

# SEC Charges Elon Musk for Failing to Timely Disclose Beneficial Ownership of Twitter

January 16, 2025

On January 14, 2025, the U.S. Securities and Exchange Commission (the “SEC”) filed a complaint (the “Complaint”) against Elon Musk for failing to timely file with the SEC a beneficial ownership report disclosing his acquisition of more than 5% of the outstanding shares of common stock of Twitter, Inc. (“Twitter”). Specifically, the Complaint alleges that Mr. Musk violated Section 13(d)(1) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rule 13d-1 promulgated thereunder, when he failed to file a beneficial ownership report by March 24, 2022, 10 days after Mr. Musk had acquired over 5% of the outstanding shares of common stock of Twitter. The action against Mr. Musk highlights the importance of timely compliance with the beneficial ownership reporting rules.<sup>1</sup>

**Background.** According to the Complaint, from the end of January through February 2022, Mr. Musk purchased large blocks of Twitter common stock in the open market. By the end of February, Mr. Musk’s beneficial ownership of Twitter common stock was just under 5%.

On March 14, 2022, Mr. Musk purchased additional shares of Twitter common stock, such that his ownership crossed the 5% threshold. Between March 14 and April 1, 2022, Mr. Musk purchased additional shares of Twitter common stock, and as of the close of trading on April 1, 2022, Mr. Musk beneficially owned over 9% of Twitter’s outstanding common stock.

On April 4, 2022, Mr. Musk filed a Schedule 13G report with the SEC, publicly disclosing for the first time his beneficial ownership in Twitter. As of the close of trading on April 4, 2022, Twitter’s stock price had risen more than 27%. On April 5, 2022, Mr. Musk filed a Schedule 13D report with the SEC publicly disclosing, among other things, that he had accepted a seat on Twitter’s board of directors.

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<sup>1</sup> To read more on the SEC’s recent focus on Section 13 compliance, please see our Debevoise Updates [here](#) and [here](#).

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Later in April 2022, Mr. Musk would go on to sign a merger agreement to acquire Twitter in a take-private transaction, which was completed in October 2022.

**Analysis.** During the relevant time period, under Section 13(d) of the Exchange Act, a person (or group) who acquired beneficial ownership of more than 5% of a registered class of equity securities was required to file a Schedule 13D within 10 calendar days after the acquisition.<sup>2</sup> If, however, such person (or group) beneficially owned less than 20% of the class of equity securities and certifies that it acquired such securities without any purpose or effect of changing or influencing control of the issuer, Rule 13d-1(c) permitted such person (or group) to file a Schedule 13G in lieu of a Schedule 13D, within 10 calendar days of crossing the 5% beneficial ownership threshold. While both Schedule 13D and Schedule 13G disclose a person's beneficial ownership of a class of equity securities, Schedule 13D requires significantly more information than a Schedule 13G, including the filing person's investment intent.

On March 14, 2022, Mr. Musk purchased additional shares of Twitter common stock, such that his beneficial ownership of Twitter's outstanding common stock exceeded 5%. As a result, Mr. Musk was required to file a Schedule 13D (or a Schedule 13G, if eligible) by March 24, 2022. However, only on April 4, 2022, did Mr. Musk file a Schedule 13G with the SEC, 11 days after the March 24, 2022 deadline.

According to the Complaint, Mr. Musk purchased an additional \$500 million worth of shares of Twitter common stock, without disclosing his beneficial ownership, during the period from March 25 to April 1, 2022. On the date on which Mr. Musk filed a Schedule 13G with the SEC, Twitter's stock price rose more than 27%.

The Complaint alleges that because of Mr. Musk's failure to publicly disclose his beneficial ownership of Twitter's outstanding common stock by March 24, 2022, Mr. Musk paid at least \$150 million less for the shares of Twitter common stock he purchased between March 25 and April 1, 2022 than he would have had he made a timely beneficial ownership report filing. The Complaint further alleges that Mr. Musk's failure to make a timely filing resulted in substantial economic harm to investors selling Twitter common stock during that period because they sold their shares at artificially low prices, as Mr. Musk's ownership had not yet been priced into the market.

As a result of Mr. Musk's failure to file a Schedule 13D or Schedule 13G by March 24, 2022, the Complaint alleges that Mr. Musk violated Section 13(d)(1) of the Exchange

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<sup>2</sup> In 2023, the SEC adopted amendments to Rule 13d-1 to, among other things, shorten the 10-calendar day filing requirement for Schedule 13D and, for certain types of investors, Schedule 13G to five business days. These amendments went into effect in 2024.

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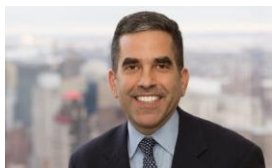
Act and Rule 13d-1 promulgated thereunder. The Complaint seeks permanent injunctive relief, disgorgement of ill-gotten gains plus prejudgment interest, and civil penalties.

**Takeaways.** The Complaint underscores the importance of compliance with SEC beneficial ownership reporting rules, not only by institutional shareholders and investment managers, but also by individual investors. In particular, the Complaint identifies the potential economic harm to public investors that can arise due to the information deficiencies caused by untimely or missed beneficial ownership report filings.

The action against Mr. Musk comes after he rejected a settlement offer from the SEC in December 2024. It is one of the last enforcement actions under the SEC's current chair, Gary Gensler, before he steps down on January 20, 2025.

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Please do not hesitate to contact us with any questions.



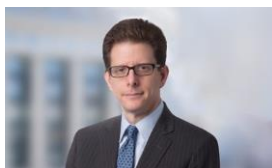
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