

Musk business lies and U-turn on Tesla deal will intensify his legal, regulatory woes

 By Michelle Price

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 FILE PHOTO: Tesla Inc. Chief Executive Officer Elon Musk pauses during a news conference in Tokyo September 8, 2014.
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WASHINGTON (Reuters) - Tesla Inc Chief Executive Elon Musk's decision to abruptly abandon a plan to take his electric carmaker private will not resolve his mounting regulatory and legal woes, and may even make them worse, some securities lawyers said.

Explaining his reversal in a late-night blog post on Friday, the billionaire CEO said that taking the company private “would be even more time-consuming and distracting than initially anticipated,” and that “most of Tesla’s existing shareholders believe we are better off as a public company.”

It was on Aug. 7 that Musk first surprised investors with his plan by tweeting that he had “funding secured” for a go-private deal, which would have had a value of \$72 billion. In a separate tweet, he wrote: “Investor support is confirmed.” [L2N1VG01J]

Musk and Tesla are facing investor lawsuits and a U.S. Securities and Exchange Commission investigation into the truthfulness of the CEO'S Aug. 7 tweets, according to an Aug. 8 report by the Wall Street Journal.

The SEC declined to confirm that report to Reuters. A Tesla spokesman declined to comment.

"The SEC will continue its investigation until it's satisfied that it is on top of the facts," said Stephen Crimmins, an attorney with Murphy & McGonigle who spent 14 years at the SEC, where he prosecuted hundreds of securities cases.

"What happened on Friday will be of interest to the SEC because it will allow them to probe whether Musk's pulling back from the go-private somehow indicates that he did not have a reasonable basis for his statement. They will be asking questions of him and others involved in the decision as to why he reversed course."

Musk has stuck to his original statement that he believed a deal was possible, and one person familiar with the discussions told Reuters that Musk was serious about taking the carmaker private.

But acting in good faith may not be enough to help Musk escape the regulator's gaze.

U.S. securities law requires public company executives to have a "reasonable basis" on which to make representations to the investing public, and that would likely be the focus of an SEC probe, said three securities lawyers.

It remains unclear what Musk meant by "funding secured." In an Aug. 13 statement, Musk said that he left a July 31 meeting with the managing director of Saudi Arabia's sovereign wealth fund "with no question that a deal ... could be closed."

The Saudi fund had earlier acquired a just-below 5 percent stake in Tesla on the open market. But the fund has made no comment on whether it had promised to back a much larger Tesla go-private deal.

'FUNDING SECURED'

Musk said on Friday he believed there was plenty of potential funding to take the company private, but he did not provide any further details to bolster his "funding secured" assertion.

Teresa Goody, CEO of law firm Goody Counsel and a former SEC attorney, said Musk's statement on Friday appeared to undermine his Aug. 7 tweet that investor support was confirmed.

She also raised concerns about a second comment Musk made on Friday, where he said it had become apparent that compliance restrictions would prevent many of Tesla's institutional shareholders from holding private Tesla equity.

Both statements are likely to raise further questions among SEC officials as to whether Musk had performed sufficient due diligence to have had a reasonable basis for his Aug. 7 tweets, she said.

Another statement in the blog that could catch the eye of SEC officials is Musk's reference to his discussion with Tesla's board on Thursday, during which both parties decided not to pursue the deal, said M. Ridgway Barker, a partner and chair of the corporate finance practice at law firm Withersworldwide.

Such discussions are unlikely to be subject to legal privilege and the SEC could subpoena minutes of the meeting, he said.

"If the board discussion included that the deal is not financeable, or prohibitively expensive, that is going to cast further doubt over Musk's claims," he said.

(Reporting by Michelle Price; Additional reporting by Greg Roumeliotis; Editing by Ross Colvin and Peter Cooney)