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ANALYSIS

Relevant for: Science & Technology | Topic: IT, Internet and Communications

Elon Musk's Twitter posts have caught the attention of regulators | Photo Credit: Reuters

Elon Musk's new pet is Twitter. The world's richest man has eclipsed the social media platform in the past few weeks. He is one of the platform's most active users, and has extensively used it to promote his ventures, including Tesla and SpaceX. On the microblogging site, he often shares his views on cryptocurrencies, content censorship and free speech.

The billionaire has used the platform to criticise some of Twitter's own policies around free speech, edit button and opaque algorithm. He called for several changes at company, and his criticisms reached a watershed moment last week when he disclosed that he had taken a massive stake in the company.

Tesla's CEO became the largest shareholder of Twitter with 9.2% stake, more than the number of shares held by co-founder Jack Dorsey. But, in an exchange filing, it was noted that Musk would not attempt a takeover of the company.

Investors were happy as shares of the company soared 27% on the New York Stock Exchange following the exchange filing. Both Dorsey, and Twitter CEO Parag Agrawal, were so excited about Musk's investment in the company that the CEO offered him a seat at the board.

The billionaire, too, was excited about earning a seat at the board. Just a day before his appointment, he posted a screen grab image of himself smoking a cigar. The picture was titled: "Twitter's next board meeting is gonna be lit."

Regulatory whip

But the Securities Exchange Commission (SEC) was not joining the party. That's because Musk's paperwork on the Twitter share purchase came in late. The exchange filing said March 14, 2022 as the date of the share purchase event.

According to U.S. securities law, an investor buying 5% stake in a company must disclose the purchase within 10 days of the event. But, in Musk's case, the 10-day window closed on March 24.

In addition, Musk filed incorrect papers. He used a disclosure form that investors file when they seek to passively hold shares of a company. But the electric vehicle pioneer was clearly interested in playing an active role.

On Tuesday, former Twitter shareholders sued the billionaire for failing to disclose his share purchase within the deadline. The group is seeking to make their case a class-action suit, representing Twitter shareholders who sold shares between March 24 and April 4. They claim Musk's delayed disclosure led them to sell their shares at "artificially deflated" price.

The SEC may soon mount a case against Musk for not complying with rules and procedures. And this won't be the first time Musk provoked the ire of the regulator. His 2018 tweet on "considering to take Tesla private" led to a civil lawsuit.

The regulator sought the court to ban Musk from serving as a director at any public company, including Tesla. The face off ended after Musk paid $20 million in penalties, agreed to step down as chairman for at least three years, and accepted to get his written communications, including tweets, pre-approved by the company’s lawyer.

The board seat volte-face

Three years after the agreement, Musk once again crossed the line. This time, too, it was because of a tweet on his business plan. In November 2021, he asked his followers whether he should sell 10% of his Tesla stake.

The SEC said that it was investigating Musk’s tweet, and subpoenaed the company to determine whether the Musk and Tesla were complying with the 2018 agreement. Musk’s attorney contended that the regulator was using the deal to trample on Tesla CEO’s First Amendment rights, imposing restraints on his speech.

The regulator revealed details of the probe on March 22 in response to a motion filed by Musk’s attorney asking a Manhattan federal judge to scrap the 2018 agreement, including pre-approval of Musk’s tweets by a lawyer.

And while the drama around the November 2021 tweet unfolded, Musk gradually built his stake at Twitter. On January 31 he bought a little over half million shares at $36.83 apiece. And since then, on nearly every single trading day, through April 1, he bought millions more of shares of the company, according to a report by *Bloomberg*.

The delayed disclosure of his stake build-up once again outraged the regulator. A possible blowback from the SEC might have made Musk to turn down the board seat offer.

Musk was supposed to take up the position on April 9, but instead “Elon shared that same morning that he will no longer be joining the board,” Twitter CEO Parag Agrawal said in statement. “I believe this is for the best.” Musk later tweeted a single “hand on mouth” emoji, before deleting the tweet.

More than a board seat

Musk does not need a board seat to pressure Twitter Inc. His Twitter handle will do that job. A dozen tweets a day to his 81 million followers is enough to influence the microblogging site’s board of directors. Plus, the world’s richest man has 9.2% stake in the San Francisco-based company to make his tweets matter.

That’s why after turning down the board seat, Musk shared some of his ideas on what the company can do to boost revenue and user engagement. He suggested the platform to remove crypto bots, add an edit button and provide more perks for paid users.

His tweets reveal that the world’s richest man will add more value to Twitter as its highly influential user from the outside than as an insider sitting in the board room. But the story doesn’t end there.

In a twist, Musk on Thursday offered to buy Twitter for $43.4 billion. He would pay $54.20 apiece in cash to take the microblogging site and make it a private company.

“My offer is my best and final offer and if it is not accepted, I would need to reconsider my position as a shareholder,” Musk said in an exchange filing.

Now the ball is in Twitter’s court, and the regulator is watching.

Our code of editorial values

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