

# **New Tesla chair must rein in CEO Musk at key moment**

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In this Dec. 14, 2016, file photo, Tesla CEO Elon Musk listens as President-elect Donald Trump speaks during a meeting with technology industry leaders at Trump Tower in New York. Electric carmaker Tesla must find a new chair for its board of directors under a settlement announced Saturday, Sept. 29, 2018, with the Securities and Exchange Commission. Whoever takes on the job will face the formidable task of overseeing Musk, a charismatic, visionary executive with an impulsive streak. (AP Photo/Evan Vucci, File)

It won't be an easy job.

Whoever becomes the new chairman of Tesla Motors will face the formidable task of reining in Elon Musk, the charismatic, visionary chief executive with an impulsive streak, while also helping Musk achieve his dream of turning Tesla into a profitable, mass-market producer of environmentally-friendly electric cars.

Musk is giving up the chairman's role under a settlement announced Saturday with the Securities and Exchange Commission. Besides a new chairman, Tesla was also ordered to appoint two new, independent members to its board. A more assertive board could provide the kind of tighter oversight that many legal experts, and Tesla investors, say is overdue for a company of Tesla's market value. Shares in the company surged 15 percent in premarket trading.

The settlement stemmed from a lawsuit the SEC filed charging Musk with misleading investors in August with a tweet that said he had "funding secured" for taking the company private.

Yet a more forceful board, coupled with a domineering CEO like Musk, could create conflicts at a risky time for the company. Visionary CEOs such as Apple's Steve Jobs and Twitter's Jack Dorsey have been forced out by strong boards of directors, though both eventually returned to their companies.

Even with the settlement, Tesla faces a daunting array of challenges.

The Justice Department has opened its own investigation into Musk's Aug. 7 tweet, in which he said he would take the company private at \$420 a share. The SEC's lawsuit charged that the tweet, which caused Tesla's shares to jump, was misleading because he did not actually have the funding lined up for such a move.

Tesla is also under heavy pressure to turn a profit because it is burning through \$1 billion in cash every three months and, as of the end of June, had just \$2.2 billion in the bank.

Musk has said the company needs to produce 7,000 cars a week to make money, a target he aimed to reach in the July-September quarter. The company is likely to report production numbers this week and financial results from that quarter in early November.

Another concern: About \$1.3 billion in Tesla debt is due to be repaid by March, including \$230 million in November.

Some investors might want more than a new chairman. Tesla has no chief operating officer, a critical No. 2 executive in most companies. That's a stark contrast to other startups, such as Facebook, where Mark Zuckerberg hired Sheryl Sandberg as a highly influential COO.

In the lawsuit filed Thursday by the SEC, the agency said it was seeking to remove Musk from Tesla management altogether. Many investors have argued that keeping Musk as CEO is critical at such a time.

"I do not doubt the value of Musk to Tesla," John Coffee, a Columbia University law professor and corporate governance expert, said.

"Without him, they are just a struggling start up that is burning cash at a hopeless rate and is facing a debt refunding crisis in the near future.

"Musk is an iconic entrepreneur but he needs adult supervision," Coffee added.

That's where the new board members come in. The current board, which includes Musk's brother, Kimbal Musk, is widely seen as subservient to Musk. They have publicly expressed support for many recent moves, such as his rejection last week of an early SEC settlement offer.

"The board is truly the alpha chapter of the Elon Musk fan club," said Erik Gordon, a professor at the University of Michigan's Ross School of Business.

Teresa Goody, a former SEC attorney and founder of The Goody Group, a consulting firm, said that many startups begin with a powerful CEO who typically puts "friendlies" on the board.

As a company grows and becomes more sophisticated, Goody said, more independent directors are typically brought on board to provide better oversight.

"That's happening a little later in the life cycle of the company in the case of Tesla," she said.

Still, Elon Musk is different than many CEOs because he owns roughly 20 percent of the company's stock. That gives him more influence.

"In a typical case, the CEO is a high-priced employee" of the board, Gordon said. "Musk will still be more powerful than the board chair."

There will be other constraints on Musk's behavior: As part of the SEC settlement, his tweets and other comments will have to be vetted by the company before they can be released to the public.

"This humiliation—that Elon can't go outside unless he's on a leash—that will bother him the most," Gordon said. He called it an "extraordinary measure."

Gordon thinks the SEC should have gone further and sought to add as many as four new board members and remove some old ones.

Still, Gordon said, "I think this experience has shown him that however

smart he is, or however powerful he thinks he is, the government is also powerful too."

Musk may want to keep a close eye on the new chairman, however. Musk himself was the chair of the board, after investing in the company, before firing the chief executive and taking over as CEO.

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