Twitter Highlights a Fundamental Governance Failure

By Alissa Kole December 2, 2022

Elon Musk's name had been in every newspaper — or, rather, on their front pages — even before he acquired **Twitter**. What has changed since he ultimately completed that transaction, which he tried to rescind, just as the **Saudi Public Investment Fund** (PIF) had earlier reneged on an acquisition of **Tesla**, is the frequency with which he has occupied public space. He has paid for both dearly.

Taking Twitter, the 15-year-old social media platform, private cost the richest man on the planet $44 billion, or $54 a share, a significant premium on its last trading price on the **New York Stock Exchange**. Meanwhile, claiming that the Saudi sovereign wealth fund was ready to help him take Tesla private cost him and Tesla $40 million in fines by the **Securities and Exchange Commission**, which deemed the statement securities fraud.

The final SEC settlement demanded a comprehensive set of governance changes at Tesla to rein in the influence of its founder on investors. It called for Musk to be replaced by an independent chairman in addition to the appointment of two independent directors on the board. A committee of independent directors was to be established, in part to oversee his communication.

It is ironic that Musk claimed to have secured funding from the PIF to take Tesla private on Twitter, that he finally took private, instead of Tesla. The employees of Twitter, half of whom were laid off overnight as he assumed leadership of the company, are not amused. Neither are the ones that the new "Twit in Chief" had unceremoniously dismissed on Twitter itself in what appeared a modern take on the French guillotine.

Neither are Twitter users, many of whom have deactivated their accounts in dismay. After the fumbled launch of Twitter Blue, the company's new owner announced that it is rolling out a more complex system of gold checkmark for companies, gray for governments and blue for individuals, verified to protect users against fake news. "Painful but necessary," he claimed in his brief announcement of the new system.

Twitter's experience in delisting from NYSE has indeed been painful. To be sure, the company is far from alone in this boat. According to the **OECD**, more than 30,000 companies, or 75% of all listed firms today, have delisted from global stock markets since 2005. What is even more concerning is these delistings have not been matched by new listings, resulting in a net loss of listed companies worldwide.

And yet, corporate governance rules, predicated on the concept of shareholder protection, continue to be targeted to listed companies as well as financial sector firms. If Twitter is to be taken as a warning — as it should be — governance regulations can no longer afford to be focused predominantly on shareholder protection in public companies.

First, the concept of public company has changed. **Snapchat** was taken public with no voting shares in 2017, despite investor outcry. In most big tech companies, having multiple voting class shares means founders retain effective control. Second, big tech firms, whether they are private or public, matter beyond their shareholders or stakeholders, which the OECD Corporate Governance Principles — the “gold standard” in the field — focus on.

They ought to be regulated, from a governance perspective, based on other parameters. Just as the number of shareholders defines if a company is considered public, the number of users can serve as an important parameter to define additional reporting obligations. Already, the **European Commission**’s approach, including the sustainability directive (CSRD) adopted earlier this month goes beyond listed firms and applies also to large private firms.

The Twitter debacle shows that this approach needs to be adopted globally. It is especially critical for the big tech sector where governments have so far relied on antitrust and fiscal regulations to rein in negative externalities with limited success. When the richest man in the world can delist a company, fire half of its employees, and decide who will have the right to express themselves and how they may do so in what was previously a public space, better governance is not a luxury, but a necessity.