

Business Report

SAN FRANCISCO CHRONICLE AND SFCHRONICLE.COM | Friday, September 28, 2018 | Section C ★★★★★

Musk sued for fraud over tweets about Tesla

CEO's claims about funding to take stock private were false, SEC says

By David R. Baker
and Melia Russell

The U.S. Securities and Exchange Commission on Thursday sued Tesla CEO Elon Musk for fraud over his claim in tweets that he had secured funding for a proposed deal to take the electric automaker private, a deal he

has since abandoned.

The commission's complaint seeks to bar Musk from serving as either an officer or director at Palo Alto's Tesla or any other publicly traded company. And it follows months of sometimes erratic behavior from Musk — from insulting Wall Street analysts

on a conference call to smoking pot during a webcast — as the company strives to ramp up production of its make-or-break electric car, the Model 3.

“Neither celebrity status nor a reputation as a technological innovator provide an exemption from securities laws,” Stephanie Avakian, co-director of the commission's enforcement division, said in a news conference Thursday.

The complaint concerns an Aug. 7 tweet in which Musk



Elon Musk claimed in a tweet that he had secured funding to take Tesla private.

wrote: “Am considering taking Tesla private at \$420. Funding secured.” Details later disclosed by Musk showed that while he had discussed the deal with Saudi Arabia's sov-

ereign wealth fund, no deal had been reached.

“In truth and in fact, Musk had not even discussed, much less confirmed, key deal terms, including price, with any potential funding source,” the commission's complaint reads.

Musk issued a brief statement Thursday calling the commission's action unjustified.

“I have always taken action
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in the best interests of truth, transparency and investors," he wrote. "Integrity is the most important value in my life and the facts will show I never compromised this in any way."

What comes next for Tesla and its chief executive is unclear.

Bill Selesky, an analyst at Argus Research, said a fine leveled against Musk is the most likely outcome, adding that there's not a lot of precedent for the SEC to remove a chief executive over a tweet. Instead, Selesky expects the company's board to take action.

"I think the board of directors at Tesla will look seriously toward having another person help him, like a co-CEO," Selesky said. "Not to keep an eye on him, but so they can alleviate

some of the pressure he's under."

Selesky wouldn't float names for a potential second in command, but he said the Tesla board would likely look at a "seasoned executive, probably from another car manufacturing company," who would oversee the day-to-day operations at Tesla.

Shares of Tesla, which closed Thursday at \$307.52, plunged below \$270 in after-hours trading.

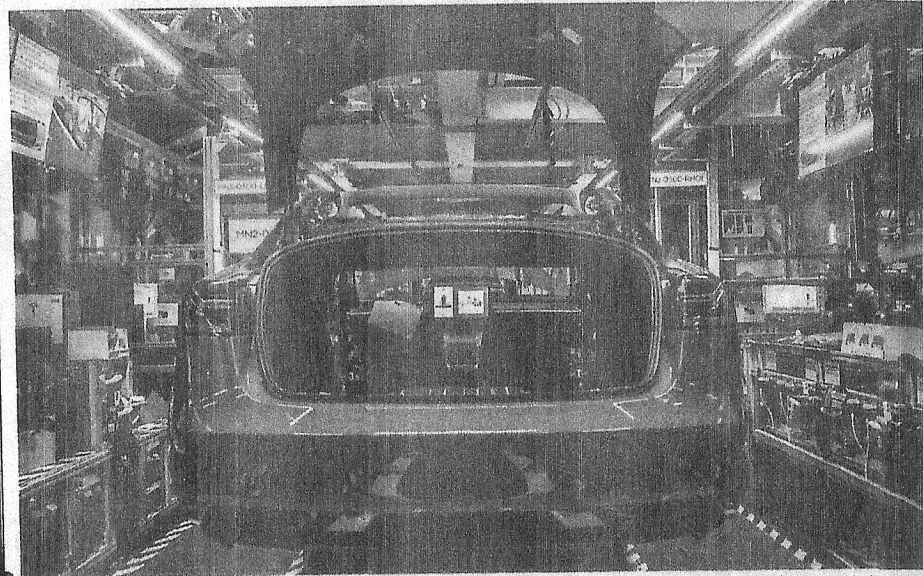
The commission launched its investigation after Musk's tweets about possibly taking Tesla private, while still allowing existing investors to maintain a stake in the company.

His initial tweet was so short and seemingly off-the-cuff that at first, many people weren't sure whether he was serious. And because the number 420 is often used a slang shorthand

for marijuana, some of Musk's Twitter followers assumed he was making an odd pot joke.

He wasn't joking, but according to the commission's complaint, suspicions of a marijuana reference weren't far off the mark. Musk, the complaint says, picked the \$420 price on Aug. 2 by calculating a \$20 premium for Tesla stock's closing price that afternoon, then rounded up because he thought using a number associated with pot would amuse his girlfriend, the musician Grimes.

Although Musk had discussed the idea of going private with Tesla's board, he did not warn the board or anyone else at Tesla before announcing the news through Twitter, according to the complaint. He also did not notify the Nasdaq exchange, which requires at least 10 minutes of warning before a



Christie Hemm Klok / New York Times

A Tesla Model 3 proceeds through an assembly line in Fremont. The company's share price fell from \$307.52 to below \$270 in after-hours trading Thursday.

company issues news that could affect its stock price during the trading day. Nasdaq suspended trading of Tesla stock for roughly 90 minutes in the wake of Musk's tweets.

The commission

charges that Musk knew he did not have secure funding for the proposed deal, nor did he have a firm commitment from investors, as he said in one of his tweets. And yet, Tesla's investor relations staff — having no

information other than his tweets — told startled Wall Street analysts on Aug. 7 that the proposed deal was "as firm as it gets," according to the complaint.

Musk's "misleading statements, none of which were pre-cleared or shared with anyone at Tesla, caused considerable market confusion and disruption" SEC enforcement division co-director Steven Peikin said during Thursday's news conference.

David R. Baker and Melia Russell are San Francisco Chronicle staff writers.
Email: dbaker@sfnchronicle.com, melia.russell@sfnchronicle.com
Twitter: @DavidBakerSF,