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Elon Musk Settled with the S.E.C., but Tesla's Troubles Aren't Over
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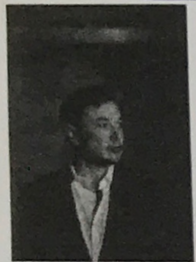

Tesla and its chief executive, Elon Musk, still face challenges, even after their settlement on Saturday with the Securities and Exchange Commission.CreditCreditJoshua Lott/Getty Images

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Elon Musk was chastened by federal regulators on Saturday night, agreeing to step down as chairman of Tesla and to have his communications monitored.

But Mr. Musk, the exuberant, relentless billionaire chief executive of Tesla, showed no immediate signs of changing his style.

On Sunday at 1:08 a.m., just hours after settling the Securities and Exchange Commission's fraud case stemming from his impulsive tweet on Aug. 7, Mr. Musk sent an email to all Tesla employees. He implored them to work hard, even though it was the weekend.

"One more day of going super hardcore and victory is ours!!" he wrote. "We are very close to achieving profitability and proving the naysayers wrong, but, to be certain, we must execute really well tomorrow (Sunday). If we go all out tomorrow, we will achieve an epic victory beyond all expectations. Go Tesla!!!"

Investors reacted to the settlement with a "Go Tesla!" of their own. After plunging almost 14 percent on Friday after the S.E.C. filed a securities fraud lawsuit against Mr. Musk, the company's shares regained virtually all of that ground in premarket trading on Monday.

For all of Mr. Musk's late-night enthusiasm and the stock bounce, however, Tesla faces many challenges in the months ahead.

The company is still struggling to produce and deliver its Model 3 cars, which are the key to its financial future. It is short on cash and has looming bond payments. Short-sellers are still targeting the company, betting on the stock to fall. The S.E.C. is continuing to look into the company's past claims about its production goals, and the Justice Department was also looking into Mr. Musk's tweet.

And Mr. Musk himself — who also runs SpaceX and the Boring Company — remains a wild card, prone to unpredictable behavior that often ensnares his various companies.

"I get the feeling that the S.E.C. wants to have more adults in the room," said Peter Henning, a law professor at Wayne State University who contributes columns for the DealBook section of The New York Times. "But will Musk listen to them?"

Neither the company nor Mr. Musk has issued a statement officially commenting on the settlement.

For the past 10 years, since Mr. Musk became chief executive of Tesla, he and the company have been practically synonymous. He is its animating force, setting its strategic direction, making virtually all important decisions and working on nearly every detail of design and manufacturing.

His intensity and ferocious work ethic have led to a wave of executive departures in recent years, and Tesla's board — which includes Mr. Musk's brother, Kimbal — is not particularly independent by the standards of most big companies.

The terms of the S.E.C. settlement are intended to change some of that.

Tesla will have to add two independent directors to the board, Mr. Musk will not be able to serve as chairman for three years and the board will have to set up a permanent committee to monitor Mr. Musk's communications with investors and the public, including his postings on Twitter and other social media. The members of this special committee will be subject to the review and approval of the S.E.C.

Tesla also must "implement mandatory procedures and controls to oversee all of Elon Musk's communications regarding the company in any format," according to the settlement. The S.E.C. will monitor to make sure the company is in compliance with those procedures.

Perhaps reflecting the new scrutiny, Tesla put a substantial portion of Mr. Musk's all-hands email into a financial filing with the commission, dated Sunday.

Some critics of the settlement suggested that the S.E.C. — which sought to bar Mr. Musk from serving as a director or executive of a public company in a lawsuit it filed on Thursday, two days before the settlement — was letting him off easy.

Remarks by the S.E.C.'s chairman, Jay Clayton, about the settlement added to the perception that regulators were making an exception for Mr. Musk, who is so central to Tesla. Mr. Clayton said there was a need to balance penalties for violating securities laws with "the skills and support of certain individuals" who may be important "to the future success of a company."

But Rebecca Roiphe, a professor at New York Law School, said removing Mr. Musk from a leadership role in the company would have been a mistake.

"I think banning him as C.E.O. would have been out of proportion considering what he did and that he is the founder, major shareholder and brains behind an innovative company," she said of Mr. Musk, who is officially a co-founder. The S.E.C. is a civil, regulatory body, she noted, and its aim is to protect investors. "While it shares some of the same goals as federal prosecutors, its mission is different."

The furor after Mr. Musk's post on Twitter in August that he had "funding secured" for a buyout of the electric-car company at $420 a share took attention away from Tesla's very real concerns about its products, and its balance sheet.

Mr. Musk's email to employees was less bullish than previous forecasts he has offered about the quarter. Since late June, he has insisted Tesla will report profits and positive cash flow in both the third and fourth quarters.

But in recent weeks, Tesla has been slashing costs and halting spending in hopes of turning a profit as Model 3 sales rise. In June, the company laid off 9 percent of its work force to lower costs, and recently stopped offering the Model 3 in certain colors. It has also delayed payments to suppliers. At the start of the third quarter, it owed suppliers $3 billion.

"It's hard for me to believe they will be profitable by traditional standards," said Karl Brauer, executive publisher of the auto information providers Autotrader and Kelley Blue Book. "You can be very creative in your accounting in how you define profitability, and whether you include certain costs in that or not."

While many analysts have focused on how many Model 3s Tesla is building, a more important indicator now is how many cars it is able to deliver. Unlike other automakers, Tesla doesn't generate revenue simply by making cars.

It doesn't collect any revenue until it delivers them to customers. Companies like Ford Motor and General Motors book their revenue when cars are shipped to dealerships.