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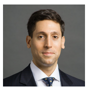
# SEC Brings Suit Against Elon Musk for Failure to Report Twitter Ownership



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On January 14, 2025, the U.S. Securities and Exchange Commission (the "SEC") sued Elon Musk over his 2022 acquisition of Twitter, Inc. stock and alleged failure to timely disclose a 5% ownership stake in Twitter, as required by federal securities laws.

Musk, the SEC alleges, violated Rule 13d of the Securities Exchange Act of 1934 by failing to report his beneficial ownership of more than 5% of Twitter's common stock within 10 calendar days of acquiring such ownership stake, as was required by Rule 13d-1(a) at the time of the alleged violation.[1] The SEC claims that Musk delayed his disclosure by 11 days, missing a March 24, 2022 deadline and allowing him to purchase an additional $500 million worth of Twitter stock between March 25, 2022 and April 1, 2022 "at artificially low prices from the unsuspecting public, who had not yet priced in the undisclosed material information of Musk's beneficial ownership...and investment purpose."

Musk filed an initial Schedule 13G on April 4, 2022, revealing a 9.2% stake. Although the initial Schedule 13G was filed under Rule 13d-1(c), which permits a person who would otherwise be obligated to file a Schedule 13D to instead file a short-form statement on Schedule 13G if that person "[h]as not acquired the securities with any purpose, or with the effect, of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having that purpose or effect," Musk subsequently converted to a Schedule 13D on April 5, 2022. This Schedule 13D stated that Musk entered into an agreement with Twitter (1) appointing Musk to Twitter's Board of Directors and (2) restricting Musk from acquiring beneficial ownership in Twitter in excess of 14.9%.[2]

According to the SEC's complaint, when Musk did eventually publicly report his ownership, Twitter's share price rose more than 27%. The SEC argues that by neglecting to timely file the beneficial ownership report, Musk profited $150 million at the expense of Twitter shareholders who sold without knowledge of Musk's stake or plans. The lawsuit seeks to impose a civil fine on Musk and require him to disgorge these profits.

Through the beneficial ownership reporting requirements, the SEC aims to help investors make informed decisions by requiring disclosure about accumulations of securities that may change or influence control of the issuer company. Rule 13d imposes strict liability on violators and, at the time of Musk's violation, would have required Musk to disclose within 10 calendar days of acquiring more than 5% beneficial ownership in Twitter. In October 2023, the SEC adopted amendments to this rule, including accelerated filing deadlines, and now requires 13D and certain 13G filings within five business days of crossing 5%. According to the SEC, the amendments modernize the reporting regime to keep up with technological evolution and protect investors by reducing information asymmetry in the fast-moving markets.

Musk's lawyers called the SEC lawsuit the culmination of a "multi-year campaign of harassment" against his client, further describing the case a "sham."

This action comes just a month after a Delaware Court of Chancery judge again ruled that Musk is not entitled to receive a $56 billion compensation package from Tesla, Inc. The Court of Chancery ruling is the latest in the ongoing dispute regarding the fairness and structure of Musk's pay package, which is performance-based with incentives triggered by ambitious company growth targets. The plaintiff argued that the package was excessive and not properly aligned with Tesla's performance or the interests of shareholders. Chancellor McCormick highlighted Musk's controlling shareholder position at Tesla as a potential conflict of interest and found that the board "failed to prove that those terms [of the pay package] were entirely fair."

This is the second time that Delaware courts have struck down the pay package. Although shareholders first approved the multi-billion-dollar option grant in 2018, in January 2024 the Delaware Court of Chancery ruled against the package in part because the judge reasoned the Tesla board was potentially beholden to Musk when it approved of the arrangement. Subsequent to this decision, Tesla again presented the pay package to shareholders who ratified Musk's options with an over 70% approval. Tesla then re-approached the Court and argued that the Court should recognize the shareholder ratification and reverse its prior decision. Writing the Court of Chancery opinion, Chancellor McCormick held that a company cannot ratify a conflicted controller transaction after a judicial decision to cure a conflict, noting that "were the court to condone the practice of allowing defeated parties to create new facts for the purpose of revising judgments, lawsuits would become interminable."

Not only did Chancellor McCormick again reject the pay package, she ordered Tesla to pay the plaintiff's attorneys $345 million in legal fees, specifying the fee could be paid in cash or Tesla stock.

Of note, the SEC complaint is based on the timeliness of Musk's eventual disclosure and not whether he was eligible to file the Schedule 13G he initially did, or if he should have filed from the beginning on Schedule 13D. However, the complaint highlights conversations Musk had with the Twitter board prior to filing his 13G where he expressed an interest in becoming a director. It remains to be seen whether Musk will appeal the Court of Chancery's decision or how Musk and his attorneys will respond to the SEC complaint and if so, whether these other facts will become an area of focus.

[1] As described below, the deadline is now five business days as a result of amendments adopted in October 2023.

[2] Musk subsequently amended the Schedule 13D, including on April 11, 2022 and April 14, 2022, the latter of which disclosed Musk's initial non-binding proposal to acquire all of the outstanding common stock of Twitter.