The New York Times https://www.nytimes.com/2018/08/13/business/dealbook/tesla-elon-musk-saudi-arabia.html

Tesla Board Surprised by Elon Musk's Tweet on Taking Carmaker Private

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An abrupt tweet last week by Elon Musk about the prospect of taking Tesla private was dashed off with little forethought, and had not been cleared ahead of time with the company's board, two people familiar with the chain of events said Monday.

The account raised new questions about the cryptic Twitter post last week in which Mr. Musk, the mercurial co-founder and chief executive of the electric-car maker, said he had "funding secured" for a buyout of the $60 billion company.

The tweet was a highly unusual way of announcing a key strategy change at a public company. It prompted the Securities and Exchange Commission to contact Tesla to inquire about the accuracy of Mr. Musk's tweets and the reason the disclosure had not been made in a regulatory filing, according to a person briefed on the inquiry, who was not authorized to speak publicly on behalf of the agency.

On Monday, Mr. Musk issued a blog post that appeared to be aimed at quelling the uproar he had created with his initial comments, which caused a dramatic jump in Tesla shares and a halt in trading. In the post, he declared that conversations with a Saudi sovereign wealth fund had left him "with no question" that such a deal could be carried out.

Since early 2017, the fund "has approached me multiple times about taking Tesla private," Mr. Musk wrote. Two weeks ago, he added, the fund's managing director "strongly expressed his support for funding a going-private transaction."

"I understood from him that no other decision makers were needed and that they were eager to proceed," he added.

But three people familiar with the workings of the Saudi fund cast doubt on his account. They said the fund had taken none of the steps that such an ambitious transaction would entail, like preparing a term sheet or hiring a financial adviser to work on the deal.

And even if the fund were ready to move forward with such an agreement, it would invite review by the Committee on Foreign Investment in the United States, the government body that reviews the national-security implications of such transactions.

A spokesman for the Saudi investment fund declined to comment.

In his blog post Monday, Mr. Musk portrayed his Twitter musings last week as part of a deliberate effort to be "completely forthcoming" with shareholders about his desire to take the company private.

But the episode appears to have been much more extemporaneous.

The tweet did not disclose the sum he had supposedly secured, its source, or any terms of the plan — the kind of transaction that would typically be detailed in documents of 200 pages or more.

Two people familiar with the chain of events said that in a conversation with an informal adviser about the mess he had gotten himself into, Mr. Musk said he had taken to Twitter impulsively. He said he had done so because he was not the kind of person who could hold things in, and was angry at the company's critics.

A person with direct knowledge of the Tesla board's thinking said some members of the board had been totally blindsided by Mr. Musk's decision to air his plan on Twitter.

On Monday evening, Mr. Musk took to Twitter again. Signaling that he remained serious about pursuing the potential buyout, he cited two financial firms and two law firms that he said he was "excited to work with" on the proposal. He named Silver Lake Partners and Goldman Sachs as financial advisers, and Wachtell, Lipton, Rosen & Katz and Munger, Tolles & Olson as legal advisers.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Case Number: 3:18-cv-04865-EMC
PLTF / DEFT Exhibit No. 27
Date Admitted:
By:
Angella Meuleman, Deputy Clerk

Exhibit 27

TE 27-1

The pursuit of a buyout has come at a crucial time for the company, as it struggles to turn out its first mass-market automobile, the Model 3. Tesla has taken on a mounting debt load and has yet to turn an annual profit. And while Mr. Musk has always been synonymous with the brand, he has never been under greater scrutiny.

In the past few months, he has mocked industry analysts for asking "bonehead" questions, pursued online tirades against investors betting against the company's stock, clashed with a government agency investigating a fatal Tesla crash, and accused a disgruntled employee of sabotage.

Then he suddenly announced the idea of taking the company private.

In his blog post on Monday, Mr. Musk said he had notified the Tesla board on Aug. 2, five days before sending out the tweets, that "in my personal capacity, I wanted to take Tesla private at $420 a per share."

He said that after the board's outside directors discussed the matter — without the participation of Mr. Musk or his brother, Kimbal Musk, also a board member — the full board agreed to have Mr. Musk discuss the matter with some of the company's largest shareholders.

Since then, Mr. Musk said, he had stayed in contact with representatives of the Saudi fund, which recently bought a stake of almost 5 percent in Tesla, and had been in touch with other investors.

A Tesla spokesman declined to comment beyond the blog post.

Tesla shares declined on Monday morning, then recovered in the afternoon to end the day 0.3 percent higher at $356.41. It was a far cry from the volatility of last Tuesday, when trading was halted in the confusion that followed Mr. Musk's initial tweet, eventually closing 11 percent higher on the day.

The Nasdaq exchange, like the rest of Wall Street, seemed to have been stunned by the news. Companies that list on Nasdaq are required to inform the exchange's market surveillance group at least 10 minutes before the release of news that could have a major effect on shares.

After Mr. Musk's tweet, however, frenzied trading went on for more than an hour before it was halted pending a fuller announcement from Tesla, which came a half-hour before the market closed.

"As an officer of a public company that was a clearly a market-moving event and he knew or should have known that," said Laura Unger, a former S.E.C. commissioner, said of Mr. Musk's initial tweet. "He was at least reckless whether he meant to drive up the price or not. What it does point out is that executives and people in power should be thoughtful about what they tweet. The stakes are high."

Aside from the scrutiny of market regulators, the frantic Tesla trading after the "funding secured" tweet has also exposed Mr. Musk to shareholder lawsuits. At least two law firms initiated potential class-action lawsuits late last week, saying the Tesla chief had deliberately acted to move the company's share price without actually having funding in place. Such suits rarely go to trial; more often they are settled.

John Reed Stark, a former longtime lawyer at the S.E.C. who specialized in investigating internet fraud cases, said that commenting online about the prospects of taking the company private was inadvisable at best. But he said that a case of market manipulation would come down to Mr. Musk's intent.

"These are very difficult cases to prove," said Mr. Stark, who runs a cybersecurity consulting business.

As it scrambles to ramp up production of the Model 3, Tesla continues to burn cash. Looming in the months ahead are two key bond payments — one in November for $230 million and another early next year for $920 million that analysts believe will be harder for Tesla to make.

The recent rise in Tesla's stock could make a difference; the company can pay off the second convertible bond with stock rather than cash if its share price is above $360.

Amid all the tension, Tesla has become a target of short sellers — investors who are betting the company's stock will fall. Mr. Musk has openly feuded with short sellers on Twitter, taunting them when Tesla shares rise and accusing them of spreading negative news to hurt the company.

TE 27-2

Shares of Tesla have one of the highest short-interest ratios in the United States stock market — that is, the most investor money betting against the stock, as a percentage of shares available for trading. So when shares rise, as they did after Mr. Musk's tweet last week, it can cost the skeptics dearly.

Among those who have been betting big against Tesla is David Einhorn, founder of the hedge fund Greenlight Capital. A letter from the fund to investors at the end of July said that Mr. Musk "appears erratic and desperate," recapitulating some of his provocative interactions with analysts, regulators and Twitter followers. It also lamented that "this bravado" was a hit in the market, sending Tesla's shares up 29 percent in the second quarter and resulting in the fund's second biggest loss.

One benefit of taking Tesla private, Mr. Musk has said, is that it would eliminate the influence of short sellers, as well as the demands of reporting quarterly earnings. Doing so, he said in the blog post, would "enable Tesla to operate at its best."

TE 27-3