

Elon Musk Moves to End \$44 Billion Deal to Buy Twitter

In a regulatory filing on Friday, Mr. Musk said Twitter was in “material breach” of the acquisition agreement.

By Kate Conger and Lauren Hirsch

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SAN FRANCISCO — Less than three months ago, Elon Musk, the world’s richest man, struck a blockbuster \$44 billion deal to buy Twitter. He proclaimed that the company had “tremendous potential.”

Since then, Mr. Musk has changed his tune. He sniped at Twitter’s top executives. He unleashed tweets taunting the company’s board. He complained that the social media service had too many spam accounts and that he could not get insight into the issue. He tweeted a poop emoji to express his displeasure.

And on Friday, Mr. Musk tried to back out of the acquisition altogether.

In a regulatory filing prepared by his lawyers, Mr. Musk said he was terminating the Twitter deal because of a continuing disagreement over the number of spam accounts on the platform. He claimed that Twitter had not provided information necessary to calculate the number of those accounts — which the company has said is lower than 5 percent — and that it had appeared to make inaccurate statements.

“Twitter is in material breach of multiple provisions” of the deal agreement, Mr. Musk’s lawyers said in the filing, and the company “appears to have made false and misleading representations.”

Mr. Musk’s move sets up what is likely to be an ugly and protracted legal battle with Twitter. The billionaire signed a legally binding agreement in April to buy the company for \$54.20 a share, waiving due diligence to get the deal done quickly. The terms included a \$1 billion breakup fee if the agreement fell apart and a clause that gives Twitter the right to sue Mr. Musk and force him to complete or pay for the deal, so long as the debt financing he has corralled remains intact.

For Twitter, completing a sale to Mr. Musk is paramount. The company has struggled for years to grow, and its financial performance has been inconsistent. No other potential buyer has emerged as a white knight, its advertising business is under pressure, and it recently slowed hiring and laid off some employees.

Since April, Twitter’s shares have plummeted more than 20 percent, far below what Mr. Musk offered to buy it. To accept less than the originally negotiated price could expose Twitter to shareholder lawsuits. And in a sign of how the company’s investors were banking on the deal, its shares fell 5 percent in after-hours trading on Friday after Mr. Musk revealed his desire to end the deal.

Ann Lipton, a professor of corporate governance at Tulane Law School, said Mr. Musk’s disagreement with Twitter over spam accounts might not constitute a material breach of the deal, meaning it is a legally tenuous argument.

False representations about such accounts are in and of themselves “not grounds to walk away,” she said. “They’re only grounds to walk away if they are so overwhelmingly bad that it really just fundamentally jeopardizes the economics of the deal. That’s a company material adverse effect.”

Yet even if Mr. Musk is forced to go ahead with the deal, sending such a letter may give him a foothold for cutting the price. His action coincides with a widespread slide in the value of tech stocks, including Tesla, the electric carmaker he runs and the main source of his wealth.

Buyers have frequently used the threat of walking away to renegotiate a deal. At the height of the pandemic, LVMH Moët Hennessy Louis Vuitton sued to back out of its acquisition of Tiffany & Company. The two parties later shaved about \$420 million off the price.

Mr. Musk, 51, didn't immediately return requests for comment.

In a tweet, Bret Taylor, Twitter's chairman, said the company was intent on seeing the deal through. He alluded to how the matter would end up in court, saying he was "confident we will prevail in the Delaware Court of Chancery." Many corporate cases are heard in Delaware, where Twitter is registered. The company would almost certainly seek an expedited case, given the size of the deal.



Citing a material adverse effect to end an acquisition has succeeded only once in Delaware court, Ms. Lipton said. That deal was a \$3.7 billion acquisition of Akorn, a pharmaceutical company, by the health care company Fresenius Kabi in 2017, she said.

"Twitter has an obligation to fight Musk on this, which they'd need to do because they have a fiduciary duty to do what's best for shareholders and salvage the deal," said Adam Sterling, executive director of the Berkeley Center for Law and Business. "I imagine this will go to court and eventually end in some sort of settlement that allows both sides to save face."

Mr. Musk, who is famously mercurial, has long winged it in the biggest moments with his businesses, which also include the rocket company SpaceX. When he agreed to buy Twitter, he had no plan for the company, people with knowledge of the situation said at the time. The billionaire was simply enamored with the platform, where he has more than 100 million followers and which he used heavily, they said.

Owning Twitter is tricky because the platform faces regulatory scrutiny and is embroiled in a debate over free speech online. Its business has also faced difficulties, especially in a competitive market for digital advertising. After Mr. Musk struck the acquisition agreement, Twitter reported 16 percent growth in revenue for the first quarter, below the 20 percent it had predicted.

Within weeks, Mr. Musk tweeted that the deal was on hold, saying he wanted more details about the volume of spam and fake accounts. At one point, he said striking a deal for Twitter at a lower price was "not out of the question." He also responded to tweets from Parag Agrawal, Twitter's chief executive, who posted details of how the company detects and fights spam, with a poop emoji.

Behind the scenes, Twitter continued giving Mr. Musk and his team access to information about its platform, people with knowledge of the situation have said. Last month, the company agreed to allow Mr. Musk direct access to its "firehose," the daily stream of millions of tweets that flow through the company's network. Twitter, which has said roughly 5 percent of its accounts are spam since it went public in 2013, has also said the number is an estimate.

Even so, the number of fake accounts remained a concern for Mr. Musk. For years before proposing the acquisition, he complained about spam on Twitter and said the company should do more to authenticate its users. In 2020, he appeared at a Twitter employee event and said the company should do more to prevent spam.

Last month, in a six-paragraph letter, Mr. Musk's lawyers demanded more information from Twitter about its methods for counting fake accounts and claimed the firm was "actively resisting and thwarting" his rights. The company was "refusing Mr. Musk's data requests" to disclose the number of fake accounts on its platform, they said. That amounted to a "clear material breach" of the deal, the lawyers continued, saying it gave Mr. Musk the right to break off the agreement.

Twitter said on Thursday that it had heightened efforts to detect and block spam after Russia used fake accounts to influence the 2016 U.S. presidential election. The company has added new requirements to its sign-up process and said it used human auditors to vet its tally of spam accounts. It also said it removed one million spam accounts each day, and locked millions more per week until the operators of the accounts passed anti-spam tests.

Inside Twitter, Sean Edgett, the general counsel, sent a memo on Friday afternoon to employees effectively telling them to keep quiet about the latest twist in the deal with Mr. Musk.

"Given this is an ongoing legal matter, you should refrain from Tweeting, Slacking or sharing any commentary about the Merger Agreement," he wrote in the memo, which was obtained by The New York Times.

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