

[Securities Regulation Daily Wrap Up, TOP STORY—S.D.N.Y.: Elon Musk spars with SEC over rogue tweets settlement, alleges staff leak, \(Feb. 22, 2022\)](#)

Securities Regulation Daily Wrap Up

[Click to open document in a browser](#)

By [Lene Powell, J.D.](#)

Elon Musk's attorneys argue the SEC is harassing Musk for criticizing the government. The SEC says it is just following the settlement compliance plan laid out by the court.

In an escalating war of words, the SEC and counsel for Elon Musk are locked in a scuffle over a settlement relating to problematic tweets by Musk about Tesla, Inc. Counsel for Musk alleges the SEC is "weaponizing the consent decree" by serially investigating Musk without court supervision, and accuses the SEC of leaking information about an investigation of Musk. They also argue the SEC has been too slow in distributing \$40 million to Tesla shareholders in a fair fund distribution. In response, the SEC denies it has improperly investigated Musk and says the distribution plan is nearing distribution ([SEC v. Musk](#), February 21, 2022).

Settlement tug-of-war. In August 2018, Musk landed in trouble with the SEC for tweeting about plans to take Tesla private and then later walking back the statements. The SEC [charged Musk](#) with knowingly making untrue statements in violation of the antifraud provisions of the Exchange Act.

The parties [settled for the first time](#) in October 2018. Musk agreed to Tesla governance changes designed to rein in his public communications. Musk and Tesla also agreed to pay \$20 million each. The SEC later brought contempt proceedings against Musk for allegedly violating the settlement's terms by again tweeting material information about Tesla without getting the tweets preapproved. The parties [settled again](#) in 2019, this time agreeing to a specific list of categories of written communication requiring preapproval by a designated in-house attorney.

Alleged leak by SEC. In a new dispute, Musk's counsel, Quinn Emanuel, has accused the SEC of leaking information about an investigation against Musk.

"Upon information and belief, after I filed the February 17, 2022 letter to this Court regarding the Commission's conduct, at least one member of the SEC staff responded by leaking certain information regarding its investigation," counsel wrote in a [letter to the court](#) on February 21.

Counsel for Musk said they have requested that SEC staff preserve their records and devices. Counsel further stated they have reported the matter to the SEC Office of Inspector General. Counsel is seeking "on-the-record assurance" that the Commission has not leaked investigative details and is not violating its rules and policies or the law.

Counsel says the SEC is "out to retaliate" against Musk for exercising his First Amendment rights by publicly criticizing the Commission and petitioning the court for relief.

Ongoing dispute. The new clash started February 17 with a [letter to the court](#) from Musk's counsel. Musk's counsel argued that the SEC has been harassing Musk and has "gone rogue" by investigating him without court supervision. According to Musk's counsel, the SEC seems to be targeting Musk because he is an "outspoken critic of the government." Musk's counsel implied—but did not state outright—that the SEC has issued subpoenas against Musk without court approval.

Counsel also argued that the SEC has moved too slowly on distributing the \$40 million to Tesla shareholders.

In a [response letter](#) on February 18, the SEC disputed that it has been overly aggressive in enforcing the settlement, noting that the court never ordered a monitoring process of the parties' interactions and in fact had

encouraged the parties to make good faith efforts to resolve any compliance issues before raising them to the court. The SEC denied that it has issued subpoenas in the current litigation. If Musk has any objections to the SEC's processes outside the current litigation, they should pursue those objections in the appropriate forum, the SEC said.

On the distribution fund, the SEC said it has met the court's schedule in filing status reports. Staff has been working with the distribution agent to develop a plan of allocation, which is nearing completion.

Counsel for Musk fired back with [another letter](#) on February 21 stating that the SEC has "failed Tesla shareholders" and tried to "waive away concerns" about failing to distribute funds to Tesla shareholders after 1,200 days. Counsel also contended that the SEC sent subpoenas to Musk and Tesla in November 2021 regarding compliance with the settlement.

This is Docket No. 1:18-cv-08865-AJN ([Musk Feb. 17](#); [SEC Feb. 18](#); [Musk Feb. 21](#)).

Attorneys: Cheryl L. Crumpton for the SEC. Alex Spiro (Quinn Emanuel Urquhart & Sullivan, LLP) for Elon Musk.

MainStory: TopStory DirectorsOfficers Enforcement FraudManipulation GCNNews

PublicCompanyReportingDisclosure CaliforniaNews TexasNews