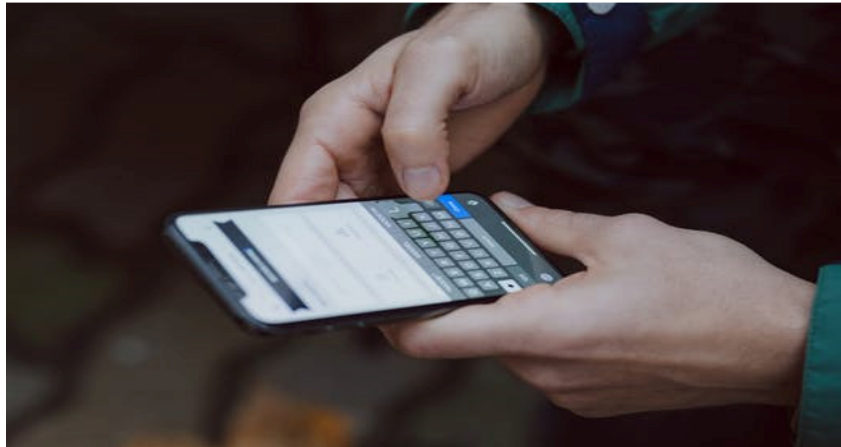


## Elon Musk Settles SEC Fraud Charges



The Securities and Exchange Commission announced on September 29, 2018 that Elon Musk, CEO and Chairman of Tesla Inc., has agreed to settle the securities fraud charge brought by the SEC against him. The SEC also charged Tesla with failing to have required disclosure controls and procedures relating to Musk's tweets, a charge that Tesla has agreed to settle. The settlements, which are subject to court approval, will result in comprehensive corporate governance and other reforms at Tesla; these include Musk's removal as Chairman of the Tesla board—and the payment by Musk and Tesla of financial penalties.

According to the SEC's complaint against him, Musk tweeted on August 7, 2018 as follows:

*"Am considering taking Tesla private at \$420. Funding secured."*

In addition to the above "funding secured" tweet, Musk tweeted to his over 22 million Tweeter followers in the hours that followed:

*"My hope is \*all\* current investors remain with Tesla even if we're private.  
Would create special purpose fund enabling anyone to stay with Tesla."*

*"Shareholders could either to [sic] sell at 420 or hold shares & go private."*

*"Investor support is confirmed. Only reason why this is not certain is that  
it's contingent on a shareholder vote."*

Essentially, Musk stated that he could take Tesla private at \$420 per share — a substantial premium to its trading price at the time, and that funding for the transaction had been secured. The SEC's complaint alleged that, in truth, Musk knew that the potential transaction was uncertain and subject to numerous contingencies. Musk had not discussed specific deal terms, including price, with any potential financing partners, and his statements about the possible transaction lacked an adequate basis in fact. According to the SEC's complaint, Musk's misleading tweets caused Tesla's stock price on NASDAQ to jump by over six percent on August 7, and led to significant market disruption.

According to the SEC's complaint against Tesla, despite filing a Form 8-K on November 5, 2013 that it intended to use Musk's Twitter account as a means of announcing material information about Tesla and encouraging investors to review Musk's tweets, Tesla had no disclosure controls or procedures in place to determine whether Musk's tweets contained information required to be disclosed in Tesla's SEC filings. Furthermore, it did not have sufficient processes in place to that Musk's tweets were accurate or complete.

Musk and Tesla have agreed to settle the charges against them without admitting or denying the SEC's allegations. Among other relief, the settlements require that:

- Musk will step down as Tesla's Chairman and be replaced by an independent Chairman. Musk will be ineligible to be re-elected Chairman for three years;
- Tesla will appoint a total of two new independent directors to its board;
- Tesla will establish a new committee of independent directors and put in place additional controls and procedures to oversee Musk's communications;
- Musk and Tesla will each pay a separate \$20 million penalty. The \$40 million in penalties will be distributed to harmed investors under a court-approved process.

"The total package of remedies and relief announced today are specifically designed to address the misconduct at issue by strengthening Tesla's corporate governance and oversight in order to protect investors," said Stephanie Avakian, Co-Director of the SEC's Enforcement Division.

"As a result of the settlement, Elon Musk will no longer be Chairman of Tesla, Tesla's board will adopt important reforms—including an obligation to oversee Musk's communications with investors—and both will pay financial penalties," added Steven Peikin, Co-Director of the SEC's Enforcement Division. "The resolution is intended to prevent further market disruption and harm to Tesla's shareholders."

**This document provides a general summary and is for information purposes only. It is not intended to be comprehensive nor does it constitute legal advice. If you are interested in obtaining further information please contact our office at:**

Schuman & Co. Law Offices  
Beit Bynet, 8 Hamarpe Street, P.O.Box 45392  
Har Hotzvim, Jerusalem 97774 Israel  
Tel: +972-2-581-3760, Fax: +972-2-581-5432  
Shalev@schumanlaw.co.il  
<http://www.schumanlaw.co.il/>