Elon Musk reaches settlement in SEC tweet battle

Enlarge / Elon Musk exits federal court on April 4, 2019 in New York City.
Drew Angerer/Getty Images

reader comments

18 with 15 posters participating

Share this story

Elon Musk has reached a deal with the Securities and Exchange Commission, the two parties said in a legal filing on Friday. The new agreement provides much more detailed guidance about when tweets and other public statements by Musk must be approved by Tesla lawyers.

Musk's original deal with the SEC was announced last September. It required Musk to obtain pre-approval for tweets that "contain or could contain" information that's material—legal jargon for information that's significant to shareholders. While the SEC expected Musk to begin regularly clearing tweets with lawyers, Musk interpreted this language as giving him significant discretion to decide for himself which tweets contained material information. As a result, he didn't seek legal review for any tweets in the first few months the agreement was in effect.

In February, Musk tweeted that Tesla "will make around 500k in 2019." Hours later, he followed up with a clarifying tweet, stating that he "meant to say annualized production rate at end of 2019 probably around 500k." Musk didn't get this tweet

cleared by Tesla lawyers. The SEC viewed that as a violation of the agreement and asked Judge Nathan to hold Musk in contempt.

But rather than immediately punishing Musk, Nathan earlier this month ordered the parties to go back to the negotiating table. Now, Musk and the SEC have submitted a revision of last September's settlement that is a lot more specific about which statements require review by Tesla's lawyers.

Under the new rules, Musk must get a Tesla securities lawyer's sign off on tweets (and other communications) regarding Tesla's finances, its production and delivery numbers, new lines of business, sales projections, proposed mergers, fundraising efforts, regulatory decisions, and several other types of information.

The SEC says that if the judge signs off on these new terms, the SEC will drop its request for Musk to be held in contempt. In other words, the SEC seems to be satisfied with getting Musk to start seeking legal review for his tweets the way the agency thought Musk had been doing since last time. The SEC is not seeking to punish Musk further for his February tweet.

But it's an open question whether Musk will be more cooperative now than he was in the wake of the original deal.

The new terms require Musk to seek approval for production and delivery numbers—or projections about future numbers—unless those numbers were "previously published via pre-approved written communications." Yet Musk had argued that when he predicted the production of 500k vehicles, he didn't need to get legal review because he was merely summarizing guidance previously published by the company (the SEC disagreed, arguing that the 500k number was inconsistent with Tesla's guidance). So it's not hard to imagine Musk continuing to tweet out production estimates without legal review, arguing that they're close enough to Tesla's official guidance that he

doesn’t need a lawyer’s approval.

https://arstechnica.com/?p=1496901