

The SEC Fraud Lawsuit Against Tesla's Elon Musk Is Serious Business And Shows Musk To Be A Sociopath

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Elon Musk will have his hands full fighting for his job -- one of them, anyway -- in the wake of the SEC's fraud lawsuit.

And even if Musk does manage to remain Tesla's ([TSLA](#)) CEO, the harsh and detailed allegations levied against him in the SEC's suit stand to be a major distraction as Tesla pushes ahead with its huge Model 3 production ramp, and to do further damage to Wall Street's trust in Musk's leadership.

Six weeks after it was first reported that the SEC is probing the Tesla and SpaceX CEO over Aug. 7th tweets indicating that he's thinking about taking Tesla private at a price of \$420 per share and has

secured the needed funding, America's securities regulator has [filed civil fraud charges](#) over what it claims are "a series of false and misleading statements" by Musk regarding taking Tesla private.

The SEC's action, which targets only Musk and not Tesla as a company, is separate from [a criminal probe](#) of Musk being carried out by the DOJ. Since it's pursuing a civil case, the SEC isn't seeking jail time. However, it *is* seeking -- in addition to financial penalties -- an order that Musk be effectively "prohibited from acting as an officer or director" of a publicly-traded company.

In response to the news, which came out after-hours on Thursday, Tesla shares fell almost 12% in after-hours trading and were down a similar amount in pre-market trading on Friday to \$270.55. Shares have bounced around a bit in recent weeks, after having made a near-term low of \$252.25 on Sep. 7th.

[The SEC's suit](#), filed with a U.S. District Court in New York, makes quite a few eye-opening claims. In spite of his tweets, which caused Tesla's shares to surge on Aug. 7th, Musk "had not even discussed, much less confirmed, key deal terms, including price, with any potential funding source," the SEC claims. It adds Musk "knew or was reckless in not knowing" a series of tweets written on Aug. 7th were false and/or misleading.

Some of the details shared by the SEC about the going-private discussions held by Musk prior to Aug. 7th are also pretty unflattering. The agency says that while Musk had held talks with representatives for a sovereign wealth fund ([presumably Saudi Arabia's](#)) since Jan. 2017 about an investment in Tesla, the parties hadn't talked "for many months" prior to late July. And when the parties did meet on July 31st, the talk is said to have "lacked discussion of even the most fundamental terms of a proposed going-private transaction." No further "substantive communications" happened between the parties prior to Musk's Aug. 7th tweets.

As for that \$420 per share buyout price Musk mentioned on Aug. 7th? The SEC says he came to it partly because "he thought 20% was a 'standard premium' in going-private transactions," and adding 20% to Tesla's stock price at the time yielded a price of \$419 per share. Musk is said to have then rounded the price to \$420 because (given the number's [cultural connotations](#)) he thought his girlfriend "would find it funny."

The SEC adds that the Nasdaq requires listed companies to give at least 10 minutes' notice prior to sharing material information about an event such as a going-private transaction, and that Musk failed to do so. It also claims Musk didn't consult with Tesla's board or other employees about his tweets before publishing them, and that he

didn't contact existing Tesla shareholders in advance to gauge their interest in a transaction, which (before the effort was officially abandoned on Aug. 24th) imagined some investors would maintain stakes in a privately-owned Tesla.

Between all of these details, as well as a few others, the SEC appears to have a pretty good case against Musk. Even *if* the DOJ doesn't join the fray by filing criminal charges against Musk, one has to think Musk's legal troubles will be a major distraction for him in the short-term. And this is far from an ideal time for such a distraction, given Tesla's ongoing efforts to work through a large Model 3 order backlog as well as carry out other projects such as building a Chinese Gigafactory, expanding its Supercharger network and bringing its [Model Y crossover](#) and [Semi truck](#) to market.

It's also not hard to imagine seeing fresh calls among investors for Musk to step down from Tesla. Or at the least, to relinquish CEO duties and take on a product-focused executive role. Of course, should the SEC have its way, remaining even as a product exec won't be an option for Musk.

And as easy as it is to criticize many of his recent antics, it's hard to argue that Tesla would be better off with Musk playing no role at the company he founded whatsoever. Misguided tweets and missed deadlines aside, there's much to respect, and even admire, in Musk's efforts to bring to market a family of high-performance electric cars that collectively have tens of thousands of satisfied buyers and have [pushed the envelope](#) for the auto industry at large. As well as in his attempts to innovate in areas such as drivetrains, charging networks, driver-assistance systems, infotainment systems and energy storage, among others.

The market's initial reaction to the SEC's suit against Musk points to an understanding of how much of a loss it would be for Tesla if he was barred from the company altogether. It also points to an understanding of how strong the SEC's case against Musk currently looks.

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Elon Musk is a believer. "Am considering taking Tesla private at \$420. The post confused analysts, reporters, investors, and **Musk** aficionados alike. **Musk** affirmed his plans in subsequent tweets ...

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"Funding secured." It's the tweet that keeps on giving **Elon Musk** and Tesla investors a major headache. The Securities and Exchange Commission is suing **Musk** for **fraud**, according to a lawsuit ...

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