

Litigation on Musk's Tweets to Move Forward

"The United States District Court for the Northern District of California recently found that 10b-5 litigation regarding Elon Musk's tweets could move forward after reviewing a motion to dismiss in *In Re Tesla Inc. Securities Litigation*," discusses Steve Quinlivan in Dodd-Frank's *Litigation blog*.

"Mr. Musk famously tweeted 'Am considering taking Tesla private at \$420. Funding secured.' Mr. Musk later responded to comments related to his tweet and also posted new tweets on the subject. Tesla's Senior Director of Investor Relations received three e-mails inquiring about Mr. Musk's tweets. One response given was 'I can only say that the first Tweet clearly stated that 'financing is secured.' Yes, there is a firm offer.'"

"The Court rejected the defendants' argument that the tweet was not false and misleading. Among other things, the Court found even if the entire tweet is deemed an opinion about the future funding, that would not insulate the tweet from scrutiny; a statement of opinion can be deemed misleading if it conveys facts, and this is especially so when the opinion contains highly specific facts—e.g., here, the specific price of \$420. Because Mr. Musk, the CEO of Tesla, included the highly-specific price of \$420 at which shares would be bought for the going-private transaction, and because his tweet followed with "funding secured," a reasonable investor would have interpreted it as something more than a speculative amorphous opinion about future possibilities. Instead, it can be read as implying a more concrete state of affairs."

Read the article.