

From: [CommissionerPeirce](#)
To: [TCR-ENF](#)
Subject: FW: This should be stopped. Why has't it been?
Date: Wednesday, February 24, 2021 7:52:08 PM

From: (b)(6)
Sent: Tuesday, February 23, 2021 5:18 AM
To: CommissionerCrenshaw ; CommissionerRoisman ; CommissionerPeirce
Subject: This should be stopped. Why has't it been?

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SEC,

It's been a while now, and I would really like to know whether you are pursuing the prosecution of Elon Musk for market manipulation.

Through Twitter, Mr Musk has been allowed to increase and decrease a stock's value at will, as he knows that he has the influence and following to significantly change the value. And from the SEC settlement a few years ago, it seems that the terms were non existent, as he has just carried on with the market manipulation, but this time the SEC has done nothing!

I don't want to use any more of your time, but the markets are supposed to be fair, and the SEC is meant to be the body to keep it fair, however the SEC is letting Elon Musk run free with his tweets. This should not be allowed to continue.

Many thanks.

From: [Crenshaw, Caroline](#)
To: [Cobbs, Robert](#); [Hirsch, David L](#); [O'Sullivan, Claire](#); [Berke, Janna](#); [Gallagher, Kathleen](#); [Cobbs, Robert](#)
Subject: Fwd: Week In Review: Musk "Recklessly" Tweeted About Tesla, Watchdog Wants Ex-SEC Official Probed & Wall Street Giants Flee SPACs
Date: Saturday, May 14, 2022 12:34:39 PM

(b)(5) ?

Sent from my iPhone

Begin forwarded message:

From: Securities Law360 <news-alt@law360.com>
Date: May 14, 2022 at 11:29:39 AM EDT
To: "Crenshaw, Caroline" (b)(6)@sec.gov>
Subject: Week In Review: Musk 'Recklessly' Tweeted About Tesla, Watchdog Wants Ex-SEC Official Probed & Wall Street Giants Flee SPACs

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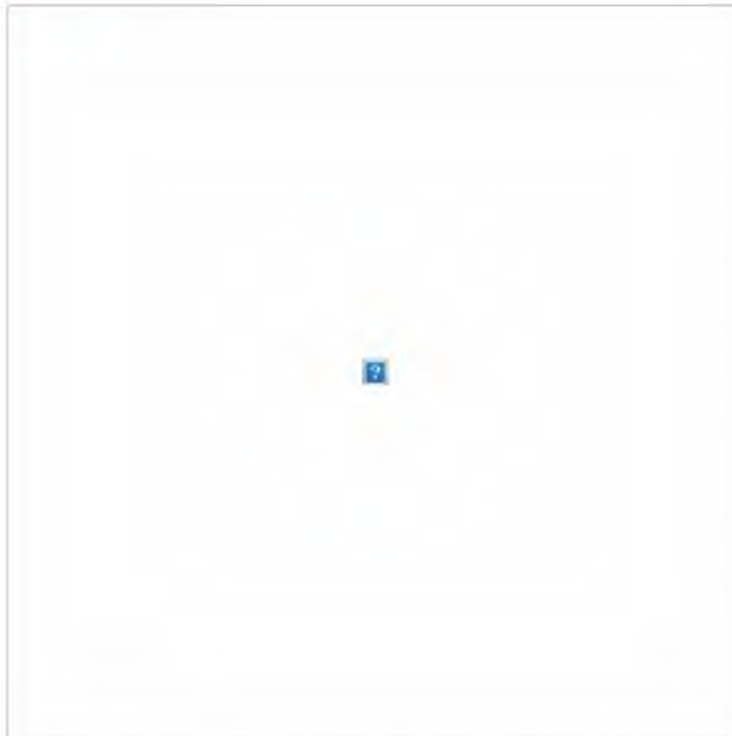
Law360 Special Report



Saturday, May 14, 2022



TOP NEWS



Musk Recklessly Tweeted About Privatizing Tesla, Judge Says
Elon Musk's August 2018 tweets claiming he had secured funding to take Tesla Inc. private were inaccurate and reckless, a California federal judge has ruled, finding that "there was nothing concrete" about financing from Saudi

LAW FIRMS

Bernstein Litowitz
Friedman Oster
Goldstein & Russell
Gunster Yoakley
Herrick Feinstein
Holland & Knight
Kramer Levin
Labaton Sucharow
Levi & Korsinsky
Mayer Brown
Morrison Foerster
Paul Weiss
Quinn Emanuel
Robbins Geller
Saxena White
Silver Golub
Simpson Thacher
Skadden Arps
Sullivan & Cromwell
Vinson & Elkins
White & Case

COMPANIES

Alaska Oil and Gas Association
American Council of Life Insurers
Bank of America Corp.
Citigroup Inc.
Coinbase Global Inc.

Arabia's sovereign wealth fund at the time.

Stockholders Sue For Vote On Musk's \$44B Twitter Takeover

A Twitter pension fund stockholder sued in Delaware's Chancery Court on Friday to assure that Tesla CEO Elon Musk's planned \$44 billion acquisition of the social media giant faces a minimum two-thirds vote of shares not tied to Musk.

SEC Asked To Probe Ex-Official's Crypto Statements

A nonprofit watchdog asked the U.S. Securities and Exchange Commission to investigate its former corporate finance head, Bill Hinman, now a Simpson Thacher & Bartlett LLP senior adviser, claiming statements he made about cryptocurrencies while at the agency may have presented a conflict of interest.

Investment Banks' Retreat Amplifies SPAC Market Woes

The apparent withdrawal of investment banks from transactions involving special-purpose acquisition companies adds jitters to a once-booming market that now faces dual headwinds of weakening investor appetite and the prospect of stiffer regulation.

Coinbase CEO Blames SEC Memo For Bankruptcy Risk Alarm

Coinbase has updated its risk disclosures to reflect new U.S. Securities and Exchange Commission guidance about holding cryptocurrencies, CEO Brian Armstrong said as he sought to calm customers' nerves about what would happen to their holdings in the event of a bankruptcy.

POLICY & REGULATION

SEC Allows More Time For Climate Risk Plan Comments

The U.S. Securities and Exchange Commission on Monday gave 30 additional days for the public to weigh in on the agency's contentious climate risk disclosure plan and two other recent rule proposals, an apparent response to criticism over shorter comment deadlines under Chair Gary Gensler.

JPMorgan, Goldman Face Dem Heat Over Russian Debt Trades

Two high-profile Democratic lawmakers are calling on JPMorgan Chase & Co. and Goldman Sachs to turn over details about their dealings in Russian debt on the secondary market, saying that this trading, while legal, could nevertheless blunt U.S. sanctions imposed after Russia's invasion of Ukraine.

ENFORCEMENT & COMPLIANCE

Jury Clears Ex-Nomura Trader, Rejects SEC No-Lying Theory

A Manhattan federal jury on Friday cleared a former Nomura trader of fraud over lies he told to counterparties in the commercial bond market, rejecting the U.S. Securities and Exchange Commission's theory that traders must adhere strictly to factual statements.

LITIGATION

Goldman Again Asks 2nd Circ. To Nix Class Cert. In CDO Case

Goldman Sachs has urged the Second Circuit to reverse a lower court's decision to certify a class of investors in their long-running securities litigation against the bank, arguing the district judge's reasoning goes against a decision the U.S. Supreme Court made in the same case.

Oracle Investors Nab Class Cert. In Securities Fraud Suit

A California federal judge has certified a class of investors that has accused Oracle Corp. of covering up coercive sales techniques used by its cloud computing business, rejecting the technology company's argument that the investors' expert failed to provide a damages model.

Coinbase Looks To Nix Claims It Sold Unregistered Securities

Cryptocurrency buyers can't claim that Coinbase sold them unregistered

Comcast Corp.
Credit Suisse Group AG
Dealogic LLC
Ethereum GmbH
Independent Community Bankers of America
JPMorgan Chase & Co.
Morgan Stanley
New York City Bar Association
Nomura Holdings Inc.
Novell Inc.
Omnicare Inc.
Oracle Corp.
Reinsurance Association of America
Ripple Labs Inc.
SIFMA
Sequoia Capital Operations LLC
Tesla Inc.
The Goldman Sachs Group Inc.
Twitter Inc.

GOVERNMENT AGENCIES

Delaware Court of Chancery
U.S. Court of Appeals for the Second Circuit
U.S. Court of Appeals for the Tenth Circuit
U.S. Department of Justice
U.S. District Court for the Northern District of California
U.S. District Court for the Southern District of New York
U.S. Securities and Exchange Commission
U.S. Supreme Court

securities because its digital-asset exchanges don't actually sell tokens to users, Coinbase told a New York federal court in an effort to rebuff sweeping claims that it's acting as an unregistered securities exchange.

EXPERT ANALYSIS

What SEC Proposal On SPACs Means For Projection Defenses

Following the U.S. Securities and Exchange Commission's recent proposal to enhance special-purpose acquisition company disclosures, SPAC participants should consider the implications for two key forward-looking statement defenses, say Scott Mascianica and Landon Mignardi at Holland & Knight.

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Law360 | Portfolio Media, Inc., 111 West 19th Street, 5th Floor, New York, NY 10011

From: [Crenshaw, Caroline](#)
To: [Jackson, Rob](#); [Khanna, Satyam](#)
Cc: [Yerramalli, Prashant](#); [Sylvester, Haley](#); [Francis, Marc](#)
Subject: RE: Tesla
Date: Friday, April 26, 2019 3:16:25 PM

(b)(5)

From: Jackson, Rob
Sent: Friday, April 26, 2019 3:15 PM
To: Khanna, Satyam
Cc: Yerramalli, Prashant; Crenshaw, Caroline; Sylvester, Haley; Francis, Marc
Subject: Re: Tesla

(b)(5)

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6)

(o)

(c)

(b)(6)

[@sec.gov](#)

On Apr 26, 2019, at 3:04 PM, Khanna, Satyam [\(b\)\(6\)@SEC.GOV](#)> wrote:

Small changes. [\(b\)\(5\)](#).

(b)(5)

Satyam Khanna | [\(b\)\(6\)](#)

From: Jackson, Rob
Sent: Friday, April 26, 2019 2:42 PM
To: Yerramalli, Prashant
Cc: Crenshaw, Caroline; Khanna, Satyam; Sylvester, Haley; Francis, Marc
Subject: Re: Tesla

(b)(5)

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6)

(o)

(c)

(b)(6)

[@sec.gov](#)

On Apr 26, 2019, at 1:24 PM, Yerramalli, Prashant (b)(6) @SEC.GOV> wrote:

(b)(5)

From: Yerramalli, Prashant
Sent: Friday, April 26, 2019 11:43 AM
To: Jackson, Rob; Crenshaw, Caroline; Khanna, Satyam; Sylvester, Haley
Cc: Francis, Marc
Subject: Tesla

(b)(5)

From: [Crenshaw, Caroline](#)
To: [Yerramalli, Prashant](#)
Cc: [Jackson, Rob](#); [Khanna, Satyam](#); [Francis, Marc](#); [Buda, Frank](#); [Hu, Edwin](#); [Sylvester, Haley](#)
Subject: Re: Current T
Date: Sunday, April 28, 2019 7:55:03 PM

(b)(5)

Sent from my iPhone

On Apr 28, 2019, at 7:45 PM, Yerramalli, Prashant (b)(6) [@sec.gov](#) wrote:

(b)(5)

Sent from my iPhone

On Apr 28, 2019, at 6:54 PM, Crenshaw, Caroline (b)(6) [@sec.gov](#) wrote:

(b)(5)

?

Sent from my iPhone

On Apr 28, 2019, at 3:58 PM, Jackson, Rob (b)(6) [@sec.gov](#) wrote:

(b)(5)

(b)(5)

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6)

(o)

(c)

(b)(6)

[@sec.gov](mailto:____@sec.gov)

From: [Crenshaw, Caroline](#)
To: [Jackson, Rob](#); [Yerramalli, Prashant](#)
Subject: RE: do you know if anyone in SEC enforcement is looking at
Date: Tuesday, July 30, 2019 4:33:33 PM

(b)(5)

From: Jackson, Rob
Sent: Tuesday, July 30, 2019 4:29 PM
To: Yerramalli, Prashant
Cc: Crenshaw, Caroline
Subject: Re: do you know if anyone in SEC enforcement is looking at

(b)(5)?

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6) (o)
(b)(6) (c)

(b)(6) [@sec.gov](#)

On Jul 30, 2019, at 4:26 PM, Yerramalli, Prashant (b)(6) [@sec.gov](#) wrote:

(b)(5)

Sent from my iPhone

On Jul 30, 2019, at 12:51 PM, Jackson, Rob (b)(6) [@sec.gov](#) wrote:

Hey P.

(b)(5)

Thanks guys!
Best,
Rob
Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6) (o)
(b)(6) (c)

(b)(6) [@sec.gov](#)

Begin forwarded message:

From: "Dana Hull (BLOOMBERG/ NEWSROOM:)"
<dhull12@bloomberg.net>
Date: July 30, 2019 at 9:36:42 AM PDT
To: <(b)(6) [@SEC.GOV](#)>
Cc: <(b)(6) [@SEC.GOV](#)>
Subject: do you know if anyone in SEC enforcement is looking at
Reply-To: Dana Hull <dhull12@bloomberg.net>

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Elon's latest tweet?

<https://twitter.com/elonmusk/status/1156005185656782848?s=20>

From: Dana Hull (BLOOMBERG/ NEWSROOM:) At:
05/08/19 14:02:15

To: (b)(6) @SEC.GOV

Cc: (b)(6) SEC.GOV

Subject: story on "TSLAQ"

Hi there,

I'm working on a story about "TSLAQ," this community of short sellers and Tesla skeptics who are convinced that Elon Musk is a fraud. I've never seen anything quite like it in finance.

Many of them have the view that the SEC is weak, and so they see themselves as white collar vigilantes---they have to do what they are doing because they don't see the regulators as doing their job.

I don't know if this is something you'd want to weigh in on? Elon's view seems to be that the SEC should be regulating the short sellers, not the actions of executives.

Not urgent. Medium term project!

Dana

Dana Hull

Tesla/SpaceX

dhull12@bloomberg.net

SF office: 415-617-7231

@danahull

From: (b)(6) SEC.GOV At: 04/30/19
18:02:45

To: Dana Hull (BLOOMBERG/ NEWSROOM:)

Cc: (b)(6) @SEC.GOV

Subject: Re: can you send your Dissenting Statement?

Hi Dana,

Sure!

"As a policy matter, those who settle cases with the SEC must be held to the bargain they struck. Given Mr. Musk's conduct, I cannot support a settlement in which he does not admit what is crystal clear to anyone who has followed this bizarre series of events: Mr. Musk breached the agreement he made last year with the Commission—and with American investors."

Best,

Rob

On Apr 30, 2019, at 8:59 PM, Dana Hull
(BLOOMBERG/ NEWSROOM:)
<dhull12@bloomberg.net> wrote:

re Musk

Sent from Bloomberg Professional
for iPhone

----- Original Message -----

From: Rob Jackson

(b)(6)@SEC.GOV>

To: DANA HULL

CC: (b)(6)@SEC.GOV

At: 10-Apr-2019 15:21:42

Me too! Feel free to call
anytime. My details are
below, and Marc
(copied here) can help
arrange a time to chat if
that's helpful. Thanks
again—talk soon!
Best,
Rob

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and
Exchange Commission

(b)(6) (o)
(b)(6) (c)
(b)(6)@sec.gov

On Apr 10, 2019, at
1:57 PM, Dana Hull
(BLOOMBERG/
NEWSROOM:)
<dhull12@bloomberg.net>
wrote:

Sent from
Bloomberg
Professional
for iPhone

From: [Avakian, Stephanie](#)
To: [Clayton, Jay](#); [Jackson, Rob](#); [Peirce, Hester](#); [Roisman, Elad](#)
Cc: [Peikin, Steven](#)
Subject: FW: Emailing: SEC v. Musk- motion to show cause, Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5
Date: Monday, February 25, 2019 6:17:48 PM
Attachments: [SEC v. Musk- motion to show cause.pdf](#)
[Exhibit 1.pdf](#)
[Exhibit 2.pdf](#)
[Exhibit 3.pdf](#)
[Exhibit 4.pdf](#)
[Exhibit 5.pdf](#)

Attached are the papers.

From: [Avakian, Stephanie](#)
To: [Peirce, Hester](#); [Carr, Jonathan E](#)
Cc: [Peikin, Steven](#)
Subject: FW: Musk Order to Show Cause Briefing
Date: Friday, March 22, 2019 5:00:54 PM
Attachments: [Musk_Order to Show Cause Motion_2.25.19.pdf](#)
[Musk_Order to Show Cause Entered_2.26.2019p.pdf](#)
[Musk_Defense Response to Show Cause Motion_2019.03.11.pdf](#)
[Musk_SEC Reply to Response to Show Cause Motion_3.18.2019.pdf](#)

Fyi. Per our discussion. Happy to discuss.

From: (b)(6); (b)(7)(C)
Sent: Friday, March 22, 2019 4:54 PM
To: Avakian, Stephanie
Subject: Musk Order to Show Cause Briefing

I've attached our order to show cause motion, the court's order, Musk's response, and our reply. I have not attached the exhibits.

Note that Musk was granted leave to file a sur-reply, which is due today. As of the time of this e-mail, the sur-reply had not posted to PACER.

(b)(6); (b)(7)(C)

U.S. Securities and Exchange Commission
Division of Enforcement
100 F Street N.E.
Washington, D.C. 20549

(b)(6); (b)(7)(C)@sec.gov

From: [Khanna, Satyam](#)
To: [Crenshaw, Caroline](#); [Francis, Marc](#); [Hu, Edwin](#); [Jackson, Rob](#); [Sylvester, Haley](#); [Yerramalli, Prashant](#)
Subject: FW: Musk-SEC dissent
Date: Wednesday, May 1, 2019 10:46:09 AM

From: Bussewitz, Cathy [mailto:CBussewitz@ap.org]

Sent: Wednesday, May 01, 2019 10:33 AM

To: Khanna, Satyam

Subject: Musk-SEC dissent

Hi Satyam,

I'm a reporter with The Associated Press and I saw in a Reuters article that Commissioner Jackson disagreed with the recent agreement the SEC reached with Elon Musk over his tweets.

<https://www.reuters.com/article/us-tesla-musk-sec/judge-approves-musk-sec-agreement-over-twitter-use-by-ceo-idUSKCN1S72ZG>

I'd love to hear more about that. Do you think he might have 2 minutes to hop on the phone?

I'm at 212-621-7627.

Thanks very much,

Cathy

AP

Cathy Bussewitz

Business Writer

Bureau: 212-621-7627

Cell: (b)(6)

cbussewitz@ap.org

<https://twitter.com/cbussewitz>

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From: [Carr, Jonathan E](#)
To: [Peirce, Hester](#)
Subject: FW: Smail (b)(5) ENF Matter
Date: Thursday, April 25, 2019 1:45:21 PM
Attachments: [Musk AmendJudgment.pdf](#)
[Counsel chart \(04252019\).docx](#)
Importance: High

Here is the Musk action memo we discussed. I'm reviewing now.

Jonathan E. Carr

Office of Commissioner Hester M. Peirce

U.S. Securities and Exchange Commission

100 F Street N.E.

Washington, D.C. 20549

Tel. (b)(6)

(b)(6)@sec.gov

From: Carpenter, Dee
Sent: Thursday, April 25, 2019 1:44 PM
To: #EthicsNotify; Jackson, Rob; Peirce, Hester; Roisman, Elad
Cc: Littman, Kristina; Yerramalli, Prashant; Carr, Jonathan E; Estabrook, Matthew
Subject: Smail (b)(5) ENF Matter
Importance: High

Hello Ethics:

Assigned Duty Officer: Commissioner Peirce

Action requested by: Thursday, April 25, by 5:30p EDT

Assigned number: Not yet submitted

Counsel info: Attached

Action memo: Attached

Kind regards,

Dee Carpenter

Senior Program Information Specialist

Office of the Secretary

U.S. Securities and Exchange Commission

100 F Street, NE - Rm. 10910

Washington, DC 20549

ph. (b)(6)

(b)(6)@sec.gov

From: (b)(6)
To: [CommissionerPeirce](#)
Subject: Fw: SEC Fraud Lawsuit Against Elon Musk
Date: Friday, September 28, 2018 9:09:29 PM

Dear SEC Commissioner Peirce-

I am writing in response to a reported fraud lawsuit filed against Elon Musk, CEO of Tesla, Inc. I own a small number of shares in this company. I am a retiree and a former United States Marine. I do not yet own a Tesla automobile, but I plan to purchase one in the next 1-2 years.

The basis of this lawsuit seems to be a "tweet" dated August 7, 2018 in which Mr. Musk stated, "Am considering taking Tesla private at \$420. Funding secured." Unless I have totally misread the United States Constitution, the First Amendment still states that "Congress shall make no law...abridging the freedom of speech." How then, does Mr. Musk's merely "considering" a course of action constitute "fraud?"

If I were a well-known politician or celebrity and tweeted friends and co-workers that I was "Considering having burgers and shakes at Five Guys, my treat," then discovered that my paycheck was late, would I be guilty of "fraud?"

To put it another way, our Chief Executive, President Donald Trump, has tweeted many times that "We are gonna build a (border) wall and Mexico's gonna pay for it." So far, construction has been started, but the shareholders (taxpayers) are paying the bills, NOT Mexico. Has the President committed fraud? He never said he was just "considering" the project and he committed his shareholders to paying for it while lacking majority support, about 2.8 million votes worth.

Part of the SEC's Mission is to "protect investors." I would submit that the fraud lawsuit against Elon Musk--filed because he shared his thoughts on Twitter--constitutes a far greater danger to stockholders than those August musings by Mr. Musk. Tesla stock has plunged nearly 43 points today, after a week of modest, but steady gains. The SEC lawsuit does a fine job of protecting and enriching short sellers, not so much for those of us who invested in Tesla for the long haul and for company's altruistic work.

In summary, I request that the SEC reconsider the full impact of its fraud lawsuit against Elon Musk, taking into account:

- The actual language used by Mr. Musk in "considering" a course of action
- The First Amendment right to freedom of speech

- The casual use of the Twitter format by others in positions of power or prestige
- The actual adverse impact of the SEC's fraud lawsuit on rank-and-file, everyday Tesla shareholders, rather than "shorters" who are gaming the system

I therefore respectfully request that the Securities and Exchange Commission withdraw this lawsuit and pursue individuals whose actual goal is defraud shareholders.

Sincerely,

(b)(6)

(b)(6) mobile and text)

(b)(6)

From: [Carr, Jonathan E](#)
To: [Peirce, Hester](#)
Subject: Fwd: March 11, 2019 5AM Daily News Digest
Date: Monday, March 11, 2019 10:19:40 AM

Two Republican officials of the Securities and Exchange Commission objected to part of the security regulator's settlement with Tesla last year that required it to appoint a lawyer to review Elon Musk's tweets.

According to records obtained under the Freedom of Information Act, SEC commissioners Hester Peirce and Elad Roisman disagreed with the requirement that the electric carmaker find an "experienced" lawyer to review tweets by senior executives and to advise the company on how to obey federal securities laws. The settlement last year came after the SEC sued Mr Musk over a tweet in which he claimed he had "funding secured" for a buyout of the company. He did not, according to the SEC, which fined Mr Musk and Tesla a total of \$40m.

On Monday, Mr Musk is due to file arguments in court in New York after the SEC accused him of breaking the settlement, which required Tesla's in-house lawyer to pre-approve any tweets containing information that could be material to Tesla shareholders.

The SEC last month asked a judge to hold Mr Musk in civil contempt of court after it said he had tweeted about Tesla's vehicle production estimates without first checking the tweet with the in-house securities lawyer as required under the settlement. He had to subsequently correct the tweet.

His first tweet had been "evidently inaccurate", according to the SEC's motion, which said that Tesla's designated Twitter reviewer had later seen the initial tweet "along with the general public" and then "immediately arranged to meet with Musk and draft the correction that Musk tweeted out over four hours later."

Mr Musk, according to a Tesla letter included in the SEC's motion, said he was drawing on information released in corporate filings and therefore believed it had already been pre-approved. "Mr Musk believed that the substance had already been appropriately vetted, pre-approved, and publicly disseminated," said an attorney for Tesla in the letter.

On Twitter, Mr Musk has attacked the civil contempt motion as a sign that "something is broken with SEC oversight".

All five of the SEC's commissioners at the time broadly backed last year's settlements with Mr Musk and Tesla, which required Mr Musk to give up the chairmanship of the company, forced Tesla to draw up rules about his communications, and imposed a \$20m fine on the entrepreneur.

While Ms Peirce and Mr Roisman supported requiring Tesla to properly oversee Mr Musk's tweets, they objected to telling the company to hire a lawyer to do so, according to records obtained under the Freedom of Information Act.

Ms Peirce, who has been critical of imposing corporate fines for executive wrongdoing, also objected to the \$20m fine the SEC imposed on Tesla.

An adviser to Ms Peirce declined to comment. Mr Roisman did not return a request for comment.

Begin forwarded message:

From: Media Analyst
<mediaanalyst@barbaricum.com>
Date: March 11, 2019 at 3:44:40 AM CDT
To: Media Analyst
<mediaanalyst@barbaricum.com>
Subject: March 11, 2019 5AM Daily News Digest

Online version available at
<http://sec.barbaricum.com>

Financial Times

1. [Two SEC officials objected to how Musk tweets reviewed](#)

Other

2. [Exchange Sues SEC Over Non-Response to Freedom of Information Act Request](#) (Lexology)

3. [Broker-Dealer Fined US \\$2 Million by FINRA for Purported Five-Year Reg SHO and Supervision Breakdowns](#) (Lexology)

4. [New CFTC Initiative Encourages Non-Registrants to Self-Report Foreign Corrupt Practices](#) (Lexology)

5. [CFTC Chairman Praises Markets as Best Evaluator of Technology-Driven Innovation](#) (Lexology)

6. [The SEC's Guidelines and Statements Show That It's Slowly Learning to Accept ICOs](#) (Coin Telegraph)

7. [US SEC's Perspective on Initial Coin Offerings \(ICO\) and How it has Changed Along the Way](#) (Bitcoin Exchange Guide)

8. [Waters, CFPB chief conflict over truthful lending enforcement in first showdown](#) (Inforsurhoy)

9. [When your car is a ticket to short-term cash and long-term financial hardship](#) (CNBC)

10. DOJ secures stay of CFTC case against cryptocurrency scheme My Big Coin Pay (Finance Feeds)

Financial Times

1. Two SEC officials objected to how Musk tweets reviewed

11 Mar 2019, Kadhim Shubber

Two Republican officials of the Securities and Exchange Commission objected to part of the security regulator's settlement with Tesla last year that required it to appoint a lawyer to review Elon Musk's tweets.

Other

2. Exchange Sues SEC Over Non-Response to Freedom of Information Act Request (Lexology)

10 Mar 2019, Katten Muchin Rosenman LLP

The New York Stock Exchange filed a complaint against the Securities and Exchange Commission in a federal court in the District of Columbia to force the SEC to comply with the exchange's request for documents related to the SEC's determination in August 2018 that fees set by two national securities exchanges for depth of book market data were not "fair and reasonable" and "not unreasonable discriminatory," as required under applicable law; another SEC determination in October 2018 that challenged over 400 exchanges' rule changes as improper limitations or prohibitions of access; and certain other enumerated proceedings (collectively, "Market Data Proceedings").

3. Broker-Dealer Fined US \$2 Million by FINRA for Purported Five-Year Reg SHO and Supervision Breakdowns (Lexology)

10 Mar 2019, Katten Muchin Rosenman LLP

Cantor Fitzgerald & Co. – a Securities and Exchange Commission-registered broker-dealer – agreed to pay a fine of US \$2 million to the Financial Industry Regulatory Authority to settle allegations that, from January 2013 through at least December 2017, it purportedly failed to comply with certain aspects of the SEC’s Regulation SHO, and failed to have and follow written supervisory procedures reasonably designed to detect such failures.

4. New CFTC Initiative Encourages Non-Registrants to Self-Report Foreign Corrupt Practices (Lexology)

10 Mar 2019, Katten Muchin Rosenman LLP

James McDonald, Director of Enforcement of the Commodity Futures Trading Commission, announced a new initiative aimed at encouraging non-CFTC registrants to voluntarily self-report violations of the Commodity Exchange Act – the principle law overseen by the CFTC – involving foreign corrupt practices.

5. CFTC Chairman Praises Markets as Best Evaluator of Technology-Driven Innovation (Lexology)

10 Mar 2019, Katten Muchin Rosenman LLP

In a speech before the Fourth Annual DC Blockchain Summit, J. Christopher Giancarlo, Chairman of the Commodity Futures Trading Commission, indicated that the CFTC has taken affirmative steps to transform into a “21st century regulator and craft a modern regulatory approach.”

6. The SEC’s Guidelines and Statements Show That It’s Slowly Learning to Accept ICOs (Coin Telegraph)

10 Mar 2019, Simon Chandler

Initial coin offerings (ICOs) may be less fashionable than security token offerings (STOs) right now, but that hasn't stopped the United States Securities and Exchange

Commission (SEC) from keeping its beady eye trained firmly on them. Ever since it published its investigation into the decentralized autonomous organization (DAO) in July 2017 and declared that ICO tokens can be (and often are) securities, it has been producing a variety of guidelines and warnings on ICOs for investors.

7. US SEC's Perspective on Initial Coin Offerings (ICO) and How it has Changed Along the Way (Bitcoin Exchange Guide)

11 Mar 2019, N/A

Ever since the US Securities and Exchange Commission (SEC) laid eyes on Initial Coin Offerings (ICOs), they've done nothing but impose rules and regulations. This is not entirely bad, as it encourages consumers to be cautious of scams. One of their key concerns was that an ICO would be considered a security, which has also startled many who have since invested through ICOs.

8. Waters, CFPB chief conflict over truthful lending enforcement in first showdown (Inforsurhoy)

10 Mar 2019, Denis Bedoya

Consumer Financial Protection Bureau
Director Kathy Kraninger today defended her predecessor's decision to assert greater control over the agency's fair lending office, signaling she had no plans to reverse the controversial move.

9. When your car is a ticket to short-term cash and long-term financial hardship (CNBC)

10 Mar 2019, Sarah O'Brien

For an estimated 2 million people every year, the title to their car becomes a pawn in their bid to stay financially afloat — a move that doesn't always work out.

10. DOJ secures stay of CFTC case against cryptocurrency scheme My Big Coin Pay (Finance Feeds)

11 Mar 2019, Maria Nikolova

The Department of Justice secured a stay of the discovery in the civil case pending resolution of a federal criminal case based on the same alleged

From: Carr, Jonathan E
To: Peirce, Hester
Subject: Fwd: Musk / Tesla --(b)(5) (SF-4082)
Date: Saturday, September 29, 2018 11:06:22 AM
Attachments: 9.28.2018 Tesla Letter.pdf
ATT00001.htm
FINAL Tesla Draft Bad Actor Waiver Memo 9.29.2018.docx
ATT00002.htm

Hester - just called you. Please let me know if you want to talk.

Begin forwarded message:

From: "Henseler, Timothy" <(b)(6)@SEC.gov>
Date: September 29, 2018 at 11:00:53 AM EDT
To: "Avakian, Stephanie" <(b)(6)@SEC.GOV>, "Clayton, Jay" <(b)(6)@SEC.GOV>, "Stein, Kara" <(b)(6)@SEC.GOV>, "Peirce, Hester" <(b)(6)@SEC.GOV>, "Jackson, Rob" <(b)(6)@SEC.GOV>, "Roisman, Elad" <(b)(6)@SEC.GOV>
Cc: "Littman, Kristina" <(b)(6)@SEC.gov>, "Kelly, N. Creola" <(b)(6)@SEC.GOV>, "Carr, Jonathan E" <(b)(6)@SEC.GOV>, "Yerramalli, Prashant" <(b)(6)@SEC.GOV>, "Estabrook, Matthew" <(b)(6)@SEC.GOV>, "Peikin, Steven" <(b)(6)@SEC.GOV>, "Choi, Jina" <(b)(6)@sec.gov>, "Schneider, Erin" <(b)(6)@sec.gov>, "Hinman, William" <(b)(6)@SEC.GOV>, "Gomez Abero, Sebastian" <(b)(6)@SEC.GOV>, "Mukerjee, Sirimal" <(b)(6)@SEC.GOV>, "Crenshaw, Caroline" <(b)(6)@SEC.GOV>, "Kingnt, Thaya" <(b)(6)@SEC.GOV>, "Fields, Brent J." <(b)(6)@SEC.GOV>
Subject: RE: Musk / Tesla --(b)(5) (SF-4082)

Chairman Clayton and Commissioners Stein, Jackson, Peirce, and Roisman,

(b)(5)

(b)(5)

Bill and I are available to talk as necessary. Thank you in advance for your consideration.

Tim Henseler

From: Avakian, Stephanie

Sent: Saturday, September 29, 2018 10:48 AM

To: Clayton, Jay; Stein, Kara; Peirce, Hester; Jackson, Rob; Roisman, Elad

Cc: Littman, Kristina; Kelly, N. Creola; Carr, Jonathan E; Yerramalli, Prashant; Estabrook, Matthew; Peikin, Steven; Choi, Jina; Schneider, Erin; Hinman, William; Henseler, Timothy

Subject: Musk / Tesla - (b)(5) e (SF-4082)

Dear Chairman Clayton and Commissioners Stein, Jackson, Peirce and Roisman:

(b)(5)

(b)(5)

(b)(5)

Do not hesitate to contact us at any hour.

Again, thank you for your support.

-- Steph & Steve

Steph (b)(6)

Steve (b)(6)

From: [Khanna, Satyam](#)
To: [Hu, Edwin](#); [Jackson, Rob](#)
Cc: [Buda, Frank](#); [Crenshaw, Caroline](#); [Francis, Marc](#); [Rollen, Jessica](#); [Sylvester, Haley](#); [Yerramalli, Prashant](#)
Subject: RE: Musk Story
Date: Wednesday, April 17, 2019 7:10:39 PM

(b)(5)

Satyam Khanna | (b)(6)

From: Hu, Edwin
Sent: Wednesday, April 17, 2019 3:44 PM
To: Jackson, Rob
Cc: Khanna, Satyam; Buda, Frank; Crenshaw, Caroline; Francis, Marc; Rollen, Jessica; Sylvester, Haley; Yerramalli, Prashant
Subject: Re: Musk Story

(b)(5)

- Eddy

On Apr 17, 2019, at 3:43 PM, Jackson, Rob (b)(6) <[\(b\)\(6\)@sec.gov](#)> wrote:

(b)(5)

Best,
Rob

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6) (o)
(b)(6) (c)

(b)(6) <[\(b\)\(6\)@sec.gov](#)>

On Apr 17, 2019, at 3:29 PM, Khanna, Satyam (b)(6) <[\(b\)\(6\)@SEC.GOV](#)> wrote:

(b)(5)

In SEC vs. Elon Musk, a Question of When Tweets Matter

Court-ordered talks over 2018 civil fraud settlement focus on oversight of executive's Twitter use

Tesla CEO Elon Musk arrived for a hearing earlier this month in New York; his team is negotiating with the SEC over an unusual settlement that affected his use of Twitter. PHOTO: NATAN DVIR/BLOOMBERG NEWS

By

Dave Michaels

April 17, 2019 5:30 a.m. ET

Elon Musk agreed with the government last year to have [Tesla Inc.](#) lawyers preapprove tweets that “reasonably could contain” material information about the electric car maker’s business.

Those words are now at the center of court-ordered talks between the two parties over his 2018 civil-fraud settlement.

The outcome of the negotiations, which face a Thursday deadline, could alter the unique punishment Mr. Musk agreed to in the settlement with the Securities and Exchange Commission, which had alleged the Tesla chief executive misled investors with tweets saying he had funding in place [to take the car maker private](#).

“They want the remedy to work in the future, that is why they might have to address that language,” said Andrew Vollmer, a law professor at the University of Virginia. “I hope both will be trying to find a standard of conduct that Musk feels he can meet and that the SEC deems to be sufficiently protective of the market.”

An SEC spokesman declined to comment on the negotiations. A Tesla spokesman declined to comment.

SHARE YOUR THOUGHTS

What government restrictions, if any, are appropriate for guiding how a chief executive communicates with investors and the public through social media and other modern communications? Join the conversation below.

Under the settlement, Mr. Musk needed permission from company lawyers for tweets and other communications that could affect buying and selling of the auto maker's stock. The SEC filed a contempt motion after Mr. Musk tweeted without permission in mid-February about expected vehicle deliveries. He hours later corrected the tweet with the help of a lawyer, prompting the SEC to initiate the contempt-of-court proceedings.

The SEC alleged he "blew past" the requirements in other instances. Mr. Musk has maintained his Feb. 16 tweet and others didn't violate the terms of his settlement.

Rather than rule on the contempt request, Judge Alison Nathan at a hearing this month ordered the two sides to engage in a new round of talks. In particular, she said she found the preapproval language hard to pin down.

Legal experts say judges and other observers should be concerned with a bigger problem: a government-imposed standard so broad it could restrict free speech.

"The original settlement is a dangerous precedent—having the U.S. government order an individual to have prospective public statements reviewed in advance and be subject to disapproval," said Mr. Vollmer, who was previously the SEC's deputy general counsel.

Mr. Musk has at times sometimes [provoked the regulator](#). He has accused the SEC of [taking the side of short sellers](#). After the SEC accused him of violating his settlement, he [suggested its oversight was "broken."](#) The tweet has since been deleted.

Others say the policy was narrow enough to address problems with Mr. Musk's use of [Twitter](#). "Those steps were crucial to the settlement—the idea we would have future oversight to prevent future problems from occurring," said Robert Jackson, a Democratic SEC commissioner.

Information is material if it likely would affect an investment decision, and has been defined by U.S. Supreme Court case law. But the words "reasonably could contain" appears to be novel.

The SEC says the extra words make the standard broader than materiality, because the agency wanted Mr. Musk to be cautious about seeking preapproval. Cheryl Crumpton, the SEC lawyer arguing before Judge Nathan, said it was probably the first time the SEC had ever used the language in an enforcement order.

Ms. Crumpton said the only tweets exempt from the oversight policy would be statements that are "obviously immaterial," such as interactions Mr. Musk has on Twitter with individual Tesla owners about their cars.

Mr. Musk's lawyers say the wording is too vague to be the basis for any contempt finding, and make it hard for the Tesla CEO and his executive staff to interpret how to comply on a day-to-day basis.

For Mr. Musk, the court's focus on the policy's ambiguity is a win. As long as he and the SEC can resolve their latest dispute, Judge Nathan won't need to rule on whether he should be held in contempt for violating the 2018 order.

Mr. Musk and Tesla have been feuding with the SEC [since the auto executive tweeted in August that he might take the company private](#) and had "funding secured" to do so. In September, Mr. Musk agreed to settle the SEC's enforcement investigation over the tweet, agreed to pay a \$20 million fine and relinquish his

chairman title. He also agreed to the policy of having company officials oversee and preapprove certain tweets.

The SEC's enforcement cases rarely involve forcing companies to undertake such particular corporate-governance steps. In another unusual example, the SEC last year [obtained a settlement with Theranos Inc. founder Elizabeth Holmes](#) that stripped her of voting control over the company.

The agency can seek to bar an executive from running a public company. But in Tesla's case, that was thought to be bad medicine, because shareholders would suffer if the company collapsed without Mr. Musk's vision and leadership steering it.

Write to Dave Michaels at dave.michaels@wsj.com

Satyam Khanna

SEC Commissioner Robert Jackson

(b)(6)

From: [Henseler, Timothy](#)
To: [Avakian, Stephanie](#); [Clayton, Jay](#); [Stein, Kara](#); [Peirce, Hester](#); [Jackson, Rob](#); [Roisman, Elad](#)
Cc: [Littman, Kristina](#); [Kelly, N. Creola](#); [Carr, Jonathan E](#); [Yerramalli, Prashant](#); [Estabrook, Matthew](#); [Peikin, Steven](#); [Choi, Jina](#); [Schneider, Erin](#); [Hinman, William](#); [Gomez Abero, Sebastian](#); [Mukerjee, Sirimal](#); [Crenshaw, Caroline](#); [Knight, Thaya](#); [Fields, Brent J.](#); [Peak, Robert](#); [Thomas, Christina](#); [Wilson, Erin R.](#); [Losert, Johanna](#)
Subject: RE: Musk / Tesla - (b)(5) (SF-4082)
Date: Saturday, September 29, 2018 11:27:04 AM
Attachments: [spaceX09292018.pdf](#)
[Neuralink Waiver Letter FINAL \(004\).pdf](#)
[TBC Waiver Letter FINAL \(004\).pdf](#)
[FINAL Space X Neuralink and TBC Waiver Memo 9.29.2018.docx](#)

Chairman Clayton and Commissioners Stein, Jackson, Peirce, and Roisman,

(b)(5)

Bill and I are available to talk as necessary, and thank you in advance for your consideration.

Tim

From: Henseler, Timothy
Sent: Saturday, September 29, 2018 11:01 AM
To: Avakian, Stephanie; Clayton, Jay; Stein, Kara; Peirce, Hester; Jackson, Rob; Roisman, Elad
Cc: Littman, Kristina; Kelly, N. Creola; Carr, Jonathan E; Yerramalli, Prashant; Estabrook, Matthew; Peikin, Steven; Choi, Jina; Schneider, Erin; Hinman, William; Gomez Abero, Sebastian; Mukerjee, Sirimal; Crenshaw, Caroline; Knight, Thaya; Fields, Brent J.
Subject: RE: Musk / Tesla -- (b)(5) (SF-4082)

Chairman Clayton and Commissioners Stein, Jackson, Peirce, and Roisman,

(b)(5)

Tim Henseler

From: Avakian, Stephanie

Sent: Saturday, September 29, 2018 10:48 AM

To: Clayton, Jay; Stein, Kara; Peirce, Hester; Jackson, Rob; Roisman, Elad

Cc: Littman, Kristina; Kelly, N. Creola; Carr, Jonathan E; Yerramalli, Prashant; Estabrook, Matthew; Peikin, Steven; Choi, Jina; Schneider, Erin; Hinman, William; Henseler, Timothy

Subject: Musk / Tesla -- (b)(5) (SF-4082)

Dear Chairman Clayton and Commissioners Stein, Jackson, Peirce and Roisman:

(b)(5)

(b)(5)

(b)(5)

Do not hesitate to contact us at any hour.

Again, thank you for your support.

-- Steph & Steve

Steph
Steve

(b)(6)

From: [Littman, Kristina](#)
To: [Clayton, Jay](#); [Stein, Kara](#); [Jackson, Rob](#); [Peirce, Hester](#); [Roisman, Elad](#)
Cc: [Wood, Bryan](#); [Strom, Natalie](#); [Rabbitt, Brian](#); [White, Ryan](#); [Burns, Judith A. \(OPA\)](#); [Nester, John J.](#); [Memon, Sean](#)
Subject: RE: press release - INTERNAL PRERELEASE DISTRIBUTION
Date: Saturday, September 29, 2018 6:32:45 PM

Since releasing this, we've gotten a significant number of requests for comment. The Chairman is preparing something to issue shortly. Just wanted to keep everybody in the loop as this develops.

From: Littman, Kristina

Sent: Saturday, September 29, 2018 5:11 PM

To: Clayton, Jay (b)(6) [@SEC.GOV](#); Stein, Kara; Jackson, Rob; Peirce, Hester; Roisman, Elad

Cc: Wood, Bryan; Strom, Natalie; Rabbitt, Brian; White, Ryan; Burns, Judith A. (OPA); Nester, John J.; Memon, Sean

Subject: press release - INTERNAL PRERELEASE DISTRIBUTION

We had OPA technical issues, so I am sending the pre-release on this. Some developments this afternoon necessitated filing today. We plan to issue this news release in the next 10 minutes.

FOR IMMEDIATE RELEASE 2018-____

**ELON MUSK SETTLES SEC FRAUD CHARGES; TESLA CHARGED WITH AND RESOLVES
SECURITIES LAW CHARGE**

***Settlement Requires Musk to Step Down as Tesla's Chairman; Tesla to Appoint Additional
Independent Directors; Tesla and Musk Agree to Pay \$40 million in Penalties***

Washington, D.C., Sept. 29, 2018 - The Securities and Exchange Commission announced today that Elon Musk, CEO and Chairman of Silicon Valley-based Tesla, Inc., has agreed to settle the securities fraud charge brought by the SEC against him last week. The SEC also today charged Tesla with failing to have required disclosure controls and procedures relating to Musk's tweets, a charge that Tesla has agreed to settle. The settlements, which are subject to court approval, will result in comprehensive corporate governance and other reforms at Tesla—including Musk's removal as Chairman of the Tesla board—and the payment by Musk and Tesla of financial penalties.

According to the SEC's complaint against him, Musk tweeted on August 7, 2018 that he could take Tesla private at \$420 per share — a substantial premium to its trading price at the time — that funding for the transaction had been secured, and that the only remaining uncertainty was a shareholder vote. The SEC's complaint alleged that, in truth, Musk knew that the potential transaction was uncertain and subject to numerous contingencies. Musk had not discussed specific deal terms, including price, with any potential financing partners, and his statements about the possible transaction lacked an adequate basis in fact. According to the SEC's complaint, Musk's misleading tweets caused Tesla's stock price to jump by over six percent on August 7, and led to significant market disruption.

According to the SEC's complaint against Tesla, despite notifying the market in 2013 that it intended to use Musk's Twitter account as a means of announcing material information about Tesla and encouraging investors to review Musk's tweets, Tesla had no disclosure controls or procedures in place to determine whether Musk's tweets contained information required to be disclosed in Tesla's SEC filings. Nor did it have sufficient processes in place to that Musk's

tweets were accurate or complete.

Musk and Tesla have agreed to settle the charges against them without admitting or denying the SEC's allegations. Among other relief, the settlements require that:

• Musk will step down as Tesla's Chairman and be replaced by an independent Chairman. Musk will be ineligible to be re-elected Chairman for three years;

• Tesla will appoint a total of two new independent directors to its board;

• Tesla will establish a new committee of independent directors and put in place additional controls and procedures to oversee Musk's communications;

• Musk and Tesla will each pay a separate \$20 million penalty. The \$40 million in penalties will be distributed to harmed investors under a court-approved process.

"The total package of remedies and relief announced today are specifically designed to address the misconduct at issue by strengthening Tesla's corporate governance and oversight in order to protect investors," said Stephanie Avakian, Co-Director of the SEC's Enforcement Division.

"As a result of the settlement, Elon Musk will no longer be Chairman of Tesla, Tesla's board will adopt important reforms—including an obligation to oversee Musk's communications with investors—and both will pay financial penalties," added Steven Peikin, Co-Director of the SEC's Enforcement Division. "The resolution is intended to prevent further market disruption and harm to Tesla's shareholders."

The SEC's investigation was conducted by Walker Newell, Brent Smyth, and Barrett Atwood and supervised by Steven Buchholz, Erin Schneider, and Jina Choi in the San Francisco Regional Office and Cheryl Crumpton in the SEC's Home Office.

###

Kristina Littman
Senior Advisor to the Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-5977

T: (b)(6)

F: (202) 772-9292

(b)(6)@sec.gov

From: [Hu, Edwin](#)
To: [Khanna, Satyam](#)
Cc: [Crenshaw, Caroline](#); [Francis, Marc](#); [Jackson, Rob](#); [Sylvester, Haley](#); [Yerramalli, Prashant](#)
Subject: Re: Coffee Op-Ed on Tesla
Date: Monday, April 29, 2019 2:17:45 PM

(b)(5)

- Eddy

On Apr 29, 2019, at 12:45 PM, Khanna, Satyam (b)(6) [@sec.gov](#) wrote:

(b)(5)

<https://www.cnn.com/2019/04/23/perspectives/tesla-elon-musk-sec/index.html>

How the SEC can be the babysitter Elon Musk needs

By John C. Coffee Jr. for [CNN Business](#) Perspectives

Updated 5:25 PM ET, Tue April 23, 2019

John C. Coffee Jr. is the Adolf A. Berle Professor of Law at Columbia University Law School and director of its Center on Corporate Governance. The opinions expressed in this commentary are his own.

The SEC and Elon Musk need to reach a settlement fast. Although Musk continues to trip over his oversized ego and sense of his own infallibility, the SEC is facing its own serious problem: Can it still enforce the consent decrees that it relies upon to make companies and executives comply with its settlements? To keep Musk from making any further major blunders on social media, the SEC must not back down in its efforts to keep him on a tight leash.

United States District Judge Alison Nathan has given Musk and the SEC until Thursday to reach an agreement after they failed to do so by the

first deadline, which expired last week. In the time leading up to the original April 18th deadline, the two sides apparently managed only one hour-long phone conversation. If they were seriously pursuing settlement, there would have been face-to-face meetings and a flurry of emails, exchanging drafts. But this does not seem to have happened. Why?

Musk is, of course, scornful of the SEC, but this is a battle he can no longer afford to fight. Tesla increasingly appears to be near the brink of disaster: Its [first quarter deliveries](#) were markedly down; it will lose money for the [first quarter](#); it is constantly changing its [business model](#) (both products and pricing); multiple class actions are pending against it; and the short sellers are chasing it with renewed enthusiasm. Also, Tesla may need to raise capital quickly, and making an enemy of the SEC does not facilitate that process.

The SEC similarly has a problem. Although it probably thought it had a slam dunk of a case, Judge Nathan has not supported its position in the manner that most Southern District judges normally do. In August 2018, Musk [posted on Twitter](#) that he had "funding secured" for his plan to take Tesla private at \$420 per share, when in fact he was not close to achieving that funding. When the SEC sued him for securities fraud, Musk settled and agreed to have a securities lawyer (either inside or outside Tesla) review any written communication or tweets to his shareholders or the market that "reasonably could contain" [material information](#) about Tesla.

That phrasing is unusual and was deemed difficult to interpret by the Court, which is why the judge ordered Musk and the SEC to draft a more specific standard.

MORE PERSPECTIVES ON MANAGEMENT & LEADERSHIP

[4 signs a company is a good employer for women](#)

[Shell is tying executive pay to carbon emissions. Here's why it could create real impact](#)

[America is facing a leadership crisis. It's on us to fix it](#)

The SEC would be both embarrassed and injured if the Court found that

Musk's post on Twitter in February — in which he asserted that Tesla would produce about 500,000 cars this year — did not violate that standard. Musk's estimate was in fact well wide of the mark, as a month earlier Tesla had predicted that it would produce only 400,000 cars this year. Musk had simply confused the total annual production number with the annualized rate he hoped to hit by the end of 2019. This error, while only negligent, seems the direct product of Musk's failing to consult a lawyer (as his settlement with the SEC required).

Given that Musk has been wrong twice and didn't consult counsel despite the settlement, the SEC must have thought it was an easy case when it sought to hold Musk in contempt of court for the February tweet. But instead, Judge Nathan told the parties to reach a settlement and clarify when Musk must consult counsel. More than simply disappointing the SEC, this threatens to undercut the SEC's contempt power, which it rarely uses but is its ultimate sanction for noncompliance.

What should the new settlement say? For the SEC, it is critical that the standard for when Musk needs to consult a lawyer be set much lower than simply that the information was "material." Letting Musk decide for himself what is material is much like allowing students to grade their own calculus exams.

The settlement could state that Musk must consult a Tesla attorney about any written communication (including tweets) that he makes about Tesla unless it would be obvious to any reasonable person that the statement could not possibly be deemed material at the time it was made. Or, it could go further and broadly require that any statement made by Musk about Tesla to the public be pre-cleared by counsel. What is critical, however, is that the standard not require the SEC to prove that a statement was material in order to show a violation of the settlement. That would render the settlement meaningless. Musk is a demonstrated delinquent who has repeatedly blundered when he tweets his own unreviewed disclosures. The Court appears to be overly concerned about Musk's constitutional rights, but his tweets fall clearly within the zone of commercial speech, where reasonable restraints are upheld. The Court is not protecting The Pentagon Papers, but a "shoot

from the hip" entrepreneur who regularly seems to shoot himself in the foot.

Bottom line: Musk cannot decide for himself what is material, and the SEC needs to be able to enforce the settlements it strikes with those who violate its rules.

Satyam Khanna

SEC Commissioner Robert Jackson

(b)(6)

From: [Hu, Edwin](#)
To: [Jackson, Rob](#)
Cc: [Khanna, Satyam](#); [Crenshaw, Caroline](#); [Francis, Marc](#); [Sylvester, Haley](#); [Yerramalli, Prashant](#)
Subject: Re: FT
Date: Thursday, June 13, 2019 5:07:30 PM

(b)(5)

- Eddy

On Jun 13, 2019, at 4:54 PM, Jackson, Rob (b)(6) [@sec.gov](#) wrote:

(b)(5)

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6) (o)

(b)(6) (c)

(b)(6) [@sec.gov](#)

On Jun 13, 2019, at 4:51 PM, Khanna, Satyam (b)(6) [@sec.gov](#) wrote:

(b)(5)

From: Jackson, Rob
Sent: Thursday, June 13, 2019 4:50 PM
To: Khanna, Satyam
Cc: Crenshaw, Caroline; Francis, Marc; Hu, Edwin; Sylvester, Haley; Yerramalli, Prashant
Subject: Re: FT

(b)(5) ?

Robert J. Jackson, Jr.
Commissioner
U.S. Securities and Exchange Commission

(b)(6) (o)

(b)(6) (c)

(b)(6) [@sec.gov](#)

On Jun 13, 2019, at 4:17 PM, Khanna, Satyam (b)(6) [@sec.gov](#) wrote:

<https://www.ft.com/content/882520b8-8dfb-11e9-a24d-b42f641eca37>

SEC official calls for scrutiny of CEOs' social media use

Robert Jackson suggests guidelines for executives on Twitter and Facebook SEC commissioner

Robert Armstrong and Robin Wigglesworth in New York 2 HOURS AGO [Print this page](#)

Robert Jackson, one of Securities and Exchange Commission's four commissioners, said the agency should consider publishing new guidance on chief executives' use of social media platforms such as Twitter and Facebook, in the wake of controversies involving Tesla founder Elon Musk. "Without prejudging a particular matter, it might be time for us to come forward and say, here are some principles of this game," said Mr Jackson, a President Donald Trump appointee and a Democrat, speaking at an industry conference on Thursday.

Earlier this year, Mr Jackson dissented from an agreement between the SEC and Mr Musk concerning the Tesla chief executive's use of Twitter. Mr Musk was sued by the SEC in 2018 after falsely claiming he had secured funding for a buyout of the car company, leading to a settlement under which Mr Musk was required to receive legal preapproval for tweets that could affect Tesla's share price.

But that deal unravelled this year after Mr Musk tweeted about the number of cars Tesla expected to make in 2019. A new accord was only struck in April, from which Mr Jackson dissented.

"I cannot support a settlement in which [Mr Musk] does not admit what is crystal clear to anyone who has followed this bizarre series of events," Mr Jackson said in a statement at the time. "Musk breached the agreement he made last year with the Commission — and with American investors."

"What's important to me is that the legal principles we've always had in the securities markets apply to all the innovative things that are happening,"

Mr Jackson said on Thursday, "but Twitter is a little different. It's a medium, it's informal. It can be responsive, there can be retweets, there can be a conversation, in ways that are not contemplated by every single SEC rule."

He added: "CEOs want to share what they can within the bounds of the law. And of course they should. The question is, how can we do that in a way that protects investors?" The rising number of corporate executives that use platforms like Twitter and Facebook to divulge news — albeit often fluffy announcements rather than market-sensitive facts — had become a headache for the SEC even before Mr Musk's tweets.

In July 2012, when Reed Hastings, Netflix chief executive, wrote on his personal Facebook page that the company had just enjoyed a record-breaking month, Netflix's shares rose. The SEC warned Mr Hastings it may censure him for breaching fair disclosure rules, but the executive countered that he had 200,000 subscribers to his Facebook page so the post should be considered a public disclosure.

In April 2013 the SEC agreed with Mr Hastings and Netflix that social media disclosure could constitute public disclosure, provided that investors have properly been alerted to which social media will be used to disseminate the information.

"One set of shareholders should not be able to get a jump on other shareholders just because the company is selectively disclosing important information," George Canellos, then-acting director of the SEC's enforcement division, said in a statement at the time. "Most social media are perfectly suitable methods for communicating with investors, but not if the access is restricted or if investors don't know that's where they need to turn to get the latest news."

Satyam Khanna

SEC Commissioner Robert Jackson

(b)(6)

From: Hu, Edwin
Sent: Tue, 10 Dec 2019 16:00:12 -0500
To: Salerno, Aaron; Jackson, Rob; Yerramalli, Prashant; Sylvester, Haley; Crenshaw, Caroline; Lowenstein, Abraham
Subject: LA Times: If Elon Musk's tweets are nonsense, why does he use them to break Tesla news?

[latimes.com](https://www.latimes.com)

(b)(5)

News Analysis: If Elon Musk's tweets are nonsense, why does he use them to break Tesla news?

By Russ Mitchell
Staff Writer
10-12 minutes

Twitter is nonsense. Don't take it seriously. That, in essence, is what Elon Musk and his team of lawyers argued in the defamation case [won by Musk](#) last Friday.

Twitter is "infamous for invective and hyperbole," his attorneys said in legal briefs. Users "play fast and loose with facts," they said. Forums like Twitter "are not a source of facts or data upon which a reasonable person would rely." Twitter participants "expect to read opinions, not facts."

Which raises the question: If Musk's Twitter account, with its 29.9 million followers, can't be taken seriously, why should anything Musk says there about Tesla, SpaceX and his other companies be believed?

And for those concerned about the functioning of open and honest financial markets, how can the U.S. Securities and Exchange Commission continue to consider Musk's account a legitimate channel for investor communications?

In the defamation case, a jury last Friday declared Musk not liable for a tweet in which he called a British rescue diver a “pedo guy.” The diver’s lawyers said “pedo guy” meant “pedophile.” But [one juror said](#) the panel supported Musk because his tweet didn’t specifically name the man, Vernon Unsworth, in his tweet.

The case raises more questions about how corporations and regulators should treat social media.

The SEC allows corporate executives to use their personal social media channels to convey corporate information considered material to investors, but says they must inform investors what channels are being used for that purpose. Companies tend to follow the guidance.

James Naughton, a professor at the University of Virginia’s Darden School of Business, notes that to keep things clear, many companies use a separate account for marketing and another run by the investor relations department for all material corporate information.

T-Mobile Chief Executive John Legere, for instance, is a colorful and sometimes profane presence on Twitter. The company included the following near the top of its 2018 10K annual report:

“Investors and others should note that we announce material financial and operational information to our investors using our investor relations website, press releases, SEC filings and public conference calls and webcasts. We intend to also use the @TMobileIR Twitter account (<https://twitter.com/TMobileIR>) and the @JohnLegere Twitter (<https://twitter.com/JohnLegere>), Facebook and Periscope accounts.”

Twitter, the company, does the same. CEO Jack Dorsey is, no surprise, active on the site. Twitter’s 10K disclosure is similar to T-Mobile’s. The same is true for countless other companies.

Tesla, as in so many other matters, has been an outlier.

At Tesla, there appears to be only a single official mention of Musk’s Twitter account, a Form 8K disclosure in 2013 that reads: “For additional information, please follow Elon Musk’s and Tesla’s Twitter accounts.”

Notices on Tesla social media policy have not appeared in recent 10K annual reports.

“What’s crazy right now is you’ve got a situation where Elon Musk can tweet that he’s taking his company private, but he also gets to have hundreds of tweets that are totally irrelevant,” Naughton said. “He gets to have it both ways.” Investors are left to sort out what’s real from what’s not.

The going-private tweet landed Musk in deep trouble. In August 2018 he used Twitter to declare he had “funding secured” for a company buyout at \$420 a share, sending the stock soaring.

The tweet didn’t simply play loose with the facts; there was nothing factual about it at all. The SEC charged him with fraud, stating that specific deal terms were never discussed with potential

buyers. The Bel-Air multibillionaire settled the fraud charges by paying a \$20-million fine and giving up his Tesla chairman title for three years.

The SEC declined to comment. Tesla did not respond to repeated requests for comment.

Tesla does file some corporate information in 8K “current report” documents through the SEC, and on the news page of the company’s website assembled by Musk’s public relations team. Musk, however, discounts the value of public relations. From the witness stand in the defamation trial, Musk said, “We don’t have much of a PR team at Tesla.”

But much essential corporate information for Tesla investors can be found only on Musk’s Twitter feed.

In January, for instance, Musk tweeted new information about Tesla’s new Gigafactory in China: “Shanghai Giga will produce affordable versions of 3/Y for greater China. All Model S/X & higher cost versions of Model 3/Y will still be built in US for WW market, incl China.” That information was not communicated through an 8K or on Tesla’s news page.

Musk uses Twitter not only as a channel for corporate communications, but as a bully pulpit to battle enemies real and perceived; a forum for silly memes; a message board to announce new Tesla products and features; and a mechanism to warn short sellers they’re about to get burned, as he did a few weeks before his going-private tweet.

Critics say he uses Twitter to pump up Tesla’s stock price, with prognostications about future products and delivery schedules that often fall short of reality. The fraud settlement with the SEC was meant to stop that, but after he tweeted in February that Tesla will make about 500,000 cars in 2019, he was [hailed before](#) the U.S. District Court for the Southern District of New York for contempt. He and the SEC came up with more specific rules for subject matter Musk needs to run past a Tesla securities lawyer before he tweets it out.

Musk tends to veer from tweeting trivial information (adding fart sounds to Tesla cars) to tweeting serious business information. Sometimes his wild ideas are just that (he’s tweeted about entering the liquor business with a Teslaquila), and sometimes they actually happen (flamethrowers).

On April 14, Musk used Twitter to update investors on Tesla’s Powerwall storage battery business. “Powerwall production is now ramping fast,” he said. Four days later, after hours of joke-making among Musk and his followers about sheep, Musk tweeted out “My Twitter is pretty much complete nonsense at this point.”

My Twitter is pretty much complete nonsense at this point

— Elon Musk (@elonmusk) [April 19, 2019](#)

On July 29, Musk set investor expectations for Tesla’s solar roof tile product. “Spooling up production line rapidly. Hoping to manufacture ~1000 solar roofs/week by end of this year.” Musk hasn’t updated production levels since then. There is no indication that Tesla is anywhere close to that level of production.

In November, after Musk unveiled the Cybertruck concept vehicle, he said on Twitter that Tesla had received 250,000 orders. Nonsense? For real? Who can say.

Spooling up production line rapidly. Hoping to manufacture ~1000 solar roofs/week by end of this year.

— Elon Musk (@elonmusk) [July 30, 2019](#)

The government sets rules on corporate disclosure to keep the playing field level for stock traders. A trader with inside knowledge that a company hasn't released to the public can make huge profits, but at the expense of stockholders who are left in the dark. Insider trading is illegal, and those convicted of insider trading can spend years in prison. The SEC's Regulation FD requires broad dissemination of material corporate information, either through an 8K filing with the agency or by other means.

Before the World Wide Web was invented in 1989, a company disclosing such information would typically prepare a news release and send it to wire services such as the Associated Press or Dow Jones, which forwarded it to newsrooms throughout the country and around the world.

The web made dissemination simple. A company could simply post material corporate information on its website, available to anyone with a computer.

The spread of smartphones and social media complicated matters. Chief executives created personal accounts on Facebook and Twitter.

Defamation attorney Jenny Afia, of the international law firm Schillings, said there remains an unresolved tension between the use of Twitter as a serious communication channel for business and Twitter as a "war zone," as Musk has described it, where reputations can be attacked and people can be smeared.

"The corporate stance is right," she said. "I disagree that Twitter isn't a forum to be taken seriously."

The relevance to corporate disclosure caught the agency's attention in 2012, when Netflix CEO Reed Hastings used his Facebook account to announce the streaming service's monthly online viewing had exceeded 1 billion hours for the first time. There was no press release and no 8K. Netflix's stock price jumped 19% over the next trading session.

The SEC last formally addressed the social media disclosure issue in 2013. In a "[guidance update](#)," the commission stated that corporate officers could communicate important corporate information through their personal social media accounts, "so long as investors have been alerted about which social media will be used to disseminate such information." (It's unclear whether Tesla is meeting even that threshold.)

Corporate investor relations executives began to wonder whether social media is an approved means for issuing potentially stock-moving corporate information. If so, must the communications channel be restricted to a corporate account, or are a CEO's personal accounts OK, too?

The SEC stated, as part of its guidance, that personal accounts could serve as a legitimate corporate channel, but each company must tell investors which channels were official.

The SEC has not said whether it intends to further clarify social media rules. Robert Jackson, one of the SEC's four commissioners, encouraged a review on a [cable news show](#) in September 2018.

"If you're wondering whether it might be time for us to clarify this, I am too," Jackson said. "We have issued some guidance in the area, but it's quite old."

Jackson could not be reached for comment about Musk and Tesla.

From: [Yerramalli, Prashant](#)
To: [Hu, Edwin](#)
Cc: [Jackson, Rob](#); [Khanna, Satyam](#); [Francis, Marc](#); [Buda, Frank](#); [Sylvester, Haley](#); [Crenshaw, Caroline](#)
Subject: Re: Matt Levine
Date: Monday, April 29, 2019 12:18:31 PM

(b)(5)

Sent from my iPhone

On Apr 29, 2019, at 12:10 PM, Hu, Edwin [\(b\)\(6\) @sec.gov](#) wrote:

Elon Musk Gets Some New Twitter Rules

Also Bayer, Schwab, personal finance and seasteading.

By

[Matt Levine](#)

April 29, 2019, 12:00 PM EDT

Well that's settled then

Last Tuesday, Elon Musk, the chief executive officer of Tesla Inc., [announced on Twitter](#) that “Tesla is going to develop a quiet, electric leafblower.” “Will be sentient, of course,” [he added](#) two days later. Is this true? Look, I don’t know. I am certainly open to the possibility that this, like Musk’s April 2018 [announcement](#) that “Tesla has gone completely and totally bankrupt,” was a joke. On the other hand, who doesn’t hate noisy leaf blowers? Musk has a pretty solid record of actually building the random whimsical things—[spaceships](#), [submarines](#), [tunnels](#), [flamethrowers](#)—that he seems to be joking about. Sentience is a difficult philosophical question but with modern advances in artificial intelligence it seems possible to build a leaf blower that can make small talk about the weather and play grandmaster-level chess. If Tesla actually builds and markets a sentient-ish leaf blower, I will be surprised, but mildly surprised. It won’t be the strangest thing Tesla does that day, probably.

On the other hand, there has been no press release, Securities and Exchange Commission filing or other corporate announcement—beyond Musk’s tweets—of the leaf-blower project. Last Monday Tesla hosted an “[Autonomy Investor Day](#)” about its plans to develop and deploy self-driving cars. You might think that leaf-blower sentience would have potential applications to self-driving cars, but the leaf blowers didn’t come up at Autonomy Day. Last Wednesday, Tesla announced its [first-quarter earnings](#), and there was no discussion of the leaf

blowers in the earnings release, or on the investor Q&A, or in the quarterly report on [Form 10-Q](#) that Tesla filed today.

Well, that's okay. Companies [can](#), and do, announce material news first (or only) on social media. On the other hand people, including Elon Musk, also often use Twitter for jokes. In general—there are exceptions, including of course [at Tesla](#)—but in general if a company puts out a press release or an SEC filing announcing a new product, it's probably developing that new product. If I [tweet](#) that I am developing a new product, I am probably joking. If Elon Musk tweets that Tesla is developing a new product, these expectations collide: Tesla might be developing that new product, or Musk might be kidding, and there will be no explicit indication either way. There will be contextual and tonal clues: How implausible (for Tesla!) is the product? Does he follow up the announcement with further jokey tweets? Is it 2 a.m.? Is it April 1? Is it *funny*? Etc. These are nuances that are hard to capture in a corporate policy or a legal regime. “Only say true things, unless a reasonably sophisticated audience would know that you are joking and find it funny” is actually a good and correct policy for *life*—it is the policy I try to live by!—but a dangerous one for a public-company CEO.

At the same time that Musk was tweeting about leaf-blower sentence, his lawyers were negotiating a re-settlement of his settlement with the SEC, the one where he had agreed not to tweet anything material about Tesla without first running the tweet by a Tesla lawyer. This requirement had been [put in place](#) after Musk [tweeted](#) about his plans to take Tesla private (not true, though also not a joke!), and the SEC [claimed that Musk violated it](#) (and sought to have him held in contempt of court) after he [tweeted that](#) Tesla would deliver 500,000 cars in 2019 (also not a joke, but forward-looking and of unclear truth value). Musk [disagreed](#), claiming that this tweet just repeated something that had been disclosed in a prior earnings call (and Form 10-K) and was thus not material.

On Friday, Musk and the SEC [filed their amended settlement](#) for court approval. Whereas the [old one](#) required Musk to run his tweets by a lawyer if they “contain, or reasonably could contain, information material to the Company or its shareholders,” the new one gives a list of specific topics that require legal approval. You can find the list on the third page of [the proposed amended settlement](#), and I suppose the obvious question is: Which of his recent tweets would or wouldn't violate it? The ones about taking Tesla private clearly would; “potential or proposed mergers, acquisitions, dispositions, tender offers, or joint ventures,” is on the list of forbidden topics. The leaf-blower one *probably* would; the list of topics includes “new or proposed business lines that are unrelated to then-existing business lines (presently includes vehicles, transportation, and sustainable energy products).” On the other hand, Musk's tweet about [adding rocket thrusters](#) to the next Tesla Roadster, *whether or not it was true*, is fine, because it's just a change to an existing business line (“vehicles, transportation”). Musk's [half\(?\) joke\(?\)](#) about giving up his CEO title and becoming “the Nothing of Tesla”: Maybe off-limits (“a change in the Company's directors; any principal executive officer, president,” etc.), but maybe fine, because it didn't *actually* say that he had resigned as CEO.

Most irritatingly, I have absolutely no idea whether the tweet that allegedly violated the original settlement—the one about delivering 500,000 cars in 2019—

would violate the new one. Musk is now not allowed to tweet about “production numbers or sales or delivery numbers (whether actual, forecasted, or projected) that have not been previously published via pre-approved written communications issued by the Company (‘Official Company Guidance’) or deviate from previously published Official Company Guidance” without running those numbers by his lawyer, but the whole dispute is that the SEC claims that this tweet was new information while Musk’s lawyers [claim that it was sufficiently grounded](#) in previous official guidance. If he did it again, they could have the same fight all over again. Perhaps that’s the plan.

Anyway separate from that (harder) question, if I were the SEC I would probably have pushed to add a requirement in the amended settlement to the effect of, if Musk is going to tweet a *joke* about Tesla, he has to add a smiley face or a “j/k” or a “lol” to the end of it. Again, this is an absolutely terrible rule for life, or comedy; it really kills the joke. And I can see why Musk would be concerned with the aesthetics of his Twitter comedy. But the SEC probably shouldn’t be!

From: (b)(6)
To: [CHAIRMANOFFICE](#); [CommissionerLee](#); [CommissionerPeirce](#); [CommissionerRoisman](#)
Subject: Re: TSLA Elon tweets, BAN social media postings for Executives
Date: Friday, May 1, 2020 12:46:25 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

SEC Officials,

As an investor in Tesla (TSLA) and other publicly traded companies, I strongly insist SEC to immediately change the rules and ban any form of company information be put out via any social media platforms including Twitter. All the news should only be put out via official press release because that prevents possible misuse by one person or if an account is hacked. SEC's function is to safeguard and ensure communications are reached by everyone at the same time via Press Releases. Not everyone has Twitter accounts or follows every executive of the company they may have position in that company's stock(s).

PLEASE immediately consider changing so what has happened today with Elon Musk's tweets on TSLA does never occur again. Publicly traded companies have to put out news via PR which as you all know gets reviewed by CEO, CFO, Legal Counsel and IR before it is released to press. Hoping to see immediate favorable action on the suggestion.
Thank you

(b)(6)

From: [Peikin, Steven](#)
To: [Peirce, Hester](#); [Carr, Jonathan E](#)
Cc: [Avakian, Stephanie](#)
Subject: Tesla (SF-4082) - Action Memo (for OS circulation).docx
Date: Tuesday, September 25, 2018 2:20:28 PM
Attachments: [Tesla \(SF-4082\) - Action Memo \(for OS circulation\).docx](#)
[ATT00001.txt](#)

As discussed.

Sent from my iPhone

From: [Newell, Walker S](#)
To: [Peirce, Hester](#)
Cc: [Carr, Jonathan E](#); [Peikin, Steven](#); [Avakian, Stephanie](#)
Subject: Tesla (SF-4082) - Action Memo Package
Date: Wednesday, September 26, 2018 12:17:49 PM
Attachments: [Tesla \(SF-4082\) - OS Memo Package.pdf](#)

Commissioner Peirce,

Attached please find the action memo package (including a DERA memo and white papers) for this recommendation.

Thanks very much,

Walker Newell
Counsel | Division of Enforcement
U.S. Securities & Exchange Commission
44 Montgomery Street, Suite 2800
San Francisco, California 94104

(b)(6) (b)(6) [@sec.gov](#)

From: (b)(6)
To: [CommissionerPeirce](#)
Subject: Tesla Civil Action No. 1:18-cv-8865
Date: Friday, September 28, 2018 12:41:59 PM

Dear Ms. Peirce,

I am writing to you because you seem to be the most sensible commissioner to write to about Tesla. I am a **long** time investor in Tesla and have been truly shocked by yesterday's SEC action towards Elon Musk.

If the essence of establishing and enforcing laws and regulations is to enhance 'goodness' in society or humanity, then I truly fail to comprehend your actions towards Elon Musk. Elon Musk's value to the world in general and to the United States economy specifically cannot be overstated, and the consequences of his involvement would have a net positive impact on cost of energy, global warming, transportation, employment productivity, connectivity, logistics to name a few.

On the other hand, if we assume that that tweeting 'funding secured' was wrong, then *intentions do matter*. Was there any prior or current unethical (even legal) profiteering from Elon Musk? If the answer is no, then definitely the punishment you propose does not fit the crime.

In conclusion, and although I do not expect a reply, I do hope I have made my case and look forward for reason and common sense to prevail.

Thank you for your expected support.

(b)(6)

From: [Avakian, Stephanie](#)
To: [Clayton, Jay](#); [Stein, Kara](#); [Jackson, Rob](#); [Peirce, Hester](#); [Roisman, Elad](#)
Cc: [Peikin, Steven](#)
Subject: Tesla Press Conference Prepared Remarks
Date: Thursday, September 27, 2018 5:55:59 PM
Attachments: [Tesla Press Conference Prepared Remarks - 401PM.docx](#)

Per Jay's request at the meeting, attached are our final press remarks on the action against Elon Musk. Thank you again for your support.
Steph & Steve

From: [Carofine, Christopher](#)
To: [Clayton, Jay](#); [Dinwoodie, Jeffrey T.](#); [Gomez Abero, Sebastian](#); [Klima, Jaime](#); [Littman, Kristina](#); [Memon, Sean](#); [Moskowitz, Lucas](#); [Rabbitt, Brian](#); [Strom, Natalie](#); [Uhlmann, Peter](#); [Stein, Kara](#); [Henderson, Jill](#); [Mukerjee, Sirimal](#); [Peak, Robert](#); [Rakestraw, Trace W.](#); [Jackson, Rob](#); [Khanna, Satyam](#); [Yerramalli, Prashant](#); [Crenshaw, Caroline](#); [Zytnick, Jonathon](#); [Francis, Marc](#); [Peirce, Hester](#); [Carr, Jonathan E.](#); [Gabbert, Richard](#); [Glazer, Adam B.](#); [Knight, Thava](#); [Porter, Amber](#); [Roisman, Elad](#); [Conway, Dean](#); [Blase, Elizabeth](#); [Wood, Bryan](#); [Kelley, Anne Marie](#); [Erb, William](#); [Nester, John J.](#); [White, Ryan](#); [Burns, Judith A. \(OPA\)](#); [Callahan, Kevin J](#)
Cc: [Avakian, Stephanie](#); [Peikin, Steven](#); [Cave, D. Mark](#)
Subject: press release - INTERNAL PRERELEASE DISTRIBUTION
Date: Thursday, September 27, 2018 4:31:35 PM

We plan to issue this news release at 5 p.m. ET

ELON MUSK CHARGED WITH SECURITIES FRAUD FOR MISLEADING TWEETS

Washington, D.C., Sept. 27, 2018 - The Securities and Exchange Commission today charged Elon Musk, CEO and Chairman of Silicon Valley-based Tesla, Inc., with securities fraud for a series of false and misleading tweets about a potential transaction to take Tesla private.

On August 7, 2018, Musk tweeted to his 22 million Twitter followers that he could take Tesla private at \$420 per share – a substantial premium to its trading price at the time – that funding for the transaction had been secured, and that the only remaining uncertainty was a shareholder vote. The SEC’s complaint alleges that, in truth, Musk had not discussed specific deal terms with any potential financing partners, and he allegedly knew that the potential transaction was uncertain and subject to numerous contingencies. According to the SEC’s complaint, Musk’s tweets caused Tesla’s stock price to jump by over six percent on August 7, and led to significant market disruption.

“Corporate officers hold positions of trust in our markets and have important responsibilities to shareholders,” said Steven Peikin, Co-Director of the SEC’s Enforcement Division. “An officer’s celebrity status or reputation as a technological innovator does not give license to take those responsibilities lightly.”

“Taking care to provide truthful and accurate information is among a CEO’s most critical obligations,” added Stephanie Avakian, Co-Director of the SEC’s Enforcement Division.

“That standard applies with equal force when the communications are made via social media or another non-traditional form.”

The SEC’s complaint, filed in federal district court in the Southern District of New York, alleges that Musk violated antifraud provisions of the federal securities laws, and seeks a permanent injunction, disgorgement, civil penalties, and a bar prohibiting Musk from serving as an officer or director of a public company.

The SEC’s investigation, which is continuing, was conducted by Walker Newell, and Brent Smyth and supervised by Steven Buchholz, Erin Schneider, and Jina Choi in the San Francisco Regional Office. The litigation will be led by Cheryl Crumpton and Barrett Atwood.

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