MARKETWATCH SAYS ELON MUSK IS SCREWED- THE EMPORERS NEW CLOTHES ARE IN TATTERS

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Elon Musk’s pedestal is crumbling, exposing Tesla risks

Opinion: Risky moves, overly optimistic projections and questionable governance are cause for concern

Getty Images
Tesla Motors Inc. Chief Executive Elon Musk has made a series of questionable moves in the past two months.

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Tesla Motors Inc. Chief Executive Elon Musk has survived years of questionable moves thanks to the Steve Jobs-like pedestal upon which Tesla fans foist him and the tremendous growth of the companies he has backed. His pedestal is now tipping, however, amid a jaw-dropping series of hazardous risks that should concern all Tesla investors.

Musk’s run of questionable decisions began in May, when he pushed forward projections for manufacturing during Tesla’s TSLA, +3.69% earnings call, fueled by the enthusiasm and preorders from its fanatical customers for its lower-cost Model 3. Musk said the company would be manufacturing at a rate of 500,000 vehicles a year by 2018, two years earlier than previously projected, a goal that Bloomberg noted was a faster growth rate than when Henry Ford pioneered production of the Model T, the first mass-market car.

One month later came Musk’s conflict-ridden proposal to buy SolarCity Corp., SCTY, +3.03% the residential solar installer that counts Musk as chairman and largest shareholder. Tesla shares plunged 11% in reaction to the offer to buy the company, which was founded and is run by Musk’s cousins, Lyndon and Peter Rive, one of several worrisome ties between the companies that rightfully spooked investors and has led to a series of recusals for board members from the decision-making process.

“The SolarCity transaction just highlighted a problem,” said Stephen Diamond, an associate professor at Santa Clara University School of Law and an expert in securities laws and corporate governance.

Diamond is advising an investment group, CtW Investment Group, which wrote a letter to Tesla’s board voicing concerns about the ties among six of seven Tesla’s directors to SolarCity. CtW, which stands for Change to Win, is asking Tesla to recruit two independent directors to fully review the company’s all-stock deal for SolarCity and take the Tesla chairman role away from Musk in favor of an independent director. The union-sponsored pension funds that work with CtW own about 270,000 shares of Tesla Motors.

“They haven’t really evolved to what typical public companies look like at this size and complexity,” Diamond said of Tesla. “When you have this kind of ambition, they have to build up credibility with the investor community.”

Tesla’s credibility has been tested even more in the past week. As most investors and media members were barbecuing on the Sunday of Fourth of July weekend, Tesla announced disappointing second-quarter sales. That sneaky release followed an announcement about a federal investigation into the death of driver Joshua Brown, a Tesla evangelist who crashed his Model S into a truck while he was using Tesla’s semiautonomous driving technology, dubbed “Autopilot.”

This rapid-fire series of issues would be tough for any company to withstand, but could be even more damaging for Tesla, which at times acts more like a spunky startup than a 13-year-old public company worth more than $30 billion with 13,000-plus employees. Much like Uber Technologies Inc.’s Travis Kalanick, Musk can be combative with regulators and the media.

Just last month, the Tesla team responded to a report that its suspension technology was under a regulatory review by writing a blog post entitled “A Grain of Salt” that flatly accused the blogger of “fabricating” the issue and suggesting he had a financial interest in Tesla failing. The NHTSA found no safety concern with the Model S suspension.

Last week, Tesla responded to legitimate concerns about the lack of disclosure of Brown’s death ahead of a $2 billion stock sale with a blog post attacking the reporting by Fortune, while also making bold proclamations about the safety of its Autopilot feature even as the NHTSA is investigating the accident.

Musk even attacked Fortune’s editor on Twitter:

> @alansmurray Yes, it was material to you -- BS article increased your advertising revenue. Just wasn't material to TSLA, as shown by market.
>
> — Elon Musk (@elonmusk) July 5, 2016

It’s entirely feasible, although unlikely, that the continuing NHTSA investigation into Brown’s accident could find some fault with Tesla’s Autopilot technology, or as one auto safety advocate told Bloomberg, Tesla might have to recall the cars to fix any defect with Autopilot. If it does, Tesla’s confident blog post could potentially come back to haunt it.

And while Musk does not believe that Tesla’s failure to disclose the wreck ahead of the company’s stock sale is a big deal, the Securities and Exchange Commission may disagree. The Wall Street Journal reported Monday, based on an anonymous source, that the SEC is investigating the issue for a potential securities-law violation.

These are the types of risks that should concern investors, who have pushed Tesla stock back up from the plunge suffered after the SolarCity bid. Analysts who cover the company have already turned off autopilot and begun adjusting their expectations, including one of Wall Street’s biggest Tesla bulls, Morgan Stanley analyst Adam Jonas. After setting a price target of $465 in late 2015, Jonas has slashed it more than once, including dropping it to $245 after the SolarCity bid, when he noted that the risks to investing in Tesla outweigh any benefit.

In all, five analysts have cut their price targets on Tesla since the end of May, pushing the average price target on Tesla stock from $268.25 to $239, according to FactSet.

A Tesla spokeswoman said in an email that no one has more at stake in the success of Tesla than Musk, and voiced confidence in the company’s leadership overall.

“(Musk) and our board have overseen the creation of tremendous value for all of Tesla’s stockholders,” Tesla said in an emailed statement. “The Tesla board is committed to a completely fair governance process.”

The facts at hand show a much more precarious position: The company is failing to reach its own expectations while adding to future projections and attempting a risky, potentially unwise acquisition, all while under federal investigation for one of its most prominent technological advances. Yet the company and its CEO act as if they are made of Teflon, and don’t need to have the types of checks and balances that corporations use to avoid disaster.

“There is a sense that there is a lot on their plate, and this is when you need the right kind of corporate governance structure in place,” Diamond said.

Musk deserves all the kudos he gets for a vast list of achievements, including successfully manufacturing an electric vehicle, working to lower the cost of ownership, bucking the franchise system and shaking up the complacent automotive industry. But Tesla may be facing some tough terrain ahead and investors face a tough decision of whether to stomach the bumpy road.