

## Disclosure Games®

### As Elon Musk Hyped and Happy-Talked Investors and Fans, Tesla Kept Quiet About a Year-Long Formal SEC Probe into the Model 3.

*Disclosure Insight® reports provide commentary and analysis on public company interactions with investors and with the SEC. They are heavily reliant on our expertise in using the Freedom of Information Act.*

**Summary and Opinion:** In what's sure to be ammo for both Elon Musk fans and haters alike, we recently acquired documents that show from Jun-2016 to 31-May-2017, the SEC conducted a formal investigation of Tesla Motors that was squarely focused on the company's Model 3. The probe was in-depth and got into a wide range of items similar to questions raised by company skeptics. It also named Goldman Sachs and looked at the timing of its analyst report upgrading Tesla ahead of the company announcing a \$2 billion stock offering later that same day, in May-2016. Goldman and Morgan Stanley were the lead underwriters. The probe ended on 31-May-2017 with no enforcement action recommended.

In a subpoena dated 15-Jun-2016, the SEC asked Tesla to produce documents related to the following: reservations for the Model 3; orders; production times and rates; cancellations; refunds requested; refunds processed; revisions in reservations; how deposits for the Model 3 have or will be used by Tesla; the company's accounting treatment for deposits; and, questions related to the 18-May-2016 offering and analyst report issued by Goldman Sachs. The 15 pages of records we obtained on this investigation are posted to our website.

In its response to us of 07-Dec-2017, the SEC also blocked access to other records on Tesla on law enforcement grounds. That gives suggestion there is at least one other unresolved SEC probe. We will appeal this response.

**Our Take:** To us, there's more than enough here to conclude this investigation should have been disclosed by Tesla. Investor focus on the Model 3 has been intense this past year, with Elon and his crew fanning the flames. With this backdrop, we think investors most certainly would

consider an SEC probe that asked a lot of questions about the Model 3 to be material and, therefore, would have wanted to know about it.

Fans – and maybe even the company itself – may rightly want to point out the investigation ended with no enforcement action taken. Despite the fact we've seen many SEC probes have consequence for investors even absent enforcement actions, we do get that rationale; and, in hindsight it does make sense. Sort of. Except for this: public companies and their supporters don't have the benefit of hindsight the day an SEC subpoena arrives.

The argument in favor of disclosure takes on even more merit when one considers the depth and breadth of the SEC's document requests. The Goldman Sachs piece in and of itself may raise an eyebrow or two as well, even if there were nothing amiss.

Elon Musk and his team could tell investors more about what is taking place with regulators. We have criticized them for bad governance and staying silent regarding undisclosed SEC probes we repeatedly found at Tesla and Solar City. At any time, Tesla could stop playing Disclosure Games® with investors, become more transparent, and simply let time prove them right. Instead, this team continues to act like the rules (on many fronts) don't apply to them. That cannot help but give critics of Tesla recurring reasons to be suspicious. Meanwhile, supporters must again rush to the ramparts to defend their beloved company.

This one's on Elon.

-- Probes Reporter



## Independent Investment Research Focused on Public Company Interactions with the SEC.

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**“Disclosure Games”**® is a term we use to highlight those public companies engaging in disclosure practices that in our opinion may be misleading, confusing, evasive, or otherwise lacking the transparency needed for investors to make well-informed investment decisions regarding a potentially material exposure.

If we alert you to existence of an undisclosed SEC probe, that means we filed a Freedom of Information Act (FOIA) request with the SEC on the company in question and have a response, in black-and-white, on government letterhead that supports our statement. The only thing we know at this time is that the probe(s) somehow pertains to the conduct, transactions, and/or disclosures of the companies referenced.

New SEC investigative activity could theoretically begin or end after the date covered by the latest information in this report which would not be reflected here. The SEC did not disclose the details on investigations referenced herein. All we know is that they somehow pertain to the conduct, transactions, and/or disclosures of the companies referenced above. Companies with undisclosed SEC investigations are maintained on our Watch List of companies with undisclosed SEC probes.

The SEC reminds us that its assertion of the law enforcement exemption should not be construed as an indication by the Commission or its staff that any violations of law have occurred with respect to any person, entity, or security.

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