Inc.:

You are cordially invited to attend a special meeting of stockholders (which we refer to, together with any adjournment, postponement or other delay thereof, as the “**special meeting**”) of Twitter, Inc. (which we refer to as “**Twitter**”). The special meeting will be held on [•], 2022, at [•], Pacific time. You may attend the special meeting via a live interactive webcast at <http://www.virtualshareholdermeeting.com/TWTR2022SM>. You will be able to listen to the special meeting live and vote online. We believe that a virtual meeting provides expanded access, improved communication and cost savings for our stockholders and Twitter.

At the special meeting, you will be asked to consider and vote on a proposal to adopt the Agreement and Plan of Merger (as it may be amended from time to time), dated as of April 25, 2022 (which we refer to as the “**merger agreement**”), among X Holdings I, Inc. (which we refer to as “**Parent**”), X Holdings II, Inc., a wholly owned subsidiary of Parent (which we refer to as “**Acquisition Sub**”), Twitter, and, solely for the purposes of certain provisions of the merger agreement, Elon R. Musk. Parent is wholly owned by Mr. Musk. We refer to the merger of Acquisition Sub with and into Twitter as the “**merger.**” * * *

If the merger is completed, you will be entitled to receive \$54.20 in cash, without interest and subject to any applicable withholding taxes, for each share of our common stock that you own (unless you have properly exercised your appraisal rights). This amount constitutes a premium of approximately 38 percent to the closing price of our common stock on April 1, 2022, which was the last full trading day before Mr. Musk disclosed his approximately nine percent stake in Twitter.

Twitter's Board of Directors, after considering the factors more fully described in the enclosed proxy statement, unanimously: (1) determined that the merger agreement is advisable and the merger and the other transactions contemplated by

the merger agreement are fair to, advisable and in the best interests of Twitter and its stockholders; and (2) adopted and approved the merger agreement, the merger and the other transactions contemplated by the merger agreement.

Twitter’s Board of Directors unanimously recommends that you vote:

(1) “FOR” the adoption of the merger agreement; * * *

B. TRANSACTION SUMMARY IN THE DRAFT PROXY STATEMENT

1. INTRODUCTION

On April 25, 2022, Twitter agreed to be acquired by an affiliate of Elon Musk. If the merger is completed, each outstanding share of our common stock (which we refer to as our “**common stock**”) (subject to certain exceptions) will be converted into the right to receive \$54.20 per share in cash.

2. PARTIES INVOLVED IN THE MERGER

a) TWITTER, INC.

Twitter is what’s happening in the world and what people are talking about right now. Our primary product, Twitter, is a global platform for public self-expression and conversation in real time. * * *

Our common stock is listed on the New York Stock Exchange (which we refer to as the “**NYSE**”) under the symbol “**TWTR**.” Twitter’s corporate offices are located at 1355 Market Street, Suite 900, San Francisco, California 94103, and its telephone number is (415) 222-9670.

b) X HOLDINGS I, INC.

Parent was formed on April 19, 2022, solely for the purpose of engaging in the transactions contemplated by the merger agreement and has not engaged in any business activities other than as incidental to its formation and in connection with the transactions contemplated by the merger agreement and arranging of the equity financing and the debt financing in connection with the merger. * * *

c) X HOLDINGS II, INC.

Acquisition Sub is a wholly owned subsidiary of Parent and was formed on April 19, 2022, solely for the purpose of engaging in the transactions contemplated by the merger agreement. * * * Acquisition Sub will cease to exist and Twitter will continue as the surviving corporation. * * *

d) ELON MUSK

Elon Musk leads SpaceX, Tesla, Inc., Neuralink Corp. and The Boring Company. Mr. Musk has served as the Chief Executive Officer of Tesla, Inc. * * *

3. EFFECT OF THE MERGER

Upon the terms and subject to the conditions of the merger agreement, and in accordance with the Delaware General Corporation Law (which we refer to as the “**DGCL**”), at the effective time of the merger: (1) Acquisition Sub will merge with and into Twitter [in a reverse subsidiary merger[]; (2) the separate existence of Acquisition Sub will cease; and (3) Twitter will continue as the surviving corporation in the merger and as a wholly owned subsidiary of Parent. * * *

As a result of the merger, Twitter will cease to be a publicly traded company. If the merger is completed, you will not own any shares of capital stock of the surviving corporation. * * *

4. PER SHARE PRICE

At the effective time of the merger, each outstanding share of our common stock (subject to certain exceptions) will be automatically canceled and will cease to exist and will be converted into the right to receive \$54.20 in cash, without interest. We refer to this amount as the “**per share price**.” * * *

5. [A DISSENTER’S RIGHTS]

After the merger is completed, you will have the right to receive the per share price for each share of our common stock that you own, but you will no longer have any rights as a stockholder of Twitter (except that our stockholders who properly and validly exercise and perfect, and do not validly withdraw or otherwise lose, their demand for appraisal or dissenters’ rights under the DGCL or other applicable law will have the right to receive a payment for the “fair value” of their shares as determined pursuant to an appraisal proceeding as contemplated by the DGCL, as described in the section of this proxy statement captioned “*The Merger—Appraisal Rights*”).

6. THE SPECIAL MEETING

a) DATE, TIME AND PLACE

A special meeting of our stockholders will be held on [•], 2022, at [•], Pacific time. You may attend the special meeting via a live interactive webcast at <http://www.virtualshareholdermeeting.com/TWTR2022SM>. * * *

b) PURPOSE

At the special meeting, we will ask stockholders to vote on proposals to [inter alia: (1) adopt the merger agreement * * *

c) REQUIRED VOTE

The proposals to be voted on at the special meeting require the following votes:

- Proposal 1: Approval of the proposal to adopt the merger agreement requires the affirmative vote of the holders of a majority of the shares of our common stock outstanding as of the record date. * * *

d) VOTING AND PROXIES

Any stockholder of record entitled to vote at the special meeting may vote [by proxy or by attending the meeting]. * * *

Recommendation of the Twitter Board and Reasons for the Merger ^ ^ ^

The Twitter Board unanimously recommends that you vote: (1) “**FOR**” the adoption of the merger agreement; [and] (2) “**FOR**” the compensation that will or may become payable by Twitter to our named executive officers in connection with the merger[.] * * *

7. OPINION OF GOLDMAN SACHS & CO. LLC [SEE A MORE COMPLETE DISCUSSION BELOW]

At a meeting of the Twitter Board held on April 25, 2022, Goldman Sachs & Co. LLC (which we refer to as “**Goldman Sachs**”) rendered its oral opinion, subsequently confirmed by delivery of its written opinion, dated April 25, 2022, to the Twitter Board that, as of the date of the written opinion and based upon and subject to limitations, qualifications and assumptions set forth therein, the \$54.20 in cash per share of Twitter common stock to be paid to the holders (other than Parent, Mr. Musk and their respective affiliates) of such shares pursuant to the merger agreement **was fair from a financial point of view** to such holders, as more fully described in the section of this proxy statement captioned “*The Merger—Opinion of Goldman Sachs & Co. LLC.*”

The full text of the written opinion of Goldman Sachs, dated April 25, 2022, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex C to this proxy statement. Goldman Sachs provided advisory services and its opinion for the information and assistance of the Twitter Board in connection with its consideration of the merger. The Goldman Sachs opinion is not a recommendation as to how any holder of our common stock should vote with respect to the merger or any other matter.

8. OPINION OF J.P. MORGAN SECURITIES LLC [SEE A MORE COMPLETE DISCUSSION BELOW]

At the meeting of the Twitter Board on April 25, 2022, J.P. Morgan Securities LLC (which we refer to as “**J.P. Morgan**”) rendered its oral opinion to the Twitter Board that, as of such date and based upon and subject to the factors and assumptions set forth in its opinion, the consideration to be paid to our common stockholders in the proposed transaction **was fair, from a financial point of view**, to such stockholders. J.P. Morgan

has confirmed its April 25, 2022 oral opinion by delivering its written opinion to the Twitter Board, dated April 25, 2022, that, as of such date, the consideration to be paid to Twitter’s common stockholders in the proposed merger was fair, from a financial point of view, to such stockholders, as more fully described in the section of this proxy statement captioned “*The Merger—Opinion of J.P. Morgan Securities LLC.*”

The full text of the written opinion of J.P. Morgan dated April 25, 2022, which sets forth, among other things, the assumptions made, matters considered and limits on the review undertaken, is attached as Annex D to this proxy statement. The summary of the opinion of J.P. Morgan set forth in this proxy statement is qualified in its entirety by reference to the full text of such opinion. Twitter’s stockholders are urged to read the opinion in its entirety. J.P. Morgan’s written opinion was addressed to the Twitter Board (in its capacity as such) in connection with and for the purposes of its evaluation of the proposed merger, was directed only to the \$54.20 per share in cash to be paid to holders of our common stock pursuant to the merger agreement and did not address any other aspect of the merger. J.P. Morgan expressed no opinion as to the fairness of the consideration to the holders of any class of securities, creditors or other constituencies of Twitter or as to the underlying decision by Twitter to engage in the proposed merger. The issuance of J.P. Morgan’s opinion was approved by a fairness committee of J.P. Morgan. The summary of the opinion of J.P. Morgan set forth in this proxy statement is qualified in its entirety by reference to the full text of such opinion. The opinion does not constitute a recommendation to any stockholder of Twitter as to how such stockholder should vote with respect to the proposed merger or any other matter.

9. TERMINATION OF THE MERGER AGREEMENT

The merger agreement may be terminated at any time prior to the effective time of the merger, whether before or after the adoption of the merger agreement by our stockholders (except as otherwise provided in the merger agreement), in the following ways:

- by mutual written agreement of Twitter and Parent;
- by either Twitter or Parent if:
 - the merger has not been consummated by 5:00 p.m., Pacific time, on October 24, 2022 (as such date may be extended pursuant to the terms of this provision, which we refer to as the “**termination date**”), except that (1) a party may not terminate the merger agreement pursuant to this provision if such party’s failure to perform or comply with any of its obligations under the merger agreement has been the principal cause of, or resulted in, the failure to consummate the merger by the termination date, and (2) the termination date will be extended for an additional six months if, as of the termination date, the closing condition regarding (a) the expiration or termination of the waiting period under the HSR Act [which gives the antitrust authorities time to review the transaction, see chapter 13] or the receipt of approvals under the other specified antitrust laws or foreign investment laws or (b) the absence of any applicable legal restraint

prohibiting the consummation of the merger has not been satisfied;

- prior to the effective time of the merger, any governmental authority of competent jurisdiction has enacted, issued, promulgated, enforced or entered any law or order or taken any other action permanently restraining, enjoining, rendering illegal or otherwise prohibiting the consummation of the transactions contemplated by the merger agreement, and such law or order or other action has become final and non-appealable, except, in each case, that the right to terminate will not be available to any party (1) that has failed to use the efforts required by the merger agreement to remove such law, order or other action, or (2) if the issuance of such law or order or taking of such action was primarily due to the failure of such party, and, in the case of Parent, the failure of Acquisition Sub or Mr. Musk, to perform any of its obligations under the merger agreement; or
- our stockholders do not adopt the merger agreement at the special meeting (or at any adjournment or postponement thereof at which the merger agreement and the transactions contemplated thereby are voted on);
- by Twitter if:
 - subject to a 30-day cure period, Parent, Acquisition Sub or Mr. Musk has breached or failed to perform any of their respective representations, warranties, covenants or other agreements in the merger agreement, which breach or failure would give rise to the failure of relevant conditions to effect the closing of the merger, except that the right to terminate will not be available to Twitter if Twitter is then in material breach of any of its representations, warranties, covenants or agreements under the merger agreement;
 - the Twitter Board has authorized Twitter to enter into a definitive agreement with respect to a superior proposal, if, substantially concurrently with the termination of the merger agreement, Twitter enters into such definitive agreement and pays (or causes to be paid) the termination fee to and at the direction of Parent; or
 - (1) Parent and Acquisition Sub have been notified in writing that the conditions precedent to Parent's and Acquisition Sub's obligations to close the merger set forth in the merger agreement (other than those conditions that by their nature are to be satisfied at the closing, each of which is capable of being satisfied if the closing were to occur at such time) have been satisfied or waived in accordance with the merger agreement; (2) Parent and Acquisition Sub fail to consummate the merger within three business days following the date on which the closing should have occurred; and (3) during such three business day period, Twitter stood ready, willing and able to consummate the merger and the other transactions contemplated by the merger agreement; and

- by Parent [i.e. Musk] if:
 - subject to a 30-day cure period, Twitter has breached or failed to perform any of its representations, warranties, covenants or other agreements in the merger agreement, which breach or failure would give rise to the failure of relevant conditions to effect the closing of the merger, except that the right to terminate will not be available to Parent if Parent, Acquisition Sub or Mr. Musk is then in material breach of any of its representations, warranties, covenants or agreements under the merger agreement; or
 - prior to the adoption of the merger agreement by the requisite affirmative vote of our stockholders, the Twitter Board has made a Twitter Board recommendation change.

10. TERMINATION FEES AND REMEDIES

The merger agreement contains certain termination rights for Twitter and Parent.

Upon valid termination of the merger agreement under specified circumstances, Twitter will be required to pay, at the direction of Parent, a termination fee of \$1,000,000,000. Specifically, this termination fee will be payable by Twitter to Parent if:

- (1) a third party will have made a competing proposal after the date of the merger agreement, (2) the merger agreement is subsequently terminated by (a) Twitter or Parent because our stockholders have failed to approve the merger agreement at the special meeting or (b) Parent as a result of a breach or failure by Twitter to perform any of its representations, warranties, covenants or other agreements in the merger agreement (subject to a 30-day cure period), which breach or failure would give rise to the failure of any condition to effect the closing of the merger, and at the time of such special meeting or breach, as applicable, a competing proposal has been publicly announced and has not been withdrawn, and (3) within 12 months of such termination of the merger agreement, Twitter consummates a transaction involving a competing proposal or enters into a definitive agreement providing for the consummation of a competing proposal and such competing proposal is subsequently consummated (provided that, for purposes of this paragraph, all percentages in the definition of competing proposal are increased to 50 percent);
- the merger agreement is terminated by Twitter to enter into a definitive agreement with respect to a superior proposal; or
- the merger agreement is terminated by Parent if the Twitter Board made a Twitter Board recommendation change prior to the adoption of the merger agreement by the requisite affirmative vote of our stockholders.

Upon valid termination of the merger agreement under certain specified circumstances, Parent will be required to pay, at the direction of Twitter, a termination fee of \$1,000,000,000, the payment of which has been guaranteed pursuant and subject to the terms and conditions of the limited guaranty. Specifically, the termination fee will be payable by Parent to Twitter if the merger agreement is terminated by Twitter:

- as a result of a breach or failure by Parent, Acquisition Sub or Mr. Musk to perform any of its respective representations, warranties, covenants or other agreements in the merger agreement (subject to a 30-day cure period), which breach or failure would give rise to the failure of relevant conditions to effect the closing of the merger; or
- because Parent and Acquisition Sub failed to consummate the merger as required pursuant to, and in the circumstances specified in, and subject to the terms of, the merger agreement while Twitter stood ready, willing and able to consummate the merger and the other transactions contemplated by the merger agreement.

[Possible Specific Performance] The merger agreement also provides that Twitter, on one hand, or Parent and Acquisition Sub, on the other hand, **may specifically enforce** the obligations under the merger agreement in accordance with its terms. In addition, **Twitter is entitled to obtain specific performance or other equitable relief to enforce Parent’s and Acquisition Sub’s obligations to cause Mr. Musk to fund the equity financing, or to enforce Mr. Musk’s obligation to fund the equity financing directly, and to consummate the closing of the merger, if certain conditions are satisfied, including the funding or availability of the debt financing.**

Neither Parent nor Twitter is required to pay to the other a termination fee on more than one occasion.

11. LIMITED GUARANTEE

Pursuant to the limited guarantee delivered by Elon Musk in favor of Twitter, dated as of April 25, 2022 (which we refer to as the “**limited guarantee**”), Mr. Musk agreed to guarantee the due, complete and punctual payment, observance, performance and discharge of the payment obligations of Parent under the merger agreement, including the termination fee payable by Parent, plus amounts in respect of reimbursement, indemnification or other payment obligations of Parent for certain costs, expenses, monetary damages or losses incurred or sustained by Twitter, subject to the conditions set forth in the limited guarantee. For more information, please see the section of this proxy statement captioned “*The Merger—Limited Guarantee.*”

§ III MAY 17, 2022, THE SPECIFIC PERFORMANCE PROVISION OF THE MERGER AGREEMENT, SECTION 9.9, ATTACHED TO THE DRAFT PROXY STATEMENT

Section 9.9 Specific Performance.

(a) The parties hereto agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of it hereunder to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. Accordingly, the parties hereto acknowledge and agree that the parties hereto shall be entitled to an injunction, specific performance and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereto agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that any other party has an adequate remedy at law or that any award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an injunction or injunctions or any other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to show proof of actual damages or provide any bond or other security in connection with any such order or injunction.

(b) Notwithstanding anything herein to the contrary, including the availability of the Parent Termination Fee or other monetary damages, remedy or award, it is hereby acknowledged and agreed that the Company shall be entitled to specific performance or other equitable remedy to enforce Parent and Acquisition Sub's obligations to cause the Equity Investor to fund the Equity Financing, or to enforce the Equity Investor's obligation to fund the Equity Financing directly, and to consummate the Closing if and for so long as, (i) all of the conditions set forth in Section 7.1 and Section 7.2 (other than those conditions that are to be satisfied at the Closing; provided, that such conditions are capable of being satisfied if the Closing were to occur at such time) have been satisfied or waived and Parent has failed to consummate the Closing on the date required pursuant to the terms of Section 2.2, (ii) the Debt Financing (or, as applicable, the Alternative Financing) has been funded or will be funded at the Closing if the Equity Financing is funded at the Closing, and (iii) the Company has confirmed that, if specific performance or other equity remedy is granted and the Equity Financing and Debt Financing are funded, then the Closing will occur. For the avoidance of doubt, (A) while the Company may concurrently seek (x) specific performance or other equitable relief, subject to the terms of this Section 9.9, and (y) payment of the Parent Termination Fee or other monetary damages, remedy or award if, as and when required pursuant to this Agreement), under no circumstances shall the Company be permitted or entitled to receive both a grant of specific performance to cause the Equity Financing to be funded, on the one hand, and payment of the Parent Termination Fee or other monetary damages, remedy or award, on the other hand; provided, however, that in no event shall the Company be permitted or entitled to receive aggregate monetary damages in excess of the Parent Termination Fee (except in all cases that Parent shall also be obligated with respect to its expense reimbursement and indemnification obligations contained in Section 6.11 and its applicable obligations under Section 8.3(d)(iii) and Section 8.6(b)).

(c) To the extent any party hereto brings an action, suit or proceeding to specifically enforce the performance of the terms and provisions of this Agreement (other

than an action to enforce specifically any provision that expressly survives the termination of this Agreement), the Termination Date shall automatically be extended to (i) the twentieth (20th) Business Day following the resolution of such action, suit or proceeding or (ii) such other time period established by the court presiding over such action, suit or proceeding.

§ IV MAY 27, 2022, DRAFT PROXY STATEMENT DISCUSSION OF GOLDMAN’S FAIRNESS OPINION

A. INTRODUCTION

Opinion of Goldman Sachs & Co. LLC

At a meeting of the Twitter Board held on April 25, 2022, Goldman Sachs rendered its oral opinion, subsequently confirmed by delivery of its written opinion, dated April 25, 2022, to the Twitter Board that, as of the date of the written opinion and based upon and subject to limitations, qualifications and assumptions set forth therein, the \$54.20 in cash per share of our common stock to be paid to the holders (other than Parent, Mr. Musk and their respective affiliates) of such shares pursuant to the merger agreement was fair from a financial point of view to such holders.

The full text of the written opinion of Goldman Sachs, dated April 25, 2022, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex C to this proxy statement. Goldman Sachs provided advisory services and its opinion for the information and assistance of the Twitter Board in connection with its consideration of the merger. The Goldman Sachs opinion is not a recommendation as to how any holder of our common stock should vote with respect to the merger or any other matter.

In connection with rendering its opinion, Goldman Sachs, among other things, reviewed:

- the merger agreement;
- annual reports to stockholders and Annual Reports on Form 10-K of Twitter for the five years ended December 31, 2021;
- certain interim reports to stockholders and Quarterly Reports on Form 10-Q of Twitter;
- certain publicly available research analyst reports for Twitter;
- certain other communications from Twitter to its stockholders; and
- certain internal financial analyses and forecasts for Twitter prepared by its management, as approved for Goldman Sachs’ use by Twitter, which are referred to in this section of the proxy statement as the “**Forecasts.**”

Goldman Sachs also held discussions with members of the senior management of Twitter regarding their assessment of the past and current business operations, financial condition and future prospects of Twitter; reviewed the reported price and trading activity for the Twitter common stock; compared certain financial and stock market information for Twitter with similar information for certain other companies the securities of which are publicly traded; reviewed the financial terms of certain recent business combinations in the internet industry; and performed such other studies and analyses, and considered such other factors, as it deemed appropriate.

For purposes of rendering this opinion, Goldman Sachs, with the consent of the Twitter Board, relied upon and assumed the accuracy and completeness of all of the financial, legal, regulatory, tax, accounting and other information provided to, discussed with or reviewed by it, without assuming any responsibility for independent verification thereof. In that regard, Goldman Sachs assumed, with the consent of the Twitter Board, that the Forecasts were reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of Twitter. Goldman Sachs did not make an independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or other off-balance-sheet assets and liabilities) of Twitter or any of its subsidiaries and it was not furnished with any such evaluation or appraisal. Goldman Sachs assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the merger will be obtained without any adverse effect on the expected benefits of the merger in any way meaningful to its analysis. Goldman Sachs also assumed that the merger will be consummated on the terms set forth in the merger agreement, without the waiver or modification of any term or condition the effect of which would be in any way meaningful to its analysis.

Goldman Sachs' opinion does not address the underlying business decision of Twitter to engage in the merger or the relative merits of the merger as compared to any strategic alternatives that may be available to Twitter; nor does it address any legal, regulatory, tax or accounting matters. Goldman Sachs was not requested to solicit, and did not solicit, interest from other parties with respect to an acquisition of, or other business combination with, Twitter or any other alternative transaction. Goldman Sachs' opinion addresses only the fairness from a financial point of view, as of the date of the written opinion, of the \$54.20 in cash per share of Twitter common stock to be paid to the holders (other than Parent, Mr. Musk and their respective affiliates) of such shares pursuant to the merger agreement. Goldman Sachs' opinion does not express any view on, and does not address, any other term or aspect of the merger agreement or the merger or any term or aspect of any other agreement or instrument contemplated by the merger agreement or entered into or amended in connection with the merger, including the fairness of the merger to, or any consideration received in connection therewith by, the holders of any other class of securities, creditors, or other constituencies of Twitter; nor as to the fairness of the amount or nature of any compensation to be paid or payable to any of the officers, directors or employees of Twitter, or class of such persons in connection with the merger, whether relative to the \$54.20 in cash per share of Twitter common stock to be paid to the holders (other than

Parent, Mr. Musk and their respective affiliates) of such shares pursuant to the merger agreement or otherwise. Goldman Sachs did not express any opinion as to the prices at which shares of Twitter common stock will trade at any time, as to the potential effects of volatility in the credit, financial and stock markets on Twitter, Mr. Musk, Parent or the merger, or as to the impact of the merger on the solvency or viability of Twitter, Mr. Musk or Parent or the ability of Twitter, Mr. Musk or Parent to pay their respective obligations when they come due. Goldman Sachs' opinion was necessarily based on economic, monetary, market and other conditions, as in effect on, and the information made available to it as of, the date of the opinion and Goldman Sachs assumed no responsibility for updating, revising or reaffirming its opinion based on circumstances, developments or events occurring after the date of its opinion. Goldman Sachs' advisory services and its opinion were provided for the information and assistance of the Twitter Board in connection with its consideration of the merger and such opinion does not constitute a recommendation as to how a holder of shares of Twitter common stock should vote with respect to such transaction or any other matter. Goldman Sachs' opinion was approved by a fairness committee of Goldman Sachs.

B. Summary of Material Financial Analysis

The following is a summary of the material financial analyses presented by Goldman Sachs to the Twitter Board in connection with rendering the opinion described above. The following summary, however, does not purport to be a complete description of the financial analyses performed by Goldman Sachs, nor does the order of analyses described represent relative importance or weight given to those analyses by Goldman Sachs. Some of the summaries of the financial analyses include information presented in tabular format. The tables must be read together with the full text of each summary and are alone not a complete description of Goldman Sachs' financial analyses. Except as otherwise noted, the following quantitative information, to the extent that it is based on market data, is based on market data as it existed on or before April 22, 2022, the last trading day before the public announcement of the merger, and is not necessarily indicative of current market conditions.

C. Implied Premia Analysis

Goldman Sachs calculated and compared certain implied premia described below based on the \$54.20 in cash per share of Twitter common stock to be paid to the holders (other than Parent, Mr. Musk and their respective affiliates) of such shares pursuant to the merger agreement.

Goldman Sachs calculated the implied premia represented by the \$54.20 in cash per share of Twitter common stock relative to:

- \$39.31, the undisturbed closing price for Twitter common stock on April 1, 2022, the last trading day prior to the filing of the Schedule 13G filed by Elon Musk disclosing his ownership of Twitter common stock (which we refer to for purposes of this section of the proxy statement as the “**Undisturbed Share Price**”);

- \$48.93, the closing price for Twitter common stock on April 22, 2022, the last full trading day prior to the signing of the merger agreement (which we refer to for purposes of this section of the proxy statement as the “**Current Share Price**”);
- \$71.69, the highest closing trading price of the shares of Twitter common stock over the 52-week period ended April 22, 2022 (which we refer to for purposes of this section of the proxy statement as the “**52-Week High**”);
- \$32.42, the lowest closing trading price of the shares of Twitter common stock over the 52-week period ended April 22, 2022 (which we refer to for purposes of this section of the proxy statement as the “**52-Week Low**”);
- \$35.89, the volume weighted average price of Twitter common stock over the 30-trading-day period ended April 1, 2022 (which we refer to for purposes of this section of the proxy statement as “**30-day Undisturbed VWAP**”); and
- \$53.91, the average closing trading price of the shares of Twitter common stock over the 1-year period ended April 1, 2022 (which we refer to for purposes of this section of the proxy statement as “**1-year Undisturbed Average**”).

The results of these calculations and comparisons were as follows:

Common Stock Reference Price	Implied Premium Represented by \$54.20 in Cash per Share of Twitter Common Stock
Undisturbed Share Price of \$39.31	38%
Current Share Price of \$48.93	11%
52-Week High of \$71.69	(24)%
52-Week Low \$32.42	67%
30-day Undisturbed VWAP \$35.89	51%
1-year Undisturbed Average of \$53.91	1%

D. Illustrative Present Value of Future Share Price Analysis

Goldman Sachs performed an illustrative analysis of the implied present value of an illustrative future value per share of Twitter common stock, which is designed to provide an indication of the present value of a theoretical future value of Twitter's equity as a function of Twitter's financial multiples. For this analysis, Goldman Sachs used the Forecasts for each of the fiscal years 2022 to 2025. Goldman Sachs first calculated the implied future enterprise value of Twitter as of December 31, 2022, 2023 and 2024, by applying a range of enterprise value to one-year forward EBITDA estimates (which are referred to for purposes of this section of the proxy statement as "**forward EV/EBITDA**") multiples of 15.0x to 17.5x to the EBITDA estimates contained in the Forecasts for each of Twitter's fiscal years 2023, 2024 and 2025. These illustrative multiples were derived by Goldman Sachs utilizing its professional judgment and experience, taking into account, among other things, current and historical average forward EV/EBITDA multiples for Twitter and certain selected internet companies described in the section below captioned "*—Selected Public Company Comparables.*"

Goldman Sachs then added the amount of Twitter's estimated total cash and cash equivalents and equity investments and subtracted the amount of Twitter's estimated total debt, as of December 31, 2022, 2023 and 2024, each as provided by management of Twitter and approved for Goldman Sachs' use by the management of Twitter, to the range of implied enterprise values to derive a range of illustrative equity values as of December 31, 2022, 2023 and 2024. Goldman Sachs then divided these implied equity values by the projected number of fully diluted outstanding shares of Twitter, as provided by management of Twitter and approved for Goldman Sachs' use by the management of Twitter, to derive a range of implied future equity values per share of Twitter common stock. Goldman Sachs then discounted these implied equity values per share to December 31, 2021, using an illustrative discount rate of 11.4%, reflecting an estimate of Twitter's cost of equity. Goldman Sachs derived such discount rate by application of the Capital Asset Pricing Model (which we refer to for purposes of this section of the proxy statement as "**CAPM**"), which requires certain company-specific inputs, including a beta for Twitter, as well as certain financial metrics for the United States financial markets generally. This analysis resulted in a range of implied present values per share of Twitter common stock, rounded to the nearest \$0.10, of \$45.50 to \$60.10.

E. Illustrative Discounted Cash Flow Analysis

Using the Forecasts, Goldman Sachs performed an illustrative discounted cash flow analysis on Twitter to derive a range of illustrative present values per share of Twitter common stock. Using the mid-year convention for discounting cash flows and discount rates ranging from 10.0% to 12.0%, reflecting estimates of Twitter's weighted average cost of capital, Goldman Sachs discounted to present value as of December 31, 2021 (i) estimates of unlevered free cash flow for Twitter for the fiscal years 2022 through 2027 as reflected in the Forecasts and referred to as Unlevered Free Cash Flow (less stock-based compensation expenses) in the section of this proxy statement captioned "*—Unaudited Prospective Financial Information*" and (ii) a range of illustrative terminal

values for Twitter, which were calculated by applying illustrative exit terminal year EV/EBITDA multiples ranging from 10.0x to 15.0x to a terminal year estimate of EBITDA, as reflected in the Forecasts (which analysis implied perpetuity growth rates ranging from 5.6% to 9.0%). Goldman Sachs derived such discount rates by application of the CAPM, which requires certain company-specific inputs, including Twitter’s target capital structure weightings, the cost of long-term debt, after-tax yield on permanent excess cash, if any, future applicable marginal cash tax rate and a beta for Twitter, as well as certain financial metrics for the United States financial markets generally. The illustrative terminal year EV/EBITDA multiple range for Twitter was derived by Goldman Sachs using its professional judgment and experience, taking into account, among other things, current and historical average forward EV/EBITDA multiples for Twitter and certain selected internet companies described in the section below captioned “—*Selected Public Company Comparables*.” In addition, using discount rates ranging from 10.0% to 12.0%, reflecting estimates of Twitter’s weighted average cost of capital, Goldman Sachs discounted to present value as of December 31, 2021 the estimated benefits of Twitter’s net operating losses, as provided by the management of Twitter and approved for Goldman Sachs’ use by the management of Twitter.

Goldman Sachs derived a range of illustrative enterprise values for Twitter by adding the ranges of present values it derived as described above. Goldman Sachs then added to the range of illustrative enterprise values it derived for Twitter the amount of Twitter’s estimated total cash and cash equivalents and equity investments and subtracted the amount of Twitter’s estimated total debt as of December 31, 2021, adjusted for any subsequent publicly announced changes to those figures, as provided by the management of Twitter and approved for Goldman Sachs’ use by the management of Twitter, to derive a range of illustrative equity values for Twitter. Goldman Sachs then divided the range of illustrative equity values it derived by the number of fully diluted outstanding shares of Twitter as of March 31, 2022, as provided by the management of Twitter and approved for Goldman Sachs’ use by the management of Twitter, to derive a range of illustrative present values per share of Twitter common stock, rounded to the nearest \$0.10, of \$39.10 to \$60.90.

F. Selected Precedent Transactions Analysis

Goldman Sachs analyzed certain publicly available information relating to the following selected transactions involving companies with an enterprise value in excess of \$1 billion in the internet industry since 2010. For each of the selected transactions, where information was publicly available, Goldman Sachs calculated and compared the implied enterprise value of the applicable target company based on the consideration paid in the transaction as a multiple of the target company’s EBITDA over the last twelve month period ended prior to the announcement of the applicable transaction (which we refer to for purposes of this section of the proxy statement as “**EV/LTM EBITDA**”).

The following table identifies the transactions reviewed by Goldman Sachs as part of this analysis:

Announcement Date	Acquiror	Target	EV/LTM EBITDA
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Feb 2021	Magnite, Inc.	SpotX, Inc.	33.4x
Jun 2020	Just Eat Takeaway.com N.V.	Grubhub Inc.	47.4x
Dec 2019	Hellman & Friedman LLC	AutoScout24	26.1x
May 2018	Silver Lake	ZPG Plc	21.5x
Jun 2016	Microsoft Corporation	LinkedIn Corporation	31.2x
Nov 2015	Expedia, Inc.	HomeAway, Inc.	36.4x
Aug 2015	Liberty Interactive Corporation	zulily, inc.	50.6x
Jul 2014	Zillow, Inc.	Trulia, Inc.	NM ⁽¹⁾
Jun 2014	The Priceline Group Inc.	OpenTable, Inc.	29.9x
Nov 2012	priceline.com Incorporated	KAYAK Software Corporation	27.6x
May 2011	Microsoft Corporation	Skype Global S. à r.l.	32.2x

(1) Not meaningful

While none of the selected transactions or companies that participated in the selected transactions are directly comparable to the proposed merger of Twitter, the transactions included as selected transactions were chosen because the target companies that participated in the selected transactions are companies with operations that, for the purpose of this analysis, may be considered similar to certain of Twitter's operations, market size and product profile.

The foregoing analysis indicated a 25th percentile EV/LTM EBITDA multiple of 28.2x and a 75th percentile EV/LTM EBITDA multiple of 35.7x. Using this analysis and its professional judgment and experience, Goldman Sachs applied a range of illustrative EV/EBITDA multiples of 28.2x to 35.7x to Twitter's last twelve months Adjusted EBITDA (adjusted to exclude a one-time litigation-related net charge of \$766 million) as of December 31, 2021, as provided by the management of Twitter and approved for Goldman Sachs' use by the management of Twitter, to derive a range of implied enterprise values for Twitter. Goldman Sachs then added to the range of implied enterprise values the amount of Twitter's estimated total cash and cash equivalents and equity investments and subtracted the amount of Twitter's estimated total debt, as of December 31, 2021, adjusted for any subsequent publicly announced changes to those figures, as provided by the management of Twitter and approved for Goldman Sachs' use by the management of Twitter, to derive a range of illustrative equity values for Twitter. Goldman Sachs divided the range of illustrative equity values by the number of fully diluted outstanding shares of Twitter as of March 31, 2022, as provided by the management of Twitter and approved for Goldman Sachs' use by the management of Twitter, to derive a range of implied values per share of Twitter common stock, rounded to the nearest \$0.10, of \$50.30 to \$62.90.

G. Premia Paid Analysis

Goldman Sachs reviewed and analyzed, using publicly available information, the acquisition premia for 149 all-cash acquisition transactions announced from January 2012 through April 2022, involving a public technology, media, or telecommunication company based in the United States as the target where the disclosed enterprise value for the transaction was greater than \$1 billion. For the entire period, using publicly available

information, Goldman Sachs calculated the median, 25th percentile and 75th percentile premia of the price paid in the transactions relative to the target’s last undisturbed closing stock price prior to announcement of the transaction. This analysis indicated a median premium of 29% across the period. This analysis also indicated a 25th percentile premium of 18% and a 75th percentile premium of 44% across the period. Using this analysis and its professional judgment and experience, Goldman Sachs applied a reference range of illustrative premia of 18% to 44% to the

undisturbed closing price per share of Twitter common stock of \$39.31 as of April 1, 2022 and calculated a range of implied values per share of Twitter common stock, rounded to the nearest \$0.10, of \$46.40 to \$56.60.

H. Selected Public Company Comparables

Using publicly available information, Goldman Sachs reviewed and compared forward EV/EBITDA multiples for Twitter and the following publicly traded corporations in the internet industry, which are collectively referred to as the “selected companies”:

- Alphabet Inc.
- Meta Platforms, Inc.
- Pinterest, Inc.
- Snap Inc.

Although none of the selected companies is directly comparable to Twitter, the companies included were chosen because they are publicly traded companies in the internet industry with certain operations that for purposes of analysis may be considered similar to certain operations of Twitter.

Goldman Sachs calculated the average multiple of enterprise value to EBITDA for the next twelve-month period (which we refer to for purposes of this section of the proxy statement as “**NTM EBITDA**”), for each of Twitter and the selected companies over the 3-month, 6-month, 1-year, 2-year and 3-year periods prior to April 22, 2022, based on financial and trading data as of April 22, 2022 obtained from public filings, Bloomberg, Capital IQ and Institutional Brokers’ Estimate System (which we refer to for purposes of this section of the proxy statement as “**IBES**”) estimates. The results of this analysis are summarized as follows:

EV/NTM EBITDA					
Averages Over Periods Prior to April 22, 2022					
	3- Month	6- Month ⁽¹⁾	1- Year ⁽¹⁾	2- Year ⁽¹⁾	3- Year ⁽¹⁾
Alphabet Inc.	13.3x	14.3x	15.0x	14.6x	13.5x

Meta Platforms, Inc.	9.0x	10.8x	12.3x	13.4x	12.8x
Pinterest, Inc.	17.5x	21.3x	35.2x	—	—
Snap Inc.	57.3x	—	—	—	—
Twitter	20.6x	22.3x	27.2x	28.4x	25.1x

(1) Average multiples excluded if respective company does not have meaningful trading data for the entire period.

Goldman Sachs also calculated and compared the current forward EV/EBITDA multiples for Twitter, based on the Forecasts and based on IBES estimates, and the selected companies for calendar years 2022 and 2023, based on financial and trading data as of April 22, 2022 obtained from public filings, Bloomberg, Capital IQ and IBES estimates. The forward EV/EBITDA multiples for Twitter were calculated using the undisturbed closing price per share of Twitter common stock on April 1, 2022. The results of this analysis are summarized as follows:

	2022E EV/EBITDA	2023E EV/EBITDA
Alphabet Inc.	12.0x	10.4x
Meta Platforms, Inc.	7.8x	6.7x
Pinterest, Inc.	16.2x	11.2x
Snap Inc.	62.8x	30.2x
Twitter (based on the Forecasts)	19.6x	11.7x
Twitter (based on IBES Estimates)	21.8x	16.9x

I. General

The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Selecting portions of the analyses or of the summary set forth above, without considering the analyses as a whole, could create an incomplete view of the processes underlying Goldman Sachs' opinion. In arriving at its fairness determination, Goldman Sachs considered the results of all of its analyses and did not attribute any particular weight to any factor or analysis considered by it. Rather, Goldman Sachs made its determination as to fairness on the basis of its experience and professional judgment after considering the results of all of its analyses. No company or transaction used in the above analyses as a comparison is directly comparable to Twitter or the merger.

Goldman Sachs prepared these analyses for purposes of Goldman Sachs' providing its opinion to the Twitter Board as to the fairness from a financial point of view of the \$54.20 in cash per share of Twitter common stock to be paid to the holders (other than Parent, Mr. Musk and their respective affiliates) of such shares pursuant to the merger

agreement. These analyses do not purport to be appraisals nor do they necessarily reflect the prices at which businesses or securities actually may be sold. Analyses based upon forecasts of future results are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by these analyses. Because these analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of the parties or their respective advisors, none of Twitter, Parent, Goldman Sachs or any other person assumes responsibility if future results are materially different from those forecast.

The merger consideration was determined through arm's-length negotiations between Twitter and Parent and was approved by the Twitter Board. Goldman Sachs provided advice to Twitter during these negotiations. Goldman Sachs did not, however, recommend any specific amount of consideration to Twitter or the Twitter Board or that any specific amount of consideration constituted the only appropriate consideration for the merger.

As described above, Goldman Sachs' opinion to the Twitter Board was one of many factors taken into consideration by the Twitter Board in making its determination to approve the merger agreement. The foregoing summary does not purport to be a complete description of the analyses performed by Goldman Sachs in connection with the fairness opinion and is qualified in its entirety by reference to the written opinion of Goldman Sachs attached as Annex C.

Goldman Sachs and its affiliates are engaged in advisory, underwriting and financing, principal investing, sales and trading, research, investment management and other financial and non-financial activities and services for various persons and entities. Goldman Sachs and its affiliates and employees, and funds or other entities they manage or in which they invest or have other economic interests or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments of Twitter, affiliates of Mr. Musk, Parent, any of their respective affiliates and third parties, or any currency or commodity that may be involved in the merger. Goldman Sachs acted as financial advisor to Twitter in connection with, and participated in certain of the negotiations leading to, the merger. Goldman Sachs has provided certain financial advisory and/or underwriting services to Twitter and its affiliates from time to time for which the Investment Banking Division of Goldman Sachs has received, and may receive, compensation, including having acted as an initial purchaser with respect to the offering of Twitter's 0% Convertible Senior Notes due 2026 in March 2021 (aggregate principal amount of approximately \$1.4 billion) (which we refer to for purposes of this section of the proxy statement as the "**convertible notes**") and as an initial purchaser with respect to the offering of Twitter's 5.000% Senior Notes due 2030 in February 2022 (aggregate principal amount of \$1.0 billion). During the two year period ended April 25, 2022, Goldman Sachs has recognized compensation for financial advisory and/or underwriting services provided by its Investment Banking Division to Twitter and/or its affiliates of approximately \$7.4 million. Goldman Sachs also has provided certain financial advisory and/or underwriting services to Elon Musk and/or his affiliates from time to time for which the Investment Banking Division of

Goldman Sachs has received, and may receive, compensation, including having acted as lead left bookrunner of follow-on public offerings by Tesla, Inc., an affiliate of Elon Musk, in September 2020 and December 2020. During the two year period ended April 25, 2022, Goldman Sachs has recognized compensation for financial advisory and/or underwriting services provided by its Investment Banking Division to Elon Musk and/or his affiliates of approximately \$[●]. Goldman Sachs may also in the future provide financial advisory and/or underwriting services to Twitter, Elon Musk, Parent and their respective affiliates for which the Investment Banking Division of Goldman Sachs may receive compensation.

In addition, concurrent with the issuance of the convertible notes, Twitter entered into convertible note hedge transactions and warrant transactions (which we collectively refer to for purposes of this section of the proxy statement as the “**convertible note hedge and warrant transactions**”) with respect to the convertible notes, with Goldman Sachs (as to 25%) and other counterparties (which we collectively refer to for purposes of this section of the proxy statement as the “**convertible note hedge and warrant counterparties**”), each acting as a principal for its own account. The convertible note hedge and warrant transactions consisted of the purchase by Twitter of call options, and the sale by Twitter of warrants, with respect to collectively approximately 11.1 million shares of Twitter common stock, the aggregate number of shares of Twitter common stock underlying the convertible notes.

As of March 16, 2022, all of the convertible note hedge transactions remain outstanding with a strike price of approximately \$130.03, and are exercisable upon conversion of the convertible notes. The convertible notes hedge transactions were intended to generally reduce the potential dilutive effect on stockholders of Twitter of the conversion of the convertible notes and/or offset any potential cash payment in excess of the principal amount of the convertible notes that Twitter may make in the event that the market value per share of Twitter common stock, as measured under the convertible notes hedge transactions at the time of exercise, is greater than the exercise price of the call options purchased by Twitter in the convertible notes hedge transactions. The warrant transactions provide Goldman Sachs with warrants on shares of Twitter common stock, the value of which depends on the price of Twitter common stock exceeding the strike price of the warrants. As of March 16, 2022, all of the warrant transactions remain outstanding with a strike price of approximately \$163.02. If the market value per share of Twitter common stock, as measured under the warrant transactions, exceeds the strike price of the warrants, the warrant transactions will have a dilutive effect on Twitter’s earnings per share, unless Twitter elects, subject to certain conditions, to settle the warrant transactions in cash.

The convertible note hedge and warrant transactions may be adjusted, exercised, cancelled and/or terminated in accordance with their terms in connection with certain events, including the announcement or consummation of the merger. In particular, under the terms of the convertible note hedge transactions, each of Goldman Sachs and the other convertible note hedge counterparties, each acting separately as calculation agent under the convertible note hedge transactions to which it is a party, is entitled or obligated in certain circumstances to make adjustments to the exercise price of the call

options purchased by Twitter from Goldman Sachs and the other counterparties to reflect the adjustments made under the convertible notes indenture or the economic effect of the announcement of the merger on the call options embedded in the convertible note hedge. Under the terms of the warrant transactions, each of Goldman Sachs and the other warrant counterparties, each acting separately as calculation agent under the warrant transactions to which it is a party, is entitled or obligated in certain circumstances to make adjustments to the exercise price of the warrants sold by Twitter to Goldman Sachs and the other counterparties to reflect certain adjustments under the ISDA equity definitions, including adjustments to account for the economic effect of the announcement of the merger on the warrants embedded in the warrant transactions. In addition, each of Goldman Sachs and the other convertible note hedge and warrant counterparties may, each acting separately as the calculation agent, determining party or otherwise as principal under the call options and warrants embedded in the convertible note hedge and warrant transactions to which it is a party, determine such additional adjustments and/or value owed upon termination or cancellation in respect of such options and warrants, respectively, in accordance with their terms, including on or following consummation or abandonment of the merger. All actions or exercises of judgment by Goldman Sachs, in its capacity as calculation agent, pursuant to the terms of the call options and warrants embedded in the convertible note hedge and warrant transactions to which it is a party, must be performed in good faith and a commercially reasonable manner.

As a result of the convertible note hedge and warrant transactions, the convertible note hedge and warrant counterparties are expected to have market exposure to the price of the shares of Twitter common stock. It is the ordinary practice of the convertible note hedge and warrant counterparties to engage in hedging activities to limit their respective market exposure to the price of the stock underlying privately negotiated equity derivative transactions with issuers of such stock, such as the convertible note hedge and warrant transactions. In connection with the convertible note hedge and warrant transactions, Goldman Sachs (and its affiliates) have engaged, and will continue to engage, in accordance with applicable law in hedging and other market transactions (which may include the entering into or unwinding of various derivative transactions with respect to Twitter common stock) that are generally intended to substantially neutralize Goldman Sachs' exposure as a result of the convertible note hedge and warrant transactions to changes in the price of Twitter common stock. Such hedging activity is at Goldman Sachs' own risk and may result in a gain or loss to Goldman Sachs that may be greater than or less than the initial expected contractual benefit to Goldman Sachs under the convertible note hedge and warrant transactions. The amount of any such gain or loss will not be known until the applicable convertible note hedge and warrant transactions have been exercised, expired or terminated in accordance with their terms and Goldman Sachs shall have completed all of its hedge unwind activities.

To mitigate the exposure from the convertible note hedge and warrant transactions, as of March 16, 2022, Goldman Sachs held a net long economic position of approximately 90,000 shares of Twitter common stock and was long and short a small number of various options on Twitter common stock.

Under the terms of the convertible notes, upon the consummation of a merger, tender offer or certain other events involving Twitter (including the merger), holders of the convertible notes will be entitled to convert their notes at a higher conversion rate. If holders of the convertible notes elect to convert or put their notes in these circumstances or otherwise under the terms of the convertible notes, a portion of the convertible note hedge corresponding to the portion of the convertible notes that are converted or put may terminate. In the event of such termination, each convertible note hedge counterparty will determine the amount of any termination payment owed to Twitter under its convertible note hedge in accordance with the termination provisions of its convertible note hedge, unless otherwise agreed by the parties. If any convertible notes are not converted or put in connection with a merger, tender offer or other event involving Twitter (including the merger) and remain outstanding following the consummation of such an event, a corresponding portion of the convertible note hedge will remain outstanding, subject to any adjustments made to the terms of the convertible note hedge as a result of the announcement and the consummation of a merger, tender offer or other event involving Twitter (including the merger), as described above. Warrant transactions are also subject to adjustments made to the terms of the warrant transactions as a result of the announcement and the consummation of a merger, tender offer or other event involving Twitter (including the merger), as described above.

Goldman Sachs provided to the management of Twitter, for the information of the Twitter Board, materials that summarized, based on theoretical models, the potential effects of the announcement and of the consummation of an acquisition of Twitter on the convertible note hedge and warrant transactions. The materials included preliminary illustrative analyses by Goldman Sachs' Investment Banking Division for a range of stated assumptions regarding takeout prices for shares of Twitter common stock and volatilities, as well as based on other reasonable assumptions (which will ultimately be subject to negotiation between Twitter and counterparties), in the event of an acquisition of Twitter for greater than 10% cash consideration. The materials calculated over a range of potential takeout prices for the shares of Twitter common stock ranging from \$50.00 per share to \$70.00 per share and volatilities (from 30% to 60%) and for an announcement date of April 13, 2022, and other stated assumptions that, upon the full unwind of the convertible note hedge and warrant transactions, Goldman Sachs might realize, after taking into account any estimated hedging gains or losses, a net gain ranging from approximately \$4.6 million to approximately \$56.1 million. The methodology employed for the aforementioned materials assumed an intrinsic unwind of the note hedge transaction and fair value unwind of the warrant contract. In accordance with industry practice, Goldman Sachs maintains customary institutional information barriers reasonably designed to prevent the unauthorized disclosure of confidential information by personnel in its Investment Banking Division to the personnel in its Securities Division who are undertaking hedging and other market transactions with respect to Goldman Sachs' convertible note hedge and warrant transactions. In connection with the preparation of presentations to Twitter senior management and the Twitter Board, personnel in Goldman Sachs' Investment Banking Division, including the representatives of Goldman Sachs who have advised Twitter in connection with the merger, from time to time, have received or may receive input from personnel in Goldman Sachs' Securities Division into how to model, or reports of historical measures or estimates of, Goldman

Sachs' and/or Goldman Sachs' Investment Banking Division's profit and/or loss over certain measurement periods related to the call spread transactions.

The amount of any termination payment owed to Twitter as a result of the termination of the convertible note hedge transactions will vary depending on the number of convertible notes converted by note-holders, the actual conversion date(s) of the convertible notes, and market conditions (including, for example, interest rates and volatility and price of Twitter common stock) and the valuation model used to determine such amount and, accordingly, the amount of any termination payment owed by a convertible note hedge counterparty to Twitter may be significantly different from the illustrative amounts described above. The amount of any termination payment owed to Goldman Sachs as a result of the termination of the warrant transactions will vary depending on market conditions (including, for example, interest rates and volatility and price of Twitter common stock) and the valuation model used to determine such amount and, accordingly, the amount of any termination payment owed by Twitter to a warrant counterparty may be significantly different from the illustrative amounts described above. The consummation of the merger could result in a convertible note hedge and warrant counterparty, in aggregate, paying Twitter an amount that is greater than, equal to, or less than the amount such convertible note hedge and warrant counterparty would have paid or delivered to Twitter upon exercise, expiration or termination of its convertible note hedge and warrant transaction in the absence of the merger.

The indenture governing the convertible notes and the confirmations containing the terms of the convertible note hedge and warrant transactions were included as exhibits to Twitter's Current Report on Form 8-K filed with the SEC on March 4, 2021, which contains additional disclosure regarding the convertible notes and a description of the convertible note hedge and warrant transactions. All references related to the convertible note hedge and warrant transactions in this section to share counts, conversion prices, and strike prices are subject to adjustment from time to time in accordance with the terms of the confirmations relating to the convertible note hedge and warrant transactions.

The Twitter Board selected Goldman Sachs as its financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the merger. Pursuant to a letter agreement dated April 25, 2022, Twitter engaged Goldman Sachs to act as its financial advisor in connection with the merger. The engagement letter between Twitter and Goldman Sachs provides for a transaction fee that is estimated, based on the information available as of the date of announcement, at approximately \$80 million, \$15 million of which became payable at announcement of the merger, and the remainder of which is contingent upon consummation of the merger. In addition, Twitter has agreed to reimburse Goldman Sachs for certain of its expenses, including attorneys' fees and disbursements, and to indemnify Goldman Sachs and related persons against various liabilities, including certain liabilities under the federal securities laws.

§ V MAY 27, 2022, DRAFT PROXY STATEMENT DISCUSSION OF J.P. MORGAN'S FAIRNESS OPINION

A. INTRODUCTION

Opinion of J.P. Morgan Securities LLC

Pursuant to an engagement letter, Twitter retained J.P. Morgan as its financial advisor in connection with the proposed merger.

At the meeting of the Twitter Board on April 25, 2022, J.P. Morgan rendered its oral opinion to the Twitter Board that, as of such date and based upon and subject to the factors and assumptions set forth in its opinion, the consideration to be paid to Twitter's common stockholders in the proposed transaction was fair, from a financial point of view, to such stockholders. J.P. Morgan has confirmed its April 25, 2022 oral opinion by delivering its written opinion to the Twitter Board, dated April 25, 2022, that, as of such date, the consideration to be paid to Twitter's common stockholders in the proposed merger was fair, from a financial point of view, to such stockholders.

The full text of the written opinion of J.P. Morgan dated April 25, 2022, which sets forth, among other things, the assumptions made, matters considered and limits on the review undertaken, is attached as Annex D to this proxy statement and is incorporated herein by reference. The summary of the opinion of J.P. Morgan set forth in this proxy statement is qualified in its entirety by reference to the full text of such opinion. Twitter's stockholders are urged to read the opinion in its entirety. J.P. Morgan's written opinion was addressed to the Twitter Board (in its capacity as such) in connection with and for the purposes of its evaluation of the proposed merger, was directed only to the \$54.20 per share in cash to be paid to holders of Twitter common stock pursuant to the merger agreement and did not address any other aspect of the merger. J.P. Morgan expressed no opinion as to the fairness of the consideration to the holders of any class of securities, creditors or other constituencies of Twitter or as to the underlying decision by Twitter to engage in the proposed merger. The issuance of J.P. Morgan's opinion was approved by a fairness committee of J.P. Morgan. The summary of the opinion of J.P. Morgan set forth in this proxy statement is qualified in its entirety by reference to the full text of such opinion. The opinion does not constitute a recommendation to any stockholder of Twitter as to how such stockholder should vote with respect to the proposed merger or any other matter.

In arriving at its opinion, J.P. Morgan, among other things:

- reviewed the merger agreement;
- reviewed certain publicly available business and financial information concerning Twitter and the industries in which it operates;
- compared the proposed financial terms of the merger with the publicly available

financial terms of certain transactions involving companies J.P. Morgan deemed relevant and the consideration paid for such companies;

- compared the financial and operating performance of Twitter with publicly available information concerning certain other companies J.P. Morgan deemed relevant and reviewed the current and historical market prices of the Twitter common stock and certain publicly traded securities of such other companies;
- reviewed certain internal financial analyses and forecasts prepared by the management of Twitter relating to its business; and
- performed such other financial studies and analyses and considered such other information as J.P. Morgan deemed appropriate for the purposes of its opinion.

In addition, J.P. Morgan held discussions with certain members of the management of Twitter with respect to certain aspects of the merger, and the past and current business operations of Twitter, the financial condition and future prospects and operations of Twitter, and certain other matters J.P. Morgan believed necessary or appropriate to its inquiry.

In giving its opinion, J.P. Morgan relied upon and assumed the accuracy and completeness of all information that was publicly available or was furnished to or discussed with J.P. Morgan by Twitter or otherwise reviewed by or for J.P. Morgan, and J.P. Morgan did not independently verify (and did not assume responsibility or liability for independently verifying) any such information or its accuracy or completeness. J.P. Morgan did not conduct and was not provided with any valuation or appraisal of any assets or liabilities, nor did J.P. Morgan evaluate the solvency of Twitter or Parent under any state or federal laws relating to bankruptcy, insolvency or similar matters. In relying on financial analyses and forecasts provided to J.P. Morgan or derived therefrom, J.P. Morgan assumed that they were reasonably prepared based on assumptions reflecting the best currently available estimates and judgments by management as to the expected future results of operations and financial condition of Twitter to which such analyses or forecasts relate. J.P. Morgan expressed no view as to such analyses or forecasts or the assumptions on which they were based. J.P. Morgan also assumed that the merger and the other transactions contemplated by the merger agreement will be consummated as described in the merger agreement. J.P. Morgan also assumed that the representations and warranties made by Twitter and Parent in the merger agreement and the related agreements were and will be true and correct in all respects material to its analysis. J.P. Morgan is not a legal, regulatory or tax expert and relied on the assessments made by advisors to Twitter with respect to such issues. J.P. Morgan further assumed that all material governmental, regulatory or other consents and approvals necessary for the consummation of the merger will be obtained without any adverse effect on Twitter or on the contemplated benefits of the merger.

The projections furnished to J.P. Morgan were prepared by Twitter's management, as discussed more fully in the section of this proxy statement captioned "*—Unaudited Prospective Financial Information.*" Twitter does not publicly disclose internal long-term

forecasts or management projections of the type provided to J.P. Morgan in connection with J.P. Morgan's analysis of the proposed merger, and such projections were not prepared with a view toward public disclosure. These projections were based on numerous variables and assumptions that are inherently uncertain and may be beyond the control of Twitter's management, including, without limitation, factors related to general economic and competitive conditions and prevailing interest rates. Accordingly, actual results could vary significantly from those set forth in such projections. For more information regarding the use of projections and other forward-looking statements, please refer to the section captioned "*—Unaudited Prospective Financial Information.*"

J.P. Morgan's opinion was necessarily based on economic, market and other conditions as in effect on, and the information made available to J.P. Morgan as of, the date of such opinion. J.P. Morgan's opinion noted that subsequent developments may affect J.P. Morgan's opinion, and that J.P. Morgan does not have any obligation to update, revise, or reaffirm such opinion. J.P. Morgan's opinion is limited to the fairness, from a financial point of view, of the \$54.20 per share in cash to be paid to holders of Twitter common stock in the transaction pursuant to the merger agreement, and J.P. Morgan has expressed no opinion as to the fairness of any consideration to the holders of any other class of securities, creditors or other constituencies of Twitter or the underlying decision by Twitter to engage in the merger. Furthermore, J.P. Morgan expressed no opinion with respect to the amount or nature of any compensation to any officers, directors, or employees of any party to the proposed merger, or any class of such persons relative to the consideration in the proposed merger or with respect to the fairness of any such compensation. J.P. Morgan expressed no opinion as to the price at which Twitter's common stock will trade at any future time.

J.P. Morgan was not authorized and did not solicit any expressions of interest from any other parties with respect to the sale of all or any part of Twitter or any other alternative transaction.

The terms of the merger agreement, including the merger consideration, were determined through arm's length negotiations between Twitter, Elon Musk and Parent, and the decision to enter into the merger agreement was solely that of the Twitter Board. J.P. Morgan's opinion and financial analyses were only one of the many factors considered by the Twitter Board in its evaluation of the proposed merger and should not be viewed as determinative of the views of the Twitter Board or management with respect to the proposed merger or the \$54.20 per share in cash to be paid to holders of Twitter common stock pursuant to the merger agreement.

In accordance with customary investment banking practice, J.P. Morgan employed generally accepted valuation methodology in rendering its opinion to the Twitter Board on April 25, 2022 and in the financial analyses presented to the Twitter Board on such date in connection with the rendering of such opinion. The following is a summary of the material financial analyses utilized by J.P. Morgan in connection with rendering its opinion to the Twitter Board and does not purport to be a complete description of the analyses or data presented by J.P. Morgan. Some of the summaries of the financial analyses include information presented in tabular format. The tables are not intended to

stand alone, and in order to more fully understand the financial analyses used by J.P. Morgan, the tables must be read together with the full text of each summary. Considering the data set forth below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of J.P. Morgan’s analyses.

B. Public Trading Multiples

Using publicly available information, J.P. Morgan compared selected financial data of Twitter with similar data for selected publicly traded companies engaged in businesses which J.P. Morgan judged to be analogous to the business of Twitter. The companies selected by J.P. Morgan (which we refer to for purposes of this section of the proxy statement as the “**selected companies**”) were:

- Alphabet Inc.
- Meta Platforms, Inc.
- Pinterest, Inc.
- Snap Inc.

The selected companies were chosen, among other reasons, because they are publicly traded companies with operations and businesses that, for purposes of J.P. Morgan’s analyses, may be considered sufficiently similar to those of Twitter based on business sector participation, operational characteristics and financial metrics. However, none of the selected companies reviewed is identical to Twitter and certain of these companies have financial and operating characteristics that are materially different from those of Twitter. The analyses necessarily involve complex considerations and judgments concerning differences in financial and operational characteristics of the companies involved and other factors that could affect the companies differently than they would affect Twitter.

Using information obtained from the selected companies’ public filings and FactSet Research Systems as of April 22, 2022, J.P. Morgan calculated, for each selected company, the ratio of such company’s firm value (which we refer to for purposes of this section of the proxy statement as “**FV**”) to the consensus equity research analyst estimates for the company’s adjusted earnings before interest, taxes, depreciation and amortization pre-stock based compensation (which we refer to for purposes of this section of the proxy statement as “**Adj. EBITDA**”) for the year ending December 31, 2023 (which we refer to for purposes of this section of the proxy statement as the “**FV/2023E Adj. EBITDA**”). The results of this analysis are indicated in the following table:

	FV/2023E Adj. EBITDA
Alphabet Inc.	10.4 x

Meta Platforms, Inc.	6.7 x
Pinterest, Inc.	11.2 x
Snap Inc.	30.2 x
Median	10.8 x

Based on the results of the above analysis and on other factors J.P. Morgan considered appropriate based on their experience and professional judgment, J.P. Morgan selected a FV/2023E Adj. EBITDA multiple reference range for Twitter of 15.0x to 17.5x. J.P. Morgan then applied that range to Twitter’s adjusted EBITDA of \$2,685 million forecasted for the year ending December 31, 2023, as provided by Twitter management, yielding implied trading values for Twitter’s common stock, rounded to the nearest \$0.10, of approximately \$49.70 to \$57.50 per share.

C. Selected Transaction Multiples Analysis

Using publicly available information, J.P. Morgan reviewed selected transactions since 2009 in excess of \$1 billion involving companies that engaged in businesses that J.P. Morgan judged to be reasonably analogous to the business of Twitter or aspects thereof. None of the selected transactions reviewed was identical to the merger contemplated by the merger agreement. Certain of these transactions may have characteristics that are materially different from those of the merger. However, the selected transactions were chosen because certain aspects of the transactions, for purposes of J.P. Morgan’s analysis, may be considered similar to the merger. The analyses necessarily involve complex considerations and judgments concerning differences in financial and operational characteristics of the companies involved and other factors that could affect the transactions differently than they would affect the merger. For each of the selected transactions, using publicly available information, J.P. Morgan calculated the multiple of the target company’s firm value implied in the relevant transaction by the consideration paid in such transaction to the target company’s Adj. EBITDA for the 12-month period immediately preceding the announcement of the applicable transaction (which we refer to for purposes of this section of the proxy statement as the “**FV/LTM Adj. EBITDA**”). Specifically, J.P. Morgan reviewed the following transactions:

Announcement Date	Acquiror	Target	FV/LTM Adj. EBITDA
Feb 2021	Magnite, Inc.	SpotX, Inc.	33.4 x
Jun 2020	Just Eat Takeaway.com N.V.	Grubhub Inc.	47.4
Dec 2019	Hellman & Friedman LLC	AutoScout24	26.1
May 2018	Silver Lake	ZPG Plc	21.5
Jun 2016	Microsoft Corporation	LinkedIn Corporation	31.2
Nov 2015	Expedia, Inc.	HomeAway, Inc.	36.4
Aug 2015	Liberty Media Corporation	zulily, inc.	50.6
Jul 2014	Zillow, Inc.	Trulia, Inc.	nm
Jun 2014	The Priceline Group Inc.	OpenTable, Inc.	29.9
Nov 2012	priceline.com Incorporated	KAYAK Software Corporation	27.6

Based on the results of this analysis and other factors that J.P. Morgan considered appropriate based on their experience and professional judgment, J.P. Morgan selected a FV/LTM Adj. EBITDA multiple reference range of 28.0x to 36.0x. J.P. Morgan then applied that reference range to Twitter's adjusted EBITDA of \$1,448 million (which is adjusted to exclude a one-time litigation-related net charge of \$766 million) for the year ended December 31, 2021, to produce a range of implied equity values per share of Twitter common stock, rounded to the nearest \$0.10, of \$50.00 to \$63.40.

D. Discounted Cash Flow Analysis

J.P. Morgan conducted a discounted cash flow analysis for the purpose of determining the fully diluted equity value per share for Twitter's common stock. A discounted cash flow analysis is a method of evaluating an asset using estimates of the future unlevered free cash flows generated by the asset and taking into consideration the time value of money with respect to those future cash flows by calculating their "**present value.**" The "**unlevered free cash flows,**" for purposes of the discounted cash flow analysis, refers to a calculation of the future cash flows generated by an asset without including in such calculation any debt servicing costs. "**Present value**" refers to the current value of the future cash flows generated by the asset, and is obtained by discounting those cash flows back to the present using a discount rate that takes into account macro-economic assumptions and estimates of risk, the cost of capital and other appropriate factors. "**Terminal value**" refers to the present value of all future cash flows generated by the asset for periods beyond the projections period.

J.P. Morgan calculated the unlevered free cash flows that Twitter is expected to generate during fiscal years 2022 through 2027 based upon financial projections prepared by Twitter's management through the year ended December 31, 2027 and more fully described in the section of this proxy statement captioned "*—Unaudited Prospective Financial Information.*" J.P. Morgan also calculated a range of terminal values for Twitter by applying terminal growth rates ranging from 6.0% to 7.0% to the unlevered free cash flows of Twitter at the end of fiscal year 2027. The unlevered free cash flows and the range of terminal values were then discounted to present values using a range of discount rates from 10.25% to 11.25%, which was chosen by J.P. Morgan based upon an analysis of the cost of capital of Twitter, which takes into account certain company-specific metrics, including Twitter's target capital structure, the cost of equity, the pre-tax cost of debt, long-term debt, forecasted tax rate and predicted (Barra) beta.

In addition, as directed by the management of Twitter, J.P. Morgan calculated the present value of certain tax credits expected to be utilized by Twitter through fiscal year 2027, which were discounted from June 30 of each year to present values as of December 31, 2021 using the same mid-year convention and a discount range of 10.25% to 11.25%. The total tax credit utilization amounts provided by management of Twitter were \$0 million, \$689 million, \$934 million, \$1,226 million, \$127 million and \$0 million for each of fiscal years 2022 through 2027, respectively. The present values were then added together with the present values derived based on the unlevered free cash flows to derive

a range of firm values for Twitter, which was then adjusted to take into account Twitter's net cash totaling \$1,364 million in the aggregate as of December 31, 2021 to derive a range of implied equity values for Twitter.

Based on the results of this analysis, J.P. Morgan arrived at a range of implied equity value per share for Twitter common stock, rounded to the nearest \$0.10, of \$36.50 to \$57.60.

E. Miscellaneous

The foregoing summary of certain material financial analyses does not purport to be a complete description of the analyses or data presented by J.P. Morgan. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. J.P. Morgan believes that the foregoing summary and its analyses must be considered as a whole and that selecting portions of the foregoing summary and these analyses, without considering all of its analyses as a whole, could create an incomplete view of the processes underlying the analyses and its opinion. As a result, the ranges of valuations resulting from any particular analysis or combination of analyses described above were merely utilized to create points of reference for analytical purposes and should not be taken to be the view of J.P. Morgan with respect to the actual value of Twitter. The order of analyses described does not represent the relative importance or weight given to those analyses by J.P. Morgan. In arriving at its opinion, J.P. Morgan did not attribute any particular weight to any analyses or factors considered by it and did not form an opinion as to whether any individual analysis or factor (positive or negative), considered in isolation, supported or failed to support its opinion. Rather, J.P. Morgan considered the totality of the factors and analyses performed in determining its opinion.

Analyses based upon forecasts of future results are inherently uncertain, as they are subject to numerous factors or events beyond the control of the parties and their advisors. Accordingly, forecasts and analyses used or made by J.P. Morgan are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. Moreover, J.P. Morgan's analyses are not and do not purport to be appraisals or otherwise reflective of the prices at which businesses actually could be acquired or sold. None of the selected companies reviewed as described in the above summary is identical to Twitter, and none of the selected transactions reviewed was identical to the merger. However, the companies selected were chosen because they are publicly traded companies with operations and businesses that, for purposes of J.P. Morgan's analysis, may be considered similar to those of Twitter. The transactions selected were similarly chosen because their participants, size and other factors, for purposes of J.P. Morgan's analysis, may be considered similar to the merger. The analyses necessarily involve complex considerations and judgments concerning differences in financial and operational characteristics of the companies involved and other factors that could affect the companies compared to Twitter and the transactions compared to the merger.

As a part of its investment banking business, J.P. Morgan and its affiliates are continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, investments for passive and control purposes, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements, and valuations for corporate and other purposes. J.P. Morgan was selected to advise Twitter with respect to the merger and deliver an opinion to the Twitter Board with respect to the merger on the basis of, among other things, such experience and its qualifications and reputation in connection with such matters and its familiarity with Twitter and the industries in which it operates.

For services rendered in connection with the merger and the delivery of the opinion, Twitter has agreed to pay J.P. Morgan a fee of approximately \$53,000,000, of which \$5,000,000 became payable upon delivery of the opinion and the remainder of which is contingent and payable only upon the closing of the merger. In addition, Twitter has agreed to reimburse J.P. Morgan for its expenses incurred in connection with its services, including the fees and disbursements of counsel, and will indemnify J.P. Morgan against certain liabilities arising out of J.P. Morgan's engagement. During the two years preceding the date of J.P. Morgan's opinion, J.P. Morgan and its affiliates have had commercial or investment banking relationships with Twitter for which J.P. Morgan and such affiliates have received customary compensation. Such services during such period have included acting as joint lead bookrunner on Twitter's offerings of convertible debt securities in March 2021 and senior debt securities in February 2022. In addition, J.P. Morgan's commercial banking affiliate is an agent bank and a lender under outstanding credit facilities of Twitter, for which it receives customary compensation or other financial benefits. In addition, J.P. Morgan and its affiliates hold, on a proprietary basis, less than 1% of the outstanding common stock of Twitter. During the two year period preceding delivery of its opinion on April 25, 2022, the aggregate fees recognized by J.P. Morgan from Twitter were approximately \$9,000,000. During the two years preceding the date of J.P. Morgan's opinion, neither J.P. Morgan nor its affiliates have had any financial advisory or other material commercial or investment banking relationships with Elon Musk or his affiliates, Elon Musk Revocable Trust, Tesla Inc. and Space Exploration Technologies Corp. In the ordinary course of their businesses, J.P. Morgan and its affiliates may actively trade the debt and equity securities or financial instruments (including derivatives, bank loans or other obligations) of Twitter for their own accounts or for the accounts of customers and, accordingly, they may at any time hold long or short positions in such securities or other financial instruments.

In addition, an affiliate of J.P. Morgan is a party to certain note hedge and warrant transactions relating to convertible debt securities issued by Twitter in June 2018, (which we refer to for purposes of this section of the proxy statement as the “**note hedge and warrant transactions**”). Such J.P. Morgan affiliate entered into such note hedge and warrant transactions as principal for its own account and not as an advisor to Twitter. Pursuant to the terms of the note hedge and warrant transactions, such transactions may be adjusted, exercised, cancelled and/or terminated in connection with certain events relating to the merger.

Prior to Twitter’s entry into the merger agreement, J.P. Morgan provided to the management of Twitter certain estimates and analyses concerning the impact of the proposed transaction on the note hedge and warrant transactions, based on, among other things, certain theoretical models, various assumptions concerning the terms of the proposed transaction, certain information provided by the derivatives trading personnel responsible for J.P. Morgan’s affiliate’s position as principal in the note hedge and warrant transactions and market conditions and other information available at the time. The estimates and analyses calculated, over a range of hypothetical purchase prices for the shares of Twitter common stock (ranging from \$54.20 per share to \$80.00 per share) and other stated assumptions, that such J.P. Morgan affiliate might realize an estimated net gain ranging from approximately \$49 million to approximately \$58 million upon a full unwind of the note hedge and warrant transactions (after taking into account any hedging gains or losses).

**§ VI JULY 12, 2022 TWITTER’S SEC FROM 8-K, ANNOUNCING
NOTICE OF TERMINATION FROM MUSK**

Item 8.01 Other Events

As previously disclosed, on July 8, 2022, Twitter, Inc. (“Twitter”) received a notice of purported termination of the Agreement and Plan of Merger (the “Merger Agreement”) by and among X Holdings I, Inc. (“Parent”), X Holdings II, Inc., a wholly owned subsidiary of Parent (“Acquisition Sub”), and, solely for the purpose of certain provisions of the Merger Agreement, Elon R. Musk. The Merger Agreement provides that, subject to the terms and conditions set forth in the Merger Agreement, Acquisition Sub will merge with and into Twitter (the “Merger”), with Twitter surviving the Merger and becoming a wholly owned subsidiary of Parent. Parent is wholly owned by Mr. Musk.

On July 12, 2022, Twitter filed a complaint in the Delaware Court of Chancery against Mr. Musk, Parent and Acquisition Sub seeking a grant of specific performance ordering Mr. Musk, Parent and Acquisition Sub to specifically perform their obligations under the Merger Agreement and consummate the closing in accordance with the terms of the Merger Agreement. A copy of the complaint is attached as Exhibit 99.1 and is incorporated by reference.

**§ VII JULY 12, 2022, EXCERPT FROM TWITTER’S COMPLAINT
AGAINST MUSK
IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

TWITTER, INC.,

Plaintiff,

C.A. No. _____

v.

ELON R. MUSK, X HOLDINGS
I, INC.,
and X HOLDINGS II, INC.,

Defendants.

VERIFIED COMPLAINT

Plaintiff Twitter, Inc. (“Twitter”), by and through its undersigned counsel, as and for its complaint against defendants Elon R. Musk, X Holdings I, Inc. (“Parent”), and X Holdings II, Inc. (“Acquisition Sub”), alleges as follows:

NATURE OF THE ACTION

1. In April 2022, Elon Musk entered into a binding merger agreement with Twitter, promising to use his best efforts to get the deal done. Now, less than three months later, Musk refuses to honor his obligations to Twitter and its stockholders because the deal he signed no longer serves his personal interests. Having mounted a public spectacle to put Twitter in play, and having proposed and then signed a seller-friendly merger agreement, Musk apparently believes that he — unlike every other party subject to Delaware contract law — is free to change his mind, trash the company, disrupt its operations, destroy stockholder value, and walk away. This repudiation follows a long list of material contractual breaches by Musk that have cast a pall over Twitter and its business. Twitter brings this action to enjoin Musk from further breaches, to compel Musk to fulfill his legal obligations, and to compel consummation of the merger upon satisfaction of the few outstanding conditions.

2. Musk, the Chief Executive Officer of Tesla, Inc. and leader of SpaceX and other entities, opened a Twitter account in 2009. His presence on the Twitter platform is ubiquitous. With over 100 million followers, Musk’s account is one of the most followed on Twitter, and he has Tweeted more than 18,000 times. He has also suggested he would consider starting his own company to compete with Twitter.

3. On April 25, 2022, Musk, acting through and with his solely-owned entities, Parent and Acquisition Sub, agreed to buy Twitter for \$54.20 per share in cash, for a total of about \$44 billion.

4. That price, presented by Musk on a take-it-or-leave-it basis in an unsolicited public offer, represented a 38% premium over Twitter’s unaffected share price. The other terms Musk offered and agreed to were, as he touted, “seller friendly.” There is no financing contingency and no diligence condition. The deal is backed by airtight debt and equity commitments. Musk has personally committed \$33.5 billion.

5. After the merger agreement was signed, the market fell. As the *Wall Street Journal* reported recently, the value of Musk's stake in Tesla, the anchor of his personal wealth, has declined by more than \$100 billion from its November 2021 peak.

6. So Musk wants out. Rather than bear the cost of the market downturn, as the merger agreement requires, Musk wants to shift it to Twitter's stockholders. This is in keeping with the tactics Musk has deployed against Twitter and its stockholders since earlier this year, when he started amassing an undisclosed stake in the company and continued to grow his position without required notification. It tracks the disdain he has shown for the company that one would have expected Musk, as its would-be steward, to protect. Since signing the merger agreement, Musk has repeatedly disparaged Twitter and the deal, creating business risk for Twitter and downward pressure on its share price.

7. Musk's exit strategy is a model of hypocrisy. One of the chief reasons Musk cited on March 31, 2022 for wanting to buy Twitter was to rid it of the "[c]rypto spam" he viewed as a "major blight on the user experience." Musk said he needed to take the company private because, according to him, purging spam would otherwise be commercially impractical. In his press release announcing the deal on April 25, 2022, Musk raised a clarion call to "defeat[] the spam bots." But when the market declined and the fixed-price deal became less attractive, Musk shifted his narrative, suddenly demanding "verification" that spam was *not* a serious problem on Twitter's platform, and claiming a burning need to conduct "diligence" he had expressly forsworn.

8. Musk's strategy is also a model of bad faith. While pretending to exercise the narrow right he has under the merger agreement to information for "consummation of the transaction," Musk has been working furiously — albeit fruitlessly — to try to show that the company he promised to buy and not disparage has made material misrepresentations about its business to regulators and investors. He has also asserted, falsely, that consummation of the merger depends on the results of his fishing expedition and his ability to secure debt financing.

9. On July 8, 2022, a little over a month after first using bad-faith pursuit of spam-related evidence to assert a baseless claim of breach, Musk gave Twitter notice purporting to terminate the merger agreement. The notice alleges three grounds for termination: (i) purported breach of information-sharing and cooperation covenants; (ii) supposed "materially inaccurate representations" in the merger agreement that allegedly are "reasonably likely to result in" a Company Material Adverse Effect; and (iii) purported failure to comply with the ordinary course covenant by terminating certain employees, slowing hiring, and failing to retain key personnel.

10. These claims are pretexts and lack any merit. Twitter has abided by its covenants, and no Company Material Adverse Effect has occurred or is reasonably likely to occur. Musk, by contrast, has been acting against this deal since the market started turning, and has breached the merger agreement repeatedly in the process. He has purported to put the deal on "hold" pending satisfaction of imaginary conditions, breached his financing efforts obligations in the process, violated his obligations to treat requests for consent reasonably and to provide information about financing status,

violated his non-disparagement obligation, misused confidential information, and otherwise failed to employ required efforts to consummate the acquisition.

11. Twitter is entitled to specific performance of defendants' obligations under the merger agreement and to secure for Twitter stockholders the benefit of Musk's bargain. Musk and his entities should be enjoined from further breaches, ordered to comply with their obligations to work toward satisfying the few closing conditions, and ordered to close upon satisfaction of those conditions.

§ VIII JULY 15, 2022, MUSK'S RESPONSE TO TWITTER'S MOTION TO EXPEDITE THE TRAIL

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TWITTER, INC.,
Plaintiff,

v.

ELON R. MUSK, X HOLDINGS I, INC.,
and X HOLDINGS II, INC.,
Defendants.

C.A. No. 2022-0613-KSJM

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO EXPEDITE PROCEEDINGS

1. This Court should reject Plaintiff Twitter, Inc.'s ("Twitter") unjustifiable request to rush this \$44 billion merger case to trial in just two months. Twitter's bid for extreme expedition rests on the false premise that the Termination Date in the merger agreement ("Agreement") is October 24, glossing over that this date *is automatically stayed* if either party files litigation. By filing its complaint, Plaintiff has rendered its supposed need for a September trial moot. * * *

3. The core dispute over false and spam accounts is fundamental to Twitter's value. It is also extremely fact and expert intensive, requiring substantial time for discovery. Twitter is a social media platform whose self-professed key performance metric is monetizable daily active users ("mDAU"). Since the Agreement was first signed, new facts have come to light that call into doubt the truthfulness of Twitter's curiously static representation in SEC filings that less than 5% of its accounts are false or spam.

4. On April 28, just three days after signing the Agreement, Twitter restated three years of its mDAU numbers, despite never disclosing the issue to Defendants pre-signing. Post-signing, Defendants promptly sought to understand Twitter's process for identifying false or spam accounts. In a May 6 meeting with Twitter executives, Musk was flabbergasted to learn just how meager Twitter's process was. Human reviewers randomly sampled 100 accounts per day (less than 0.00005% of daily users) and applied unidentified standards to somehow conclude every quarter for nearly

three years that fewer than 5% of Twitter users were false or spam. That's it. No automation, no AI, no machine learning.

5. Alarmed, Defendants exercised their information rights to validate Twitter's user claims. At every turn, however, Twitter deliberately erected artificial roadblocks and frustrated Defendants' efforts. Indeed, on June 20 Twitter admitted the information it provided "is insufficient to perform the spam analysis. . . ." Put simply, Defendants asked for—and were refused—the same information that Twitter relies on in making its <5% representation. The limited information Twitter has provided calls its representations into serious doubt. Meanwhile, Twitter has adopted significant personnel changes without consent.

6. Resolving these issues will require complex, technical discovery—including the forensic review and analysis of large swaths of data. Twitter's Complaint only adds to that complexity. Rather than simply challenging Defendants' termination, Twitter has manufactured a hodgepodge of baseless new claims, none of which were ever noticed. The extensive discovery required for all of these claims cannot be completed within six weeks. * * *

§ IX July 22, 2022, TWITTER PRESS RELEASE ANNOUNCING FINANCIAL RESULT FOR THE SECON QUARTER 2022 AND DISCLOSURE RE MUSK TRANSACTION

Elon Musk Transaction

As announced on April 25, 2022, we entered into a merger agreement, pursuant to which Twitter agreed to be acquired by an entity wholly owned by Elon Musk, for \$54.20 per share in cash. Upon completion of the transaction, Twitter will become a privately held company.

On July 8, 2022, representatives of Mr. Musk delivered a notice purporting to terminate the merger agreement. Twitter believes that Mr. Musk's purported termination is invalid and wrongful, and the merger agreement remains in effect. On July 12, 2022, Twitter commenced litigation against Mr. Musk and certain of his affiliates to cause them to specifically perform their obligations under the merger agreement and consummate the closing in accordance with the terms of the merger agreement. On July 19, 2022, Twitter's request for an expedited trial was granted, and the trial is being scheduled for October 2022.

Adoption of the merger agreement by our stockholders is the only remaining approval or regulatory condition to completing the merger under the merger agreement. The exact timing of completion of the merger, if at all, cannot be predicted because the merger is subject to ongoing litigation, adoption of the merger agreement by our stockholders and the satisfaction of the remaining closing conditions.

