Securities Regulation Daily Wrap Up, TOP STORY—Musk will step aside as Tesla chairman as part of settlement with SEC, (Oct. 1, 2018)

Securities Regulation Daily Wrap Up

Click to open document in a browser

By John Filar Atwood

Elon Musk quickly settled the SEC's fraud charges by agreeing to several actions, including stepping down as chairman of Tesla. He also agreed to appoint two independent directors to the company's board, and he and Tesla will pay $40 million in penalties. Musk will be replaced by an independent chairman, but is eligible to be re-elected as chairman after three years.

In addition to the securities fraud charges from last week, the SEC added the charge against Tesla of failing to have required disclosure controls and procedures relating to Musk's tweets. Tesla agreed to settle the additional charge, the Commission noted in a news release. The company will establish a committee of independent directors, and will put in place more controls to oversee Musk's communications.

Clayton statement. SEC Chairman Jay Clayton, who supported the filing of the fraud charges, commended the speedy resolution of the matter, saying that it is in the best interest of Tesla shareholders and the markets as a whole. Clayton reminded companies and corporate insiders that when they make statements, they must act responsibly and try to ensure the statements are not false or misleading and do not omit information a reasonable investor would consider important in making an investment decision.

Clayton said that the SEC understands that in matters involving the misconduct of officers, directors and companies, the interests of shareholders are often intertwined with the interests of offending officials and the company. He noted, for example, that corporate fines often are financed with funds that could benefit shareholders, and that the skills of certain individuals may be important to the future success of a company.

Clayton reiterated that the interests of average investors are the foremost consideration for the Commission, but also emphasized that holding individuals accountable is an important means of deterrence. The Commission took these multiple interests into consideration when deciding on the terms of the Musk settlement, he said.

SEC's allegations. The SEC's charges stemmed from claims that Musk made in August 7 tweets that he could take Tesla private at $420 per share, and that funding for the transaction had been secured. The Commission alleged that Musk knew the potential transaction was uncertain, and that he had not discussed specific deal terms with any potential financing partners.

The complaint against Tesla noted that the company notified 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. However, the Commission alleged that Tesla had no disclosure controls or procedures in place to determine whether Musk's tweets contained information required to be disclosed in the company's SEC filings. In addition, the SEC claimed that Tesla did not have sufficient processes in place to ensure that Musk's tweets were accurate or complete.

Musk and Tesla settled without admitting or denying the allegations. The $40 million in penalties will be distributed to harmed investors under a court-approved process.

Companies: Tesla, Inc.

MainStory: TopStory FraudManipulation DirectorsOfficers MergersAcquisitions CorpGovNews GCNNews CorporateGovernance