

Harding and Company – SEC Files Suit against Tesla’s Elon Musk

Since Elon Musk’s famous \$420 tweet back in August, analysts and investors alike have been discussing whether the Tesla CEO will face any repercussions.

MANHATTAN, NEW YORK, UNITED STATES, September 28, 2018 /EINPresswire.com/ -- This appears to have been answered as the SEC announced yesterday the details of the case they are putting forward against Musk.

Whether Elon Musk’s new legal difficulties will result in his being banned from serving as an officer or director of any publicly traded-company is far from certain.



SEC Files Case Against Tesla CEO - Elon Musk

The Securities and Exchange Commission sued the Tesla, Inc. chief executive for securities fraud Thursday, seeking in part to ban him from serving as an officer of a publicly traded company, a measure that is common in such cases, according to former SEC lawyers.

If Mr. Musk chooses to go to trial and a jury finds him liable for securities fraud, a federal judge would determine whether Mr. Musk should be banned from the securities industry for any period of time. If he and the government agree to a settlement before trial, both sides would likely negotiate any ban.

Because the complaint is against Mr. Musk and not Tesla, any financial penalties would come out of Mr. Musk’s pocket—not those of shareholders, said Joseph A. Grundfest, a Stanford Law School professor and former SEC commissioner. That leads to what Mr. Grundfest said was a central question to the SEC: “How do you punish Musk without harming Tesla’s shareholders?”

“Elon Musk is really important to the company’s future,” Mr. Grundfest said. “If he is barred from acting in ways that are central to the company’s success, then the shareholders of Tesla wind up being the largest victims of the process.”

Business executives who are charged with securities fraud are often banned permanently from their industries after they are criminally convicted.

The central focus of the SEC’s charges are Mr. Musk’s [statements on Twitter about plans to take Tesla private](#). The Justice Department also is investigating the tweets, though it didn’t bring a parallel criminal case Thursday in conjunction with the SEC.

Former pharmaceutical executive Martin Shkreli earlier this year accepted a lifetime ban from the securities industry, as part of his settlement with the SEC. He had been convicted last year at

trial of three criminal counts of securities fraud.

Mr. Shkreli was barred from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent or rating organization.

Former SEC lawyers said the speed of the investigation was unusually fast, as the SEC complaint came less than two months after Mr. Musk's tweet.

Some SEC experts said the commission may be trying to send a strong message to Silicon Valley's freewheeling culture that chief executives who appear to mislead investors will face regulatory scrutiny.

One of the key points [Harding and Company](#) recognizes is that the SEC essentially is going after Musk under the guise of protecting investors. Since Musk's statement, although the stock rose 10% initially on the day, subsequently, the barrage of negative press against the CEO and Tesla has seen the stock price fall nearly 20% in open trading, with a further 10% fall after hours and the SEC's announcement yesterday.

This means the stock has gone from \$379 to \$270, a near 30% drop in just under 2 months.

Considering that the original tweet could be construed as a continuation of Elon Musk's rhetoric against the short sellers he believed were harming the firm, effectively, the SEC's case that he was misleading investors didn't exactly work as they say he may have intended.

H&C believes that although the news is indeed detrimental to the company, Musk and his team of lawyers will do everything they can to negate any major damage from the case and will do everything in their power to ensure any ban is not too disruptive.

If we look back several years to the Martha Stewart case, where the SEC actively sought a jail term, she was banned for 5 years from having any positions on the board of her company, ultimately Martha ended up taking a creative position within the company for that period.

The SEC are not looking for a jail term this time and the speed at which they have put the case together shows that they are looking to make a statement.

What we now have to do is wait to see what Musk's initial defense is and whether a settlement can be agreed before the case goes to trial.

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Jefferson Wilde
Harding and Company
+16469311975
[email us here](#)

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