

## Elon Musk gets off the ropes with SEC settlement, but Tesla still has a bruising fight ahead

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It looked like it was curtains for Elon Musk.

The Securities and Exchange Commission charged Tesla Inc.'s chief executive with fraud, and it seemed to some like an airtight case: Musk tweeted to his 22 million followers Aug. 7 that he had a deal to take the company private at a premium price, though no such deal existed.

But a swift settlement of the government's lawsuit — with Musk staying on as CEO as part of the agreement — has given the embattled entrepreneur another shot at fixing the ailing Tesla.

The company he'll continue to helm is beset with troubles and facing significant challenges, including penalties stemming from the legal settlement announced Saturday.

Musk and Palo Alto-based Tesla agreed to pay a total of \$40 million to settle the case, and he will give up his chairmanship for at least three years. The electric-car maker also is required to install an independent chairman and two new board members, though Musk will remain on the board, according to terms of the settlement.

Musk and Tesla will each pay \$20 million to settle the case; both reached the deal without admitting wrongdoing. The company declined to comment.



Elon Musk, under the SEC settlement, will be allowed to remain as CEO of Tesla but must relinquish his role as chairman for at least three years. (Chris Carlson / Associated Press)

The SEC charged Musk with fraud Thursday, alleging that his tweets about taking Tesla private — at \$420 a share — were “false and misleading.” As part of the lawsuit, the agency asked a federal court to remove him from the company's leadership and ban him from running a public company.

Several observers believe Musk and his company struck a good deal, given the circumstances.

“In three words, the SEC blinked,” said Lloyd Greif, CEO at Los Angeles investment banking firm Greif & Co.

“This is clearly a retreat; it's a victory for Tesla. The SEC had him with an open-and-shut case. But maybe they went too far with the original complaint and the draconian penalty they were seeking.”

Michelle Krebs, executive analyst at Autotrader, said that given the drastic punishment Musk could have faced, he and Tesla “got lucky.”

Although the case was settled quickly, it marked yet another ugly chapter in a difficult stretch for Tesla, which has contended with several issues, among them strange behavior by Musk.

In recent months, the billionaire inventor has smoked marijuana on a comedian's podcast livestreamed on YouTube, feuded with countless Twitter users and made derogatory comments about a diver involved with the rescue of boys trapped in a cave in Thailand, prompting a lawsuit from the man.

Musk, who founded rocket company SpaceX in 2002, is considered a visionary. He joined Tesla as a startup in 2004 and became its CEO in 2008, producing powerful, attractive vehicles that forced the auto industry to take electric cars seriously.

But his personal foibles come at a crucial time for Tesla: It faces significant cash shortage issues and problems surrounding the rollout of the Model 3 sedan.

Musk had told investors the company would be making 10,000 Model 3s a week by now, but it is turning out less than half that amount. Twitter, Facebook, Reddit and Tesla online forums are filled with customers complaining about poor service, slow deliveries and quality problems that range from poor paint jobs to dead batteries to software glitches that won't let them start their cars.

Tesla is due to release third-quarter production and sales figures early next week. Over the weekend, the company was working hard to achieve record results at the end of the quarter, putting executives to work at delivery centers and recruiting Tesla owners and fans of the company to volunteer to help train new owners in how the cars work. Eventually, the company will need to sustain steady production and deliveries without relying on end-of-quarter surges in production, Tesla critics say.

Meanwhile, the company has been roiled by high executive turnover. Dozens of executives have left Tesla in sales, distribution, engineering, supplier relations, manufacturing, human resources, reliability and testing, business development and other departments. A new chief accounting

officer, hired in August after a long career at disc-drive maker Seagate, quit after less than a month on the job.

The most serious issue the company faces is a cash shortage. Tesla, which had \$2.2 billion in cash on hand at the end of the second quarter, will need billions of dollars of outside capital over the next year just to keep the Model 3 program running and pay down debt, never mind building new facilities for a planned crossover vehicle and a semi-truck.

In November, \$230 million in convertible debt comes due. Another \$920 million must be repaid in March — unless Tesla stock hits \$359.87 after Dec. 1.

The settlement with the SEC could make it easier for the company to drum up money. Bob Lutz, former vice chairman of General Motors, said the deal clears the path for Musk to secure new financing for Tesla.

"The only reason he was forced to settle is that he needs to raise cash and can't do it while under SEC investigation," said Lutz, an outspoken critic of Musk.

Though the SEC settlement brushes away some clouds for potential investors, the company remains under a Department of Justice criminal probe.

"This leaves the company where it was before. Awful performance, dishonest reporting and financial statements, other investigations, and needing money," said Rob Majteles of Treehouse Capital, whose short positions in Tesla stock are bets the price will eventually plummet. "How does it all net out? Crazy swings as the numbers play out."

Tesla saw its stock sink 14% Friday to \$264.77 after the SEC filed its lawsuit, wiping out more than \$7 billion in shareholder value and putting pressure on the company's board to settle its dispute with the government. It had been widely reported that Musk and Tesla had rejected a settlement proposed by the SEC in the days before the lawsuit was filed. After the

government filed its case, Musk issued a statement that forcefully denied the allegations.

"This unjustified action by the SEC leaves me deeply saddened and disappointed," Musk said in a statement Thursday. "I have always taken action in the best interests of truth, transparency and investors. Integrity is the most important value in my life, and the facts will show I never compromised this in any way."

Musk and Tesla may have not been the only parties keen on making a deal. Greif and others believe that the SEC, which had sought in its lawsuit Musk's removal from the company, likely felt the need to come to a settlement.

"The SEC is a government organization subject to political pressure, and you can bet they received a lot of pressure since announcing the penalty," Greif said, adding that if Musk had been kicked out "it would have been the death knell for the company."

Jay Dubow, an attorney at the Pepper Hamilton law firm and expert in securities law, agreed.

"Part of the calculation, I'm sure, is that if he were removed as CEO, the share price would have been negatively impacted and the shareholders would have been negatively impacted," Dubow said.

Given Musk's vast wealth — Forbes estimates his net worth at \$19.7 billion — the \$20-million fine he will pay is not overly significant. However, the entire matter sends a message to the entrepreneur and his company.

"Musk is a grown-up in some ways and in some ways he's a child," Greif said. "You can view him as being on probation."