european corporate governance institute

How Twitter Pushed Stakeholders Under The Bus

Law Working Paper N° 704/2023
May 2023

Lucian A. Bebchuk
Harvard Law School and ECGI
Kobi Kastiel
Tel Aviv University, Harvard Law School and ECGI
Anna Toniolo
Harvard Law School

© Lucian A. Bebchuk, Kobi Kastiel and Anna Toniolo 2023. All rights reserved. Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission provided that full credit, including © notice, is given to the source.

This paper can be downloaded without charge from:
https://doi.org/10.67929/ecgi-law-704-2023

european corporate governance institute

ECGI Working Paper Series in Law

How Twitter Pushed Stakeholders Under The Bus

Working Paper N° 704/2023
May 2023

Lucian A. Bebchuk
Kobi Kastiel
Anna Toniolo

© Lucian A. Bebchuk, Kobi Kastiel and Anna Toniolo 2023. All rights reserved. Short sections of text, not to exceed two paragraphs, may be quoted without explicit permission provided that full credit, including © notice, is given to the source.

Abstract

This study focusses on the acquisition of Twitter by Elon Musk. Our analysis indicates that when negotiating the sale of their company to Musk, Twitter's leaders chose to disregard the interests of the company's stakeholders and to focus exclusively on the interests of shareholders and the corporate leaders themselves. In particular, Twitter's corporate leaders elected to push under the bus the interests of company employees, as well as the mission statements and core values to which Twitter had pledged allegiance for years. Our analysis can inform the heated debates on corporate stakeholders and their treatment by corporate leaders. Our findings indicate that, contrary to the predictions of the implicit promises and team production theories of Coffee (1986), Shleifer-Summers (1988) and Blair-Stout (1999), corporate leaders selling their company should not be expected to look after the interests of stakeholders. In addition, rather than supporting the stakeholder governance, our findings also support the agency critique of stakeholder governance (Bebchuk and Tallarita (2020)), which stresses that corporate leaders have incentives not to serve stakeholders beyond what would serve shareholder value. Finally, our findings are consistent with the view that corporate mission and purpose statements are mostly for show.

Keywords: stakeholders, stakeholder capitalism, stakeholder governance, corporate social responsibility, corporate purpose, Twitter, Elon Musk

JEL Classification: D21, G32, G34, G38, K22

Lucian A. Bebchuk

Harvard Law School and ECGI

Kobi Kastiel

Tel Aviv University, Harvard Law School and ECGI

Anna Toniolo

Harvard Law School

ISSN 1936-5349 (print)
ISSN 1936-5357 (online)

HARVARD

JOHN M. OLIN CENTER FOR LAW, ECONOMICS, AND BUSINESS

HOW TWITTER PUSHED STAKEHOLDERS UNDER THE BUS

Lucian Bebchuk
Kobi Kastiel
Anna Toniolo

Discussion Paper No. 1102

04/2023, Last Revised 05/2023

Harvard Law School
Cambridge, MA 02138

This paper can be downloaded free of charge from:

The Harvard John M. Olin Discussion Paper Series:
http://www.law.harvard.edu/programs/olin_center/

The Social Science Research Network Electronic Paper Collection:
https://papers.ssrn.com/abstract =4330393

This paper was also issued as Discussion Paper No. 2023-1 of the
Harvard Law School Program on Corporate Governance:
https://pcg.law.harvard.edu/working-papers/

Electronic copy available at: https://ssrn.com/abstract=4330393

Forthcoming, *Stanford Journal of Law, Business, and Finance*, Vol. 28, 2023

First Draft December 2022, Last revised May 2023

How Twitter Pushed Stakeholders under the Bus

Lucian A. Bebchuk,[*] *Kobi Kastiel,*[†] *& Anna Toniolo*[‡]

Abstract

This study focusses on the acquisition of Twitter by Elon Musk. Our analysis indicates that when negotiating the sale of their company to Musk, Twitter's leaders chose to disregard the interests of the company's stakeholders and to focus exclusively on the interests of shareholders and the corporate leaders themselves. In particular, Twitter's corporate leaders elected to push under the bus the interests of company employees, as well as the mission statements and core values to which Twitter had pledged allegiance for years.

Our analysis can inform the heated debates on corporate stakeholders and their treatment by corporate leaders. Our findings indicate that, contrary to the predictions of the implicit promises and team production theories of Coffee (1986), Shleifer-Summers (1988) and Blair-Stout (1999), corporate leaders selling their company should not be expected to look after the interests of stakeholders. In addition, rather than supporting the stakeholder governance, our findings also support the agency critique of stakeholder governance (Bebchuk and Tallarita (2020)), which stresses that corporate leaders have incentives not to serve stakeholders beyond what would serve shareholder value. Finally, our findings are consistent with the view that corporate mission and purpose statements are mostly for show.

Keywords: stakeholders, stakeholder capitalism, stakeholder governance, corporate social responsibility, corporate purpose, Twitter, Elon Musk.
JEL Classification: D21, G32, G34, G38, K22.

---

[*] James Barr Ames Professor of Law, Economics, and Finance, and Director of the Program on Corporate Governance, Harvard Law School.

[†] Professor of Law, Tel Aviv University Faculty of Law; Senior Research Fellow and Lecturer on Law, Harvard Law School.

[‡] Postdoctoral Fellow at the Program on Corporate Governance, Harvard Law School.

We have benefited from helpful discussions with and suggestions from many individuals including Oliver Hart, Roberto Tallarita, participants at two Harvard Law School workshops, and editors of the *Stanford Journal of Law. Business, & Finance*.

Electronic copy available at: https://ssrn.com/abstract=4330393

TABLE OF CONTENTS

I. Introduction....1
II. For Whom Twitter Leaders Bargained....3
A. The Deal....3
B. Gains for Twitter Shareholders....7
C. Gains for Corporate Leaders....9
III. Pushing Employees under the Bus....11
A. Pro-employee Rhetoric....11
B. Laid-off Employees....12
1. No Protection for Laid-off Employees....12
2. The Ax Falls....14
C. Retained Employees....16
1. No Protection for Retained Employees....16
2. The Ax Falls....18
IV. Pushing Mission and Core Values under the Bus....20
D. Twitter's Mission and Core Values....20
E. Hateful Conduct and Civic Integrity....21
1. Hateful Conduct....21
2. Civic Integrity....23
F. Other Core Values and Commitments....25
1. The War in Ukraine....25
2. Climate Risks and ESG Initiatives....27
3. Human Rights....29
V. Beyond Twitter....30

List of Tables

Table 1: Gains to Shareholders....8
Table 2: Gains to Executives....9
Table 3: Gains to Non-Executive Directors....11

Electronic copy available at: https://ssrn.com/abstract=4330393

I. INTRODUCTION

An epic battle was waged between Twitter and Elon Musk in 2022.[1] Twitter sought to secure the monetary gains Musk had promised to its shareholders and corporate leaders in the Twitter-Musk merger agreement. Musk tried to avoid meeting his original commitments. The battle ended with Twitter's decisive victory. Musk bought out the company at the full offering price and Twitter's shareholders and corporate leaders walked away with significant monetary gains.

Our focus, however, is on another group that was substantially affected by the deal—Twitter's "stakeholders" (i.e., its non-shareholder constituencies). In particular, we argue that, when negotiating the deal, Twitter's corporate leaders chose to focus exclusively on the interests of their shareholders and the private interests of corporate leaders themselves. With this exclusive focus, and despite their stakeholder rhetoric over the years, Twitter's corporate leaders essentially chose to push their stakeholders under the (Musk) bus. We argue that our analysis of how stakeholder interests were disregarded by Twitter leaders has implications for three important corporate governance debates and discussions.

Our analysis proceeds as follows. Part II examines for whom Twitter corporate leaders chose to bargain. Our findings indicate that shareholders obtained significant premiums, with a mean of 38% of the pre-deal market capitalization, and the aggregate premium obtained by all the non-Musk shareholders exceeding $10 billion. Corporate leaders also received large monetary benefits, both as shareholders and as executives or directors.

Part III analyzes how Twitter's corporate leaders pushed the employees of Twitter—the so-called "tweeps," whose interests Twitter had long promised to look after—under the bus.[2] Twitter's leaders did not attempt to allocate a share of the large gains from the deal to the company's employees. Even assuming that reducing Twitter's workforce post-acquisition was efficient, Twitter's leaders could have used some of the deal gains to provide compensation to laid-off employees that would cushion them from the deal's adverse effects, but Twitter's leaders chose not to do so. Indeed, it appears that Twitter's leaders did not even seek soft pledges or information regarding

[1] For a brief account of this case, *see infra* Section III.

[2] For examples of Twitter referring to its employees as "Tweeps," *see Tweep Life: Here's What's Happening in the Flock*, TWITTER, https://careers.twitter.com/en/tweep-life.html [https://perma.cc/XJN6-SUMG]; and Twitter Inc., Twitter Acquisition: Tweep FAQ, May 2, 2022, https://www.sec.gov/Archives/edgar/data/1418091/000119312522136716/d228476ddefa14a.htm.

Electronic copy available at: https://ssrn.com/abstract=4330393

Musk's plans for the post-deal treatment of employees. Instead, Twitter leaders chose to disregard risks to employees despite the clear presence of such risks at the time that the deal was negotiated.

Part IV discusses how Twitter's corporate leaders also pushed the mission statements and core values to which Twitter had pledged allegiance for years under the bus. In negotiating the terms of the transaction, Twitter's corporate leaders did not bargain for any constraints on post-deal abandonment of these commitments. In fact, these leaders did not even negotiate soft pledges about maintaining some of these commitments. Twitter's corporate leaders, we explain, chose this course of action despite indications that Musk could well elect to abandon or depart from commitments and core values that Twitter had consistently supported.

Our focus in Part IV is not on whether abandoning the mission and core values to which Twitter pledges allegiance was or was not socially undesirable. Rather, our key point is that the commitments were made by Twitter's leaders mostly for show and were completely pushed aside when a substantial premium was put on the table.

Our findings in Parts III and IV reinforce the findings of two prior studies co-authored by two of us on the treatments of stakeholders in two large samples of public company acquisitions. One study investigated a sample of over 100 public companies that were governed by state constituency statutes and were acquired during the twenty-year period between 2000 and 2019;[3] and the second study focused on a sample of more than 120 public companies acquired during the first two years of the recent Covid pandemic.[4] Both studies documented that corporate leaders generally disregarded the interests of stakeholders in negotiating deal terms. The analysis of the Twitter case in this Article provides an especially vivid and rich illustration of this pattern. Finally, Part V discusses the implications that our analysis of the Twitter case has for important corporate governance policy debates. First, Part V discusses the long-standing implicit promises / team production theories, advanced by prominent economists and legal scholars. According to these theories, corporate leaders selling their company should be expected to look after stakeholder interests. Our findings are inconsistent with the predictions of these theories, which have been put forward as a basis for enabling corporate leaders to block acquisitions.

Part V next discusses the increasingly influential view of stakeholder governance, which encourages relying on corporate leaders to serve the

[3] See Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *For Whom Corporate Leaders Bargain,* 94 S. CAL. L. REV. 1467 (2021).

[4] See Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *Stakeholder Capitalism in the Time of COVID*, 40 Yale J. on Reg. 60 (2023).

Electronic copy available at: https://ssrn.com/abstract=4330393

interests of stakeholders and not only shareholders. Whereas this view relies on and is encouraged by the stakeholderist pledges that corporate leaders have been increasingly making, our findings suggest that such pledges are mostly for show.

Part V also discusses the increasing support for and attention to corporate adoption of mission and purposes statements. Our findings are consistent with the view that such statements represent rhetorical public-relation moves rather than practically meaningful commitments.

Our key message is not that Twitter's leaders acted in an undesirable way and that in future acquisition cases it would be desirable for corporate leaders to act differently (and would be realistic to expect them to do so).[5] We view Twitter not as an aberrant case but rather as a representative one. We share the view that corporate leaders have incentives not to serve stakeholders beyond what would serve shareholders and corporate leaders themselves; that expectation that corporate leaders would look after stakeholder interests beyond that point are illusory; and that legal rules and regulations that constrain and incentivize corporate behavior are practically the key to protecting stakeholders.[6] Our analysis seeks to contribute to recognizing this reality.

II. For Whom Twitter Leaders Bargained

A. The Deal

Elon Musk started to buy Twitter shares in January 2022. Within six weeks, he had acquired a 9.2% stake, making him the company's largest shareholder.[7] Following the path often taken by large activist blockholders,

[5] In a working paper subsequent to this Article, Petrucci and Subramanian argue that, in light of the pushing of Twitter stakeholders under the bus, in future cases corporate leaders should act differently. See Caley Petrucci & Guhan Subramanian, ESG Amnesia in M&A Deals: The Case of Musk and Twitter (Mar. 30, 2023) (unpublished manuscript) (on file with author). We do not share this inference from the Twitter case for the reasons discussed below.

[6] For detailed discussions putting forward this view, see Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 Cornell L. Rev. 91 (2020) at 139-175; and Lucian A. Bebchuk, Kobi Kastiel & Roberto Tallarita, *Stakeholder Capitalism in the Time of COVID*, 40 Yale J. on Reg. 60 (2023) at 120-126.

[7] Twitter Inc., Schedule 13G (Mar. 14, 2022); Twitter Inc., Definitive Proxy Statement Relating to a Merger or Acquisition (Form DEFM14A) at 46 (Jul. 26, 2022) (detailing Musk's equity ownership in Twitter).

Electronic copy available at: https://ssrn.com/abstract=4330393

Musk agitated for change.[8] In April 2022, however, Musk turned from an activist blockholder to a potential acquirer and offered to purchase the company.

Following Musk's announcement of his acquisition of a significant stake in Twitter, the company adopted a "poison pill" rights plan that enabled it to block an outside buyer should it decide to do so.[9] This newly-adopted defense mechanism provided Musk with incentives to negotiate with the board of directors rather than to try acquiring the company through a hostile tender offer.[10] Initially, Twitter's board indicated its unwillingness to enter into negotiations without clarity from Musk on the financing of the acquisition and other closing certainty risks.[11] However, once Musk disclosed that he had secured the financing for his proposal, the Twitter board agreed to enter into negotiations.[12]

On April 25, Twitter and Musk completed their negotiation of the acquisition terms and entered into an agreement. Among other things, Twitter's leaders obtained a "specific performance" provision during the negotiations that entitled Twitter to enforce the agreement and obtain the promised acquisition price through a specific performance remedy.[13] This provision proved valuable later on, preventing Musk from negotiating down the promised acquisition price in light of the general decline in stock market

---

[8] *Id*. at 45. *See* Elon Musk's tweets on Twitter's business, its functionality, and its content moderation policies after becoming the largest shareholder of the company: @elonmusk, TWITTER (Mar. 24, 2022, 1:07 PM), https://twitter.com/elonmusk/status/1507041396242407424 ("Twitter algorithm should be open source"); @elonmusk, TWITTER (Mar. 24, 2022, 12:50 PM), https://twitter.com/elonmusk/status/1507037126654939140 ("I'm worried about de facto bias in "the Twitter algorithm" having a major effect on public discourse. How do we know what's really happening?"); @elonmusk, TWITTER (Mar. 26, 2022, 1:51 PM), https://twitter.com/elonmusk/status/1507777261654605828 ("Given that Twitter serves as the de facto public town square, failing to adhere to free speech principles fundamentally undermines democracy. What should be done?"). *See* also Sarah E. Needleman and Will Feuer, *Elon Musk to Join Twitter's Board of Directors After Becoming Largest Shareholder*, THE WALL ST. J. (Apr. 5, 2022), https://www.wsj.com/articles/twitter-to-name-elon-musk-to-its-board-of-directors-11649162614 [https://perma.cc/PB8N-XKLZ].

[9] Twitter 2022 Proxy Statement, *supra* note 7, at 50. For an insightful discussion of the authority of the Twitter board of directors to block Musk's offer to protect stakeholders or otherwise, *see* Jeffrey Gordon, *The Twitter Board Bears Personal Responsibility for a Bad Outcome in the Twitter Case*, THE CLS BLUE SKY BLOG (May 5, 2022).

[10] For a concise account of the Twitter board's strategy, *see* Daniel P. Lefler, *Twitter's Board Handled Elon Musk Well*, WALL ST. J., Apr. 27, 2022.

[11] Twitter 2022 Proxy Statement, *supra* note 7, at 51 (detailing the events that led to Muck acquisition of Twitter).

[12] *Id.* at 52-54.

[13] *Id.* at 160.

Electronic copy available at: https://ssrn.com/abstract=4330393

prices. Musk, in turn, also obtained some advantageous terms in the negotiations, including an ordinary course covenant protecting him against Twitter making significant changes between signing and closing, and a breakup fee in the event Twitter entered into an agreement with a third party for a "superior proposal."[14]

During the 10-week period after the Twitter acquisition was publicly announced, stock market prices of high-tech companies experienced a sharp decline.[15] Not surprisingly, Musk tried to abandon the deal, alleging disclosure failures and breach of contract by Twitter. In response, Twitter filed a lawsuit in the Delaware Court of Chancery to force specific performance of the acquisition agreement.[16] Ultimately, on the eve of trial, Musk agreed to complete the transaction for the agreed-upon acquisition price. The deal was closed on October 27, heralded by Musk's tweet, "the bird is freed."[17]

Thus, Twitter's leaders negotiated a merger agreement with Musk and subsequently held him to the agreed-upon bargain. The question to which we now turn is for whose interests these Twitter leaders bargained.

By Twitter's leaders we refer throughout to the members of the board of directors and to the CEO and other top executives of Twitter. All members of this group could have potentially influenced Twitter's decisions with respect to the deal, and we note that the deal was approved unanimously by Twitter's board of directors, which included Twitter's CEO.[18] We do not attempt to identify the particular effects of specific individuals with this group, but rather focus on the outcome that was produced by the group as a whole.[19]

---

[14] *Id.* at 146-148, 159-161.

[15] The NASDAQ-100 Technology Sector Index (NDXT), which is a basket of 100 of the world's largest technology companies, decreased by 10% – declining from 7420.7 points to 6628.8 points – from April 25, 2022 when the merger agreement was announced to July 8, 2022 when Musk disclosed his intention to exit the Twitter deal. *See NDXT Historical Data*, NASDAQ, https://www.nasdaq.com/market-activity/index/ndxt (last visited Apr. 28, 2023).

[16] Verified Complaint at 12, Twitter, Inc. v. Elon R. Musk, X Holdings I, Inc., and X Holdings II, Inc., WL 2713259, (Del. Ch. July 12, 2022).

[17] @elonmusk, TWITTER (Oct. 28, 2022, 6:49 AM), https://twitter.com/elonmusk/status/1585841080431321088.

[18] *See* Twitter 2022 Proxy Statement, *supra* note 7, at 57 ("[T]he Twitter Board unanimously… authorized the execution and delivery of the merger agreement and approved the consummation of the transactions contemplated by the merger agreement, including the merger").

[19] It is reasonable to speculate that the company CEO had a relatively more influence than the average independent director. Among independent directors, it is similarly

Electronic copy available at: https://ssrn.com/abstract=4330393

Before proceeding, we would like to address two objections claiming that, in the circumstances under consideration, the disregarding of stakeholder interests was not a choice that Twitter's corporate leaders elected to make, but rather one that they were forced to make. The first objection is that the *Revlon* standard, which governs the sales of Delaware public companies, required Twitter's leaders to disregard stakeholder interests and focus on shareholder interests.[20] However, as long as Twitter's corporate leaders did not enter into the merger agreement with Musk, Delaware law provided them with expansive freedom to oppose and block a sale to Musk (by maintaining the poison pill they put in place) on grounds that Musk's offer was inadequate or a threat to the corporate culture.[21] Thus, Twitter's leaders were able to insist that they would not enter into any merger agreement unless, say, that agreement allowed them to adopt prior to the closing arrangements that increase the severance payments to which Twitter employees would be entitled in the event the deal closes.

To be sure, once Twitter's leaders entered into the agreement with Musk, the *Revlon* doctrine required them to consider superior offers in the event such offers are made. Suppose that Twitter's leaders considered negotiating for a provision Y providing some protections to laid-off employees in return for agreeing to a provision Z providing Musk with some relief in the event of a large decline in NASDAQ prices prior to the closing. In theory, such a possibility could have been precluded by the prospect that this would lead to an offer by a rival that would offer the same baseline price as Musk but without the above provisions Y and Z. In the circumstances of

---

reasonable to speculate that the three members of the "Transactions Committee" appointed by the board of directors might have had more influence than other independent directors. *See* Twitter 2022 Proxy Statement, *supra* note 7, at 49-50 ("To assist in the Twitter Board in its evaluation and negotiation of Mr. Musk's acquisition proposal and consideration of other strategic alternatives and to provide additional feedback and guidance to members of Twitter management, the Twitter Board established a Transactions Committee of the Twitter Board... The Twitter Board appointed Mr. Taylor, Ms. Lane Fox and Patrick Pichette as the members of the Transactions Committee, each of whom is an independent director"). For the purposes of this article, however, what matters is the nature of the outcome produced by the team of Twitter's leaders as a whole.

[20] The *Revlon* standard was put forward in the well-known case of Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173 (Del. 1986). Under this doctrine, once a decision to sell the company has been reached, corporate leaders have a duty to try to obtain the highest price for shareholders. *Id.* at 182. Twitter was incorporated in Delaware, *see* TWITTER INC., FORM S-1 (Oct. 3, 2013) ("Twitter, Inc. was incorporated in Delaware in April 2007.").

[21] For a discussion of this freedom to block offers and remain independent under Delaware law, see Wachtell, Lipton, Rosen & Katz, *Takeover Law and Practice*, 26-34, 94-96 (Apr. 2022), https://www.wlrk.com/webdocs/wlrknew/ClientMemos/WLRK/WLRK.28044.22.pdf (last visited Apr. 30, 2023).

Electronic copy available at: https://ssrn.com/abstract=4330393

the Twitter deal, however, no rival bidder with ability and willingness to pay the kind of price offered by Musk was present.[22]

The second objection claims that corporate leaders were precluded from seeking to include stakeholder-benefitting provisions by the need to obtain shareholder approval of the deal.[23] According to this objection, Twitter leaders might have believed that shareholders would not have approved the transaction if they had bargained for stakeholder-benefitting protections that would allocate a very large part of the deal surplus to stakeholders, at shareholder expense.

Such a consideration, however, could not have precluded Twitter leaders from bargaining for some meaningful stakeholder protections at some cost to the deal's economic value for shareholders. Indeed, the sale to Musk was ultimately approved by a supermajority of 98.6% of the outstanding shares of Twitter.[24] Therefore, there was a substantial range of stakeholder-favoring provisions whose inclusion should have been expected to be consistent with obtaining shareholder approval for the transaction. Note in this regard that, as discussed in Section C below, Twitter's leaders negotiated for some private gains to themselves, and this aspect of the deal did not preclude obtaining massive shareholder approval for the transaction.

B. Gains for Twitter Shareholders

Musk's acquisition provided large gains for Twitter shareholders. We used the FactSet M&A database to collect information about the premium that Twitter shareholders received. The unaffected Twitter stock price—that is, the stock price prior to the surfacing of information about the transaction—was $39.31 per share. With an acquisition price of $54.20 per share, the "unaffected premium,"—that is, the premium compared to the unaffected stock price preceding the deal's announcement—was about 38%.

Multiplying the premium by the number of Twitter shares, the total

---

[22] Furthermore, even if a rival bidder with the same willingness to pay as Musk had been present, *Revlon* would have required the board to consider only a rival offer that was clearly superior. Accordingly, if the economic values of provisions Y and Z were not substantial relative to the monetary size of the premium, the rival offer specified above might fail to qualify as a superior offer that requires consideration by the board of directors.

[23] *See* Twitter 2022 Proxy Statement, *supra* note 7, at 20 ("In order to complete the merger, stockholders representing a majority of all issued and outstanding shares of our common stock must vote to approve the adoption of the merger agreement at the special meeting. This approval is a condition to the consummation of the merger.").

[24] For a report on the outcome of the shareholder vote of approval, see TWITTER INC., FORM 8-K (September 14, 2022), https://www.sec.gov/ix?doc=/Archives/edgar/data/0001418091/000119312522244289/d403306d8k.htm.

Electronic copy available at: https://ssrn.com/abstract=4330393

aggregate premium received by shareholders was $11.4 billion.[25] However, since Musk held about 9.5% of the shares at the time of the acquisition agreement,[26] 9.5% of the total premium was received by Musk's-owned shares. Therefore, the aggregate premium obtained by all the non-Musk shareholders was about $10.3 billion.

[25] *See* Twitter 2022 Proxy Statement, *supra* note 7, at 35 (indicating that Twitter had 765,246,152 shares).

[26] *Id.* at 163.

Electronic copy available at: https://ssrn.com/abstract=4330393

Table 1. Gains to Shareholders

Unaffected Price	$39.3 per share
Price/Share	$54.2 per share
Unaffected Premium %	37.9%
Aggregate Premium for Shareholders (765,246,152 shares)	$11.4B
Aggregate Premium for non-Musk Shareholders (total minus 73,115,038 Musk's shares)	$10.3B

C. Gains for Corporate Leaders

1. Executives

Table 2 reports our findings regarding the benefits obtained by Twitter's top executives. To examine their benefits, we reviewed both the Definitive Proxy Statement (Form DEFM14A) that Twitter filed with the Securities and Exchange Commission (SEC) in connection with the shareholder vote on the Musk-Twitter transaction and the acquisition agreement attached to this statement. As our detailed analysis of these documents shows, Twitter's top executives obtained large gains from the deal.

Monetary Gain Qua Shareholders. Executives usually have equity holdings in the companies they lead. These equity holdings align the interests of executives and shareholders by ensuring that executives obtain significant monetary gains from an acquisition that provides gains to shareholders. In this case, we found that the four top executives obtained gains of $74.3 million in their capacity as Twitter shareholders.[27]

Payments Qua Executives. The monetary gains to the top executives from the transactions included additional payments they received in connection with the acquisition in their capacity as executives and not as shareholders. In this case, the four top Twitter executives received payments for severance arrangements, perquisites benefits, and cashing out of unvested equity awards in their capacity as executives,[28] valued at an aggregate amount of about $141 million.

[27] *Id.* at 113. The Proxy Statement lists six named executive officers, but two of them (Jack Dorsey and Mike Montano) stopped serving as executives in 2021 and thus did not serve as officers at the time of the Musk deal. *Id.* at 117.

[28] *Id.* at 116.

Electronic copy available at: https://ssrn.com/abstract=4330393

Total Monetary Gains to Executives. Combining the monetary gains that the four top executives of Twitter obtained as both shareholders and executives, the Twitter deal produced about $215 million in total gains for the four top executives.

Table 2. Gains to Executives

	Qua Shareholders	*Qua Executives*			
Executive Officers	Dollar Value (M)	Cash Severance (M)	RSUs (M)	PSUs (M)	Total (M)
Parag Agrawal	8.4	1	17.8	38.6	65.8
Ned Segal	22	0.6	16.8	27	66.5
Vijaya Gadde	34.8	0.6	7.3	12.1	54.8
Sarah Personette	9.1	0.6	9.1	9.5	28.4
All Top Executives	$74.3	$2.8	$51	$87.2	$215.4

2. Non-Executive Directors

Having considered the gains to executives, we now turn to examine the benefits that non-executive directors obtained as a result of the transaction. Table 3 reporting our findings shows that non-executive directors also obtained significant gains from Musk's acquisition.

Monetary Gains Qua Shareholders. Much like the executive officers, directors typically own shares and/or vested options in the companies they lead and therefore obtain monetary gains from the premium negotiated with the buyer in their capacity as shareholders. The aggregate monetary benefits to the team of Twitter's non-executive directors from their equity holdings was considerable, exceeding $90 million.[29]

Payments Qua Directors. In addition, Twitter's non-executive directors received additional payments from outstanding Twitter Restricted Stock Units (RSUs) and Performance Stock Units (PSUs) in their capacity as officeholders.[30] These payments added up to $4.9 million in the aggregate, with each non-executive director receiving at least $200,000 from such

[29] *Id.* at 113.
[30] *Id*.

Electronic copy available at: https://ssrn.com/abstract=4330393

payments.

Total Monetary Gains. Combining the monetary gains that non-executive directors obtained both qua shareholders and qua officeholders, the Twitter deal produced about $93 million in total gains for the non-executive directors.

Table 3. Gains to Non-Executive Directors

	Qua Shareholders		*Qua Directors*	
Directors	Shares $ Value (M)	Stock Options (M)	RSUs and PSUs (M)	Total (M)
Mimi Alemayehou	0.3	–	0.2	0.5
Egon Durban	0.9	–	0.3	1.2
Omid Kordestani	53.4	20.1	3	76.5
Martha Lane Fox	1.8	–	0.2	2.1
Fei-Fei Li	0.7	–	0.2	0.9
Patrick Pichette	1.4	–	0.2	1.7
David Rosenblatt	6.1	–	0.3	6.4
Bret Taylor	3.2	–	0.4	3.5
Total Directors	67.8	20.1	4.9	92.9

III. PUSHING EMPLOYEES UNDER THE BUS

A. Pro-employee Rhetoric

Prior to the Musk deal, Twitter had long promulgated commitments to look after the welfare of its employees—the so-called "tweeps." A company webpage dedicated to "Tweep Life" emphatically expressed such commitments, emphasizing among other things:

- "We put people first. . . . Together we're creating a culture that's supportive, respectful, and a pretty cool vibe";

Electronic copy available at: https://ssrn.com/abstract=4330393

- "At Twitter, we do our work where it makes the most sense. Most roles can be done from home"; and
- "Our Business Resource Groups (BRGs for short) are made up of Tweeps and their allies who dedicate time to shaping our culture by uplifting and empowering our communities. They work to make Twitter a place where anyone, anywhere can belong."

On its Careers page, Twitter further highlighted its commitment to employee welfare:

- "We take care of our Tweeps. We know that feeling your best allows you to do your best. That's where perks & benefits come in;" and
- "We take care of the whole you — from physical and mental to financial and professional. So no worries, we got you."[31]

Once Twitter's leaders turned to negotiating the deal with Musk, however, they seem to have disregarded their commitments to "take care of the whole" of their employees and their assurances that employees shall have "no worries." Indeed, Sections III.B and III.C below examine in turn what happened to Twitter employees that were laid-off post-deal and those employees that remained. Twitter's leaders failed to take care of the whole of either one of these two groups, and left them with a great deal of worries.

B. Laid-off Employees

1. No Protection for Laid-off Employees

Given that any acquisition might be followed by layoffs, and that this risk was clear and present in the case of the Twitter acquisition, it might be expected that employee-oriented corporate leaders would seek to use some part of the surplus created by the deal to cushion employees who stood to lose their employment. Even buyers reluctant to accept constraints on their freedom to lay off employees should be expected to agree to pay specified compensation to laid-off employees in return for other concessions in the deal negotiations. The Twitter deal, however, did not provide any protection regarding the risks of reductions in the work force following the deal.[32]

The Twitter deal terms placed no constraints on Musk's freedom of choice with respect to the scale and speed of post-deal layoffs. Moreover, and most importantly, the deal terms did not promise any compensation or

[31] *See Tweep Life: Here's What's Happening in the Flock*, *supra* note 2.
[32] Twitter 2022 Proxy Statement, *supra* note 7, at A-44.

Electronic copy available at: https://ssrn.com/abstract=4330393

monetary benefits to employees who would be laid off post-deal and even precluded Twitter from providing employees with such promises between the signing and closing of the deal. Of course, some Twitter employees might have had severance arrangements in their pre-deal contracts with the company. However, although the deal produced a significant surplus and the shareholders were expected to walk away with massive monetary gains, Twitter's leaders chose not to allocate any part of the surplus to providing an additional monetary cushion to employees who would be laid off.

To illustrate, employee-oriented corporate leaders could have declined to tie their hands from amending the terms of employee contracts. They could have insisted, say, on retaining some freedom to address concerns about layoffs by promising employees, say, three months of additional pay (on top of whatever severance arrangements they had) in the event of a post-deal layoff. Given the small size of this monetary commitment relative to the deal premium or acquisition price, retaining the board's power to make such promises to employees should have been expected not to preclude the deal but at most require a minor adjustment in other deal terms.[33]

Not only did Twitter not negotiate explicitly for protections for laid-off employees in the acquisition agreement, but it appears that it even avoided discussing the subject with Musk; it apparently neither tried to obtain some soft pledges or at least some information about future plans that could be shared with employees. In particular, Twitter's statements following the signing of the deal denied the receipt of any information regarding potential post-deal layoffs.

For example, in the company-wide town hall meeting that took place shortly after the deal was signed, Twitter CEO Parag Agrawal told employees that there were no plans for layoffs, and Bret Taylor— chair of Twitter's board—reassured workers that the agreement with Musk prioritized "operating continuity."[34] Similarly, in the first Employee FAQ issued following the announcement of the deal agreement, the company leaders denied having any information about expected reductions in employment. In response to the question of "[i]s there a possibility for layoffs, now or post-

[33] The acquisition consideration was of $41.5 billion with an aggregate premium for non-Musk shareholders of $10.3 billion. By contrast, a payment of, say, $50,000 to each of the 3,700 Tweeps who were fired immediately after the deal, while providing a meaningful cushion to laid-off workers, would have amounted to only $185 million in the aggregate, and thus just 1.8% of their total gains. *See* Form 8-K, *supra* note 24.

[34] For a report on a speech by Twitter's CEO during the company town hall meeting, *see* Sheila Dang and Katie Paul, *Twitter CEO Tells Employees Company Is in the Dark Over Future Under Musk*, REUTERS (Apr. 25, 2022), https://www.reuters.com/technology/twitter-ceo-tells-employees-company-is-dark-over-future-under-musk-2022-04-25/ [https://perma.cc/7W23-XUZH].

Electronic copy available at: https://ssrn.com/abstract=4330393

close?", the company statement replied that "[t]here are no plans for layoffs *at this time*." [emphasis added][35] Whereas Twitter's leaders denied having obtained any information on post-closing layoffs, the ax fell on a large proportion of Tweeps shortly post-closing.

2. The Ax Falls

Just a week after closing the Twitter deal, Musk executed mass layoffs, firing about 50% of the company's workforce of 7,500 employees.[36] Layoffs were especially concentrated around Twitter's headquarters, with 890 jobs eliminated in the San Francisco Bay area and a total of 983 jobs eliminated in California (both cases representing a very large fraction of the company's workforce in the area).[37]

Notably, despite their consistent pledges "to take care of the whole of Tweeps," Twitter's leaders not only did not seek enhanced monetary cushions for laid-off employees, but they did not even try to ensure that Tweep layoffs would be conducted in a humane and considerate manner. Prior to closing the deal, Twitter's leaders could have put in place terms protecting employee rights with respect to the process of their termination (and avoided provisions preventing them from doing so), or they could have at least sought and expressed some soft pledges regarding this issue, but they chose not to do so.

The first sign that several Twitter employees had been laid off arrived when their work laptops and email and Slack accounts were suddenly logged out late Thursday, November 3, just one week after the closing.[38] Shortly thereafter, the Twitter workforce was officially notified about the impending layoffs in a company-wide email—coming from a generic address and signed

---

[35] *Twitter Acquisition: Tweep FAQ*, *supra* note 2.

[36] For a discussion of these layoffs, *see* Faiz Siddiqui, *Elon Musk Begins Mass Layoffs at Twitter*, THE WASH. POST (Nov. 3, 2022), https://www.washingtonpost.com/technology/2022/11/03/elon-musk-twitter-layoffs/ [https://perma.cc/XW8U-9A3V].

[37] For a discussion of the layoffs in the San Francisco Bay Area, *see* George Avalos, *Twitter Lays Off About 900 in Bay Area After Elon Musk Takeover: Official State Report*, THE MERCURY NEWS (Nov. 5, 2022), https://www.mercurynews.com/2022/11/05/twitter-layoff-job-cut-elon-musk-tech-economy-bay-area-900-state-1000/ [https://perma.cc/S7FC-RKAD].

[38] As described in Donie O'Sullivan and Clare Duffy, *Elon Musk's Twitter Lays Off Employees Across the Company*, CNN BUSINESS (Nov. 9, 2022), https://www.cnn.com/2022/11/03/tech/twitter-layoffs/index.html [https://perma.cc/S3CQ-NKQ8], the layoffs were executed abruptly, with some employees realizing they had lost their jobs while in the middle of a Twitter meeting, when they got locked out of the company's systems during a call.

Electronic copy available at: https://ssrn.com/abstract=4330393

just "Twitter" —that provided no details about the reasons for the layoff.[39] The message explained that the next day, the offices would be closed and all badge access suspended, and instructed employees to go home.[40] The following day, Musk informed employees via a tweet that "[r]egarding Twitter's reduction in force, unfortunately there is no choice when the company is losing over $4M/day. Everyone exited was offered 3 months of severance, which is 50% more than legally required."[41] Unsurprisingly, a Twitter manager speaking to the media described the process as a "lack of care and thoughtfulness,"[42] and Harvard Business School professor Sandra Sucher characterized it as "a particularly inhumane way to treat" employees.[43]

The mass layoff of about half of Twitter's employees in early November, which brought the company's workforce to below 4,000, was subsequently followed by additional substantial reductions in employment, which brought Twitter's headcount to only about 2,000 by December 2022. Twitter communicated to employees that there were no plans for additional staff reductions, but then announced in late February 2023 a reduction of about 10% of workforce. Notably, media accounts indicate that some employees fired in this round also learnt about losing their job only upon finding that they were locked out of their work email accounts. On the whole, in the four months following the closing of the Musk acquisition, Twitter's workforce went from about 7,500 to about 1,800 employees, with more than three-quarters of the employees losing their employment.[44]

---

[39] Furthermore, the communication did not take into account the different time zones of Twitter's workforce, with the result that employees in Europe and Japan received the layoff email while still at work. For detailed descriptions of how the layoffs were handled, *see* Kate Conger et al., *Confusion and Frustration Reign as Elon Musk Cuts Half of Twitter's Staff*, THE NEW YORK TIMES (Nov. 5, 2022), https://www.nytimes.com/2022/11/04/technology/elon-musk-twitter-layoffs.html [https://perma.cc/4KN6-ZQXZ].

[40] *See* Siddiqui, *supra* note 36 ("To help ensure the safety of each employee as well as Twitter systems and customer data, our offices will be temporarily closed and all badge access will be suspended. If you are in an office or on your way to an office, please return home").

[41] Elon Musk (@elonmusk), TWITTER (Nov. 5, 2022, 1:14 AM), https://twitter.com/elonmusk/status/1588671155766194176.

[42] For additional details on the Twitter manager's comments, *see* Barbara Ortutay and Matt O'brien, *Elon Musk Defends Twitter Layoffs As Critics See a 'Lack of Care and Thoughtfulness'*, FORTUNE (Nov. 5, 2022), https://fortune.com/2022/11/05/elon-musk-twitter-layoffs-critics-lack-of-care-thoughtfulness/ [https://perma.cc/CM4W-DY65].

[43] *See* Conger et al.*, supra* note **Error! Bookmark not defined.**.

[44] For media discussions of the multiple rounds of layoffs at Twitter, *see* Kate Conger et al., *In Latest Round of Job Cuts, Twitter Is Said to Lay Off at Least 200 Employees*, THE NEW YORK TIMES (Feb. 26, 2023),

Electronic copy available at: https://ssrn.com/abstract=4330393

In assessing the failure of Twitter's leaders to seek protections to laid-off employees, it is worth noting that relatively vulnerable employees seem to have been disproportionately affected by the layoffs. Concerns were expressed that, among those who were particularly hard hit by the job cuts were pregnant women, new mothers, and employees on work visas who were placed on a 60-day deadline with their immigration status under threat. Employees who used to work from home before the acquisition were reportedly also targeted for the layoffs. Furthermore, Musk allegedly declined to accept a suggestion from Twitter executives to conduct a diversity and inclusion assessment to ensure the cuts would not disproportionately affect people of color.[45] In December 2022, a class action lawsuit alleging gender discrimination in the mass layoffs was filed, claiming that the company had laid off 57% of its women employees compared to 47% of its men employees, including 63% of women in engineering-related roles compared to 48% of men in similar roles.[46]

C. Retained Employees

1. No Protection for Retained Employees

Protecting the interests of retained employees generally involves two

https://www.nytimes.com/2023/02/26/technology/twitter-layoffs.html [https://perma.cc/2CNG-WCNP]; Alex Heath, *Elon Musk Says Twitter Is Done With Layoffs and Ready to Hire Again*, THE VERGE (Nov. 21, 2022), https://www.theverge.com/2022/11/21/23472025/elon-musk-twitter-hiring-again-ending-layoffs [https://perma.cc/TX9G-YDP5]; Alexa Corse, *Elon Musk's Twitter Cuts More Jobs as Platform Seeks to Slash Costs*, THE WALL ST. J. (Feb. 27, 2023), https://www.wsj.com/articles/elon-musks-twitter-cuts-more-jobs-as-platform-seeks-to-slash-costs-ab9ef143 [https://perma.cc/9FJQ-KQQH]; and Tom Gerken, *Twitter Reportedly Lays Off 200 More Employees*, BBC NEWS (Feb. 27, 2023), https://www.bbc.com/news/technology-64784368 [https://perma.cc/5A44-76TB].

[45] For a discussion on the impact of the layoffs on specific minorities and communities, *see* Conger et al*., supra* note **Error! Bookmark not defined.**; Sawdah Bhaimiya, *Some T witter staff on H-1B visas and parental leave were fired in Elon Musk's pre-Thanksgiving purge, a former engineer says*, THE BUSINESS INSIDER (Nov. 25, 2022), https://www.businessinsider.com/twitter-staff-visas-and-parental-leave-fired-ex-engineer-says-2022-11 [https://perma.cc/D6MS-UZSU] (last visited May 22, 2023); and Clare Duffy, *She was weeks away from maternity leave at Twitter. Then Elon Musk took over*, CNN BUSINESS (March 6, 2023), https://www.cnn.com/2023/03/06/tech/elon-musk-twitter-employees-year-of-uncertainty/index.html [https://perma.cc/VY83-RCG5] (last visited May 22, 2023).

[46] *See* Class Action Complaint and Jury Demand, *Strifling v. Twitter, Inc.*, No. 3:22-cv-07739 (N.D. Cal. Dec. 7, 2022), 2022 WL 17633657 at *1.

Electronic copy available at: https://ssrn.com/abstract=4330393

main dimensions. The first one involves protecting the financial terms of the employment, such as the employees' hourly pay. The second dimension involves elements of the working environment and conditions that are important for employees' well-being.

At first glance, it seems that the acquisition agreement contained a provision aimed at protecting the interests of retained employees by committing to maintain the same level of employee compensation or benefits for a period of one year.[47] A closer analysis of this provision, however, indicates that it is largely cosmetic and practically inconsequential. First, the transition period for not worsening the employment conditions of retained employees was limited to only 12 months. More importantly, in reality, as we will discuss in detail below, the provision did not provide practical protection for even a few days, and Musk moved to worsen the employment conditions of continuing employees immediately following the closing of the deal. This was possible because the ostensible employee-protection provision explicitly denied employees or any third party other than Musk or Twitter (owned post-closing by Musk) from enforcing the provision.[48]

Notably, Twitter's leaders did not even seek soft pledges or information regarding how retained employees would be treated. In the company-wide town hall meeting immediately following the signing of the deal, Twitter CEO Parag Agrawal acknowledged the uncertainty ahead and told Twitter employees that "[o]nce the deal closes, we don't know what direction this company will go in."[49] Moreover, in response to questions about Musk's plans for the company, the CEO would not answer, insisting that those questions should be addressed to Musk. Furthermore, Twitter released a rather vague and uninformative statement with respect to the post-close continuation of its flexible/remote work policy: "We do not expect our policies around remote work to change *at this time*. A significant portion of

---

[47] Twitter 2022 Proxy Statement, *supra* note 7, at A-43 ("Parent shall, or shall cause the Surviving Corporation or any of their Affiliates to, provide for each Continuing Employee (i) at least the same base salary and wage rate, (ii) short- and long-term target incentive compensation opportunities that are no less favorable in the aggregate than those provided to each such Continuing Employee immediately prior to the Effective Time (provided that Parent shall not be obligated to provide such incentives in the form of equity or equity-based awards) and (iii) employee benefits (excluding equity and equity-based awards) which are substantially comparable in the aggregate (including with respect to the proportion of employee cost) to those provided to such Continuing Employee immediately prior to the Effective Time."

[48] *Id.* at A-59.

[49] *See* Mike Isaac and Lauren Hirsch, *With Deal for Twitter, Musk Lands a Prize and Pledges Fewer Limits*, THE NEW YORK TIMES (Apr. 25, 2022), https://www.nytimes.com/2022/04/25/technology/musk-twitter-sale.html [https://perma.cc/GAE9-KRDF].

Electronic copy available at: https://ssrn.com/abstract=4330393

our workforce is either fully or partially remote. That is how we have worked the last several years and that is how we currently expect to work going forward *during this time.*"[50]

2. The Ax Falls

Shortly after the deal closed, Musk moved swiftly in ways that worsened both of the key dimensions of continuing employees' employment terms. First, Musk moved to significantly reduce the compensation received per hour by requiring Tweeps to substantially increase the time spent on Twitter work.

In his first post-deal communication to Twitter's employees, Musk stated that he expected 80-hour work weeks and that employees would be required to be in the office for a minimum of 40 hours per week with any exceptions having to be personally reviewed and approved by him.[51] Soon afterwards, three weeks after the deal closed, Musk required all Twitter employees to fill out a Google form by the next day indicating whether they would like to continue, with the understanding that they would have to work long hours at high intensity or leave the company.[52] In this way, Musk effectively made it impossible for any employees to continue working without consenting to increase the scope and intensity of the time spent on Twitter work.

Recall that the deal agreement included a provision ensuring Twitter's continuing employees "at least the same base salary and wage rate" and benefits for twelve months following the acquisition but denied employees any right to enforce this provision.[53] Clearly, Musk's move was inconsistent with at least the spirit of this provision, as it effectively lowered the hourly rate paid to continuing employees. Had the employees been granted the power to enforce this provision, they could have resisted Musk's move to force them to sign a form consenting to such a reduction as a bad faith circumvention of the provision. But with the deal agreement designed to deny

[50] See *Twitter Acquisition: Tweep FAQ*, *supra* note 2 (emphasis added).

[51] For a report on Musk's first post-deal communication, *see* Ed Ludlow, *Musk Warns Twitter Bankruptcy Possible If Cash Burn Lingers*, BLOOMBERG LAW (Nov. 10, 2022), https://news.bloomberglaw.com/mergers-and-acquisitions/musk-tells-twitter-staff-social-networks-bankruptcy-is-possible; and Ian Johnston et al, *Elon Musk Bans Remote Work at Twitter*, THE FINANCIAL TIMES (Nov. 10, 2022), https://www.ft.com/content/899bb401-1ab0-43aa-8ab1-102111b49568.

[52] For a review of Musk's communication asking Twitter's employees to fill the Google form, *see, e.g.,* Sarah E. Needleman and Alexa Corse, *Elon Musk Tells Twitter Staff to Work 'Long Hours at High Intensity' or Leave*, THE WALL ST. J. (Nov. 16, 2022), https://www.wsj.com/articles/elon-musk-gives-twitter-staff-an-ultimatum-work-long-hours-at-high-intensity-or-leave-11668608923 [https://perma.cc/2MWX-5LEH].

[53] Twitter 2022 Proxy Statement, *supra* note 7, at A-43, A-59.

Electronic copy available at: https://ssrn.com/abstract=4330393

employees the right to enforce the provision, they were powerless to prevent Musk from stripping it of all meaning and sharply reducing their per hour pay.

Turning to the employment conditions, Musk also moved swiftly to worsen key elements of the working environment that significantly affected employees' well-being. In particular, Musk's first email to Twitter's workers announced "changing Twitter policy such that remote work is no longer allowed, unless you have a specific exception."[54] Note that prior to signing the acquisition agreement, Twitter had long expressed a strong commitment to providing a flexible work environment, had claimed with pride to be one of the first companies to permit remote work in the face of COVID-19, and had stressed that employees would be allowed to work from home "forever."[55] Twitter executives explained that their remote work policy gave workers more autonomy and freedom and thereby improved morale, retention, and productivity.[56] Furthermore, Twitter claimed that the "work from anywhere" policy implemented during the pandemic boosted diversity within the workforce, increasing Black and Latino hires in particular.[57]

In addition, and despite the provision for maintaining employment conditions for twelve months—which employees were enjoined from enforcing—Musk made other changes to the working environment that were expected to adversely affect the well-being of many continuing employees. Among other things, Musk announced a reduction in office benefits, such as free food at the company cafeteria, as well as removing "days of rest"—a monthly, company-wide day off introduced during the pandemic period to

---

[54] Johnston et al., *supra* note 51.

[55] Jennifer Christie, *Keeping our Employees and Partners Safe During #coronavirus, Twitter Blog (May. 12, 2020),* https://blog.twitter.com/en_us/topics/company/2020/keeping-our-employees-and-partners-safe-during-coronavirus.html ("Twitter was one of the first companies to go to a work from home model in the face of COVID-19, but we don't anticipate being one of the first to return to offices. We were uniquely positioned to respond quickly and allow folks to work from home given our emphasis on decentralization and supporting a distributed workforce capable of working from anywhere. The past few months have proven we can make that work. So if our employees are in a role and situation that enables them to work from home and they want to continue to do so forever, we will make that happen.")

[56] Elizabeth Dwoskin, *Americans might never come back to the office, and Twitter is leading the charge*, THE WASH. POST, October 1, 2020 ("Twitter executives in exclusive interviews explained that the company's shift to distributed work is ultimately about creating a model that gives employees more autonomy and freedom, which they believe improves morale, retention and productivity").

[57] For a discussion of the potential benefits of Twitter's "*work from anywhere"* policy, *see* Jeff Green and Kurt Wagner, *'Work From Anywhere' Helped Twitter Boost Black, Latinx Hires*, BLOOMBERG, January 12, 2022.

Electronic copy available at: https://ssrn.com/abstract=4330393

rest and recharge. Musk also called on Twitter's workers to "work strenuously to keep the company afloat,"[58] stating that for "[t]hose who are able to go hard core and play to win, Twitter is a good place," while for "those who are not, totally understand, but then Twitter is not for you."[59] In addition, to advance this "hardcore" work culture, Musk reportedly turned some Twitter offices into bedrooms for staff to sleep in.[60]

IV. PUSHING MISSION AND CORE VALUES UNDER THE BUS

D. Twitter's Mission and Core Values

Prior to signing the merger agreement with Musk, Twitter had consistently employed a strong stakeholderist rhetoric and expressed commitments to stated missions and core values. Among other things, Twitter describes its mission, purpose and objectives as follows:

- "To give everyone the power to create and share ideas and information instantly without barriers," with a commitment that its "business and revenue will always follow that mission";[61]
- To "serve the public conversation,"[62] "to promote the long-term interests of [its] stakeholders and help build public trust in Twitter,"[63] and "to bring our company and community together as a force for good";[64] and
- To unite "profit and purpose" as "a purpose-driven company that does good."[65]

In addition to this general "being a force for good" pro-stakeholder

---

[58] See Kurt Wagner, *Musk's First Email to Twitter Staff Ends Remote Work*, BLOOMBERG, November 10, 2022.

[59] Conger et al., *supra* note **Error! Bookmark not defined.**; and Kurt Wagner, *Musk's F irst Email to Twitter Staff Ends Remote Work*, BLOOMBERG, November 10, 2022.

[60] For a discussion of Musk's alleged conversion of Twitter offices into bedrooms, *see* Dani Anguiano, *Elon Musk accused of turning Twitter offices into bedrooms*, THE GUARDIAN, December 8, 2022.

[61] See Twitter, *Investor Relations FAQ*, https://investor.twitterinc.com/contact/faq/default.aspx#:~:text=back%20to%20top-,What%20is%20Twitter%27s%20mission%20statement%3F,a%20free%20and%20global%20conversation (last visited May 20, 2023) [https://perma.cc/57NF-GHC5].

[62] See Twitter, *About*, https://about.twitter.com/en (last visited May 20, 2023), https://perma.cc/J4K7-C9AP.

[63] See Twitter, *https://investor.twitterinc.com/corporate-governance/Governance-Resources/default.aspx#impact-report* [https://perma.cc/5SGH-4GT9]. (last visited May 20, 2023)

[64] *Id.*

[65] *Id.*

Electronic copy available at: https://ssrn.com/abstract=4330393

commitment, Twitter expressed commitment to some more particular core values and principles, including commitments to:

- "[P]rotecting the health of the public conversation"[66] and ensuring that this conversation be "safe, inclusive and authentic";[67]
- Supporting local communities;[68]
- Becoming "the world's most inclusive, diverse, equitable, and accessible tech company";[69] and
- "protecting the environment" against climate change.[70]

This was all, however, prior to negotiating the deal with Musk. As explained below, in negotiating the deal, Twitter's leaders elected to disregard the company's public commitments to core values and public goals, did not seek to constrain or limit post-deal departures from these commitments, and acted in this way despite indications that Musk could well abandon some or all of these commitments post-deal.

E. Hateful Conduct and Civic Integrity

1. Hateful Conduct

Prior to signing the Musk deal, Twitter had long upheld a clear and strong Hateful Conduct Policy, which was aimed at preventing speech that could promote violence, attacks, or threats against other people.[71] This policy included recognition that people from historically underrepresented

---

[66] Twitter, *About*, https://about.twitter.com/en/our-priorities/healthy-conversations [https://perma.cc/WXP3-RXQ6].

[67] *Id.*

[68] See Twitter, *Inclusion, Diversity, Equity, and Accountability,* https://careers.twitter.com/en/diversity.html [https://perma.cc/55BF-CJX3] ("Strengthening our communities is core to our social impact philosophy, and our goal is to bring our company and community together as a positive societal force around the world").

[69] *Id.*

[70] See Twitter, *Governance* Resources, https://investor.twitterinc.com/corporate-governance/Governance-Resources/default.aspx#impact-report [https://perma.cc/5SGH-4GT9] ("We're committed to protecting the environment, reducing our carbon footprint, and fostering long-term sustainability projects to play our part").

[71] See Twitter, *Hateful conduct policy*, https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy [https://perma.cc/2NHX-ER9G] ("Hateful conduct: You may not promote violence against or directly attack or threaten other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease. We also do not allow accounts whose primary purpose is inciting harm towards others on the basis of these categories").

Electronic copy available at: https://ssrn.com/abstract=4330393

communities were disproportionately subjected to online abuse.[72] To implement these policies, Twitter reviewed accounts that seemed to threaten or incite violence, and it took action against such accounts, with suspension serving as the most severe enforcement option.[73]

Given its expressed commitments, in the immediate aftermath of the January 6, 2021 attack on Capitol Hill, Twitter decided to permanently suspend the account of former President Donald Trump due to its perceived risk of further incitement of violence.[74] Twitter's then Chief Financial Officer, Ned Segal, explained this permanent suspension was mandated by Twitter's long-standing policies: "Remember, our policies are designed to make sure that people are not inciting violence. And if anybody does that, we *have* to remove them from the service. And our policies don't allow people to come back."[75]

In the months preceding the deal agreement, Musk stressed his different approach, favoring an easing of Twitter's controls on political speech.[76] Among other things, he explicitly declared that: "timeouts I think are better than permanent bans" for dealing with hateful conduct.[77] Despite the clear

---

[72] *Id*. ("Research has shown that some groups of people are disproportionately targeted with abuse online. This includes; women, people of color, lesbian, gay, bisexual, transgender, queer, intersex, asexual individuals, marginalized and historically underrepresented communities.")

[73] See Twitter, *https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy*, https://perma.cc/2NHX-ER9G ("[W]e have a zero tolerance policy against violent threats. Those deemed to be sharing violent threats will face immediate and permanent suspension of their account.").

[74] See Twitter, *Permanent suspension of @realDonaldTrump*, https://blog.twitter.com/en_us/topics/company/2020/suspension [https://perma.cc/8L2R-MEHD] (Announcing the permanent suspension of former President Trump form Twitter).

[75] *See* Mark Moore, *Trump's Twitter ban is permanent, executive says*, NEW YORK POST, February 10, 2021 (emphasis added).

[76] See Elon Musk (@elonmusk), TWITTER (Mar. 25, 2022, 3:34 AM), https://twitter.com/elonmusk/status/1507259709224632344 ("Free speech is essential to a functioning democracy. Do you believe Twitter rigorously adheres to this principle?"); Elon Musk (@elonmusk), TWITTER (Mar. 26, 2022, 1:51 PM), https://twitter.com/elonmusk/status/1507777261654605828 ("Given that Twitter serves as the de facto public town square, failing to adhere to free speech principles fundamentally undermines democracy"). *See* also ELON MUSK, AMENDMENT NO. 2 TO SCHEDULE 13D, (April 13, 2022), https://www.sec.gov/Archives/edgar/data/1418091/000110465922045641/tm2212748d1_sc13da.htm, ("I invested in Twitter as I believe in its potential to be the platform for free speech around the globe, and I believe free speech is a societal imperative for a functioning democracy. However, since making my investment I now realize the company will neither thrive nor serve this societal imperative in its current form").

[77] See *Elon Musk talks Twitter, Tesla and how his brain works*, TED2022, April 14, 2022, https://www.youtube.com/watch?v=cdZZpaB2kDM.

Electronic copy available at: https://ssrn.com/abstract=4330393

pre-deal indications that Musk could well choose to abandon the company's long-standing commitment to fight what it defined as hateful conduct, Twitter's leaders chose not to negotiate for any constraints on, and seem not to have even sought soft pledges or information with respect to any post-deal abandonment of Twitter's core values.

Soon after signing the acquisition agreement, Musk announced that he would "reverse the permanent ban" of Donald Trump from the platform, and following the closing, Musk moved quickly to restore the former President's account after a small majority of respondents to a poll he conducted supported this move.[78] Shortly afterwards, and to further implement his policy of reducing restrictions on free speech, even when that speech rises to the defined level of hateful conduct, Elon Musk reinstated nearly all other previously banned Twitter accounts, including those that had been suspended for offenses such as violent threats and harassment.[79] Notably, Musk also fired several outsourced content moderators who had been working with the company's civic integrity team to track hateful conduct.[80] According to media reports, the volume of hate speech on Twitter witnessed a sharp increase following the closing of the deal, with racist, misogynistic, homophobic, and anti-Semitic tweets soaring.[81]

2. Civic Integrity

A related core value to which Twitter had expressed commitment was that of "civic integrity" intended "to protect the conversation on Twitter during elections or other civic processes."[82] Twitter's civic integrity team evaluated the risks posed to elections throughout the world and sought to prevent the use of Twitter to share or spread false or misleading information

[78] See Elon Musk (@elonmusk), TWITTER (Nov. 19, 2022, 7:53 PM), https://twitter.com/elonmusk/status/1594131768298315777 ("The people have spoken. Trump will be reinstated. Vox Populi, Vox Dei.").

[79] For a discussion of Musk's decision to reinstate previously banned accounts, *see* Taylor Lorenz, *'Opening the gates of hell': Musk says he will revive banned accounts*, THE WASH. POST, November 24, 2022.

[80] For a review of these layoffs, *see* Barbara Ortutay and Matt O'Brien, *Elon Musk fires outsourced content moderators who track hate and harmful posts on Twitter*, FORTUNE, November 13, 2022.

[81] For a report on the increase of the volume of hate speech on Twitter after Musk's acquisition, *see The Musk Bump: Quantifying the rise in hate speech under Elon Musk*, CENTER FOR COUNTERING DIGITAL HATE, (December 6, 2022), https://counterhate.com/blog/the-musk-bump-quantifying-the-rise-in-hate-speech-under-elon-musk/.

[82] Twitter, *About*, https://about.twitter.com/en/our-priorities/civic-integrity, https://perma.cc/JR4Q-DH3Q.

Electronic copy available at: https://ssrn.com/abstract=4330393

about elections that could disrupt or undermine public confidence in civic processes.[83]

As noted above, after purchasing a significant block in Twitter and prior to signing the deal with Twitter, Musk had repeatedly expressed his support for reducing content moderation on Twitter to loosen constraints on free speech.[84] In addition, his views about avoiding permanent bans suggested the possibility of reinstating accounts that had been removed on the grounds of misinformation about elections or otherwise undermining civic processes. Despite these indications, Twitter's corporate leaders did not negotiate for any constraints, or even soft pledges or disclosure of information, with respect to the post-deal maintenance of the company's commitments to civic integrity.

After the deal closed and Musk took control, he quickly restored the accounts that had been banned for violating Twitter policy against civic integrity misinformation.[85] Notably, it was reported that misinformation and false narratives proliferated on Twitter in the run-up to the 2022 midterm elections that took place immediately following Musk's takeover.[86] Furthermore, Musk decided to remove Twitter's prior ban on political ads,[87] which had been adopted in 2019 to prevent election misinformation from spreading.[88]

---

[83] *Id.*

[84] *See supra* note 71, and Elizabeth Dwoskin, *Elon Musk wants a free speech utopia. Technologists clap back*, THE WASHINGTON POST (April 18, 2022), https://www.washingtonpost.com/technology/2022/04/18/musk-twitter-free-speech/ [https://perma.cc/CT5A-HKQ4] (last visited May 16, 2023) ("Elon Musk's vision for Twitter is a public town square where there are few restrictions on what people can or can't say on the Internet").

[85] For an overview of the restatements of suspended Twitter accounts, *see* Clare Duffy, *The mass unbanning of suspended Twitter users is underway*, CNN BUSINESS (December 8, 2022), https://www.cnn.com/2022/12/08/tech/twitter-unbanned-users-returning/index.html [https://perma.cc/7YBE-2AA9] (last visited May 16, 2023).

[86] For a report on Twitter misinformation during the midterm elections, *see* Tiffany Hsu, *Elon Musk's Twitter Did Not Perform at Its Best on Election Day*, THE NEW YORK TIMES (Nov. 9, 2022), https://www.nytimes.com/2022/11/09/technology/elon-musk-twitter-maricopa-election-false-claims.html [https://perma.cc/YKT7-LMCU] (last visited May 16, 2023).

[87] For a discussion of Musk's decision, *see* Sheila Dang, *Elon Musk's Twitter lifts ban on political ads*, REUTERS (Jan. 4, 2023), https://www.reuters.com/business/media-telecom/twitter-expand-permitted-political-advertising-2023-01-03/ [https://perma.cc/P8SM-37UQ] (last visited May 16, 2023).

[88] *See* Twitter, *Political Content*, https://business.twitter.com/en/help/ads-policies/ads-content-policies/political-content.html [https://perma.cc/2MUM-SBXB] (Twitter's statements removed by Musk post-acquisition) (last visited May 16, 2023). *See* also the

Electronic copy available at: https://ssrn.com/abstract=4330393

Additionally, at the end of November, 2022, one month following the closing of the deal, Twitter announced that it would discontinue its COVID-19 misleading information policy.[89] The policy had been introduced by Twitter two and half years earlier, at the start of the pandemic, and was praised by experts as an example of how tech companies should address misinformation.[90] According to a report published by Twitter on July 28, 2022, it had removed almost 100,000 tweets and had suspended more than 11,000 accounts for violating the policy.[91] In addition to discontinuing the COVID misinformation policy, Musk also reinstated several accounts that had been banned for violating it by spreading misinformation about the virus and vaccines for it .[92]

F. Other Core Values and Commitments

1. The War in Ukraine

Following the start of the war in Ukraine in March 2022, Twitter expressed its deep concerns about the "Russian invasion of Ukraine and the

---

tweets of then CEO Jack Dorsey and of then head of legal, policy and trust Vijaya Gadde, Jack Dorsey (@jack), TWITTER (Oct. 30, 2019, 4:05 PM), https://twitter.com/jack/status/1189634368081260549 [https://perma.cc/LE4Z-NX2N] ("While internet advertising is incredibly powerful and very effective for commercial advertisers, that power brings significant risks to politics, where it can be used to influence votes to affect the lives of millions") (last visited May 16, 2023) and Vijaya Gadde (@vijaya), TWITTER (Nov. 15, 2019, 1:30 PM), https://twitter.com/vijaya/status/1195408744730877952 [https://perma.cc/VQK4-75MS] ("1. Political message reach should be earned, not bought. 2. Advertising should not be used to drive political, judicial, legislative, or regulatory outcomes; however, cause-based advertising can facilitate public conversation around important topics") (last visited May 16, 2023).

[89] Twitter, *Company*, https://blog.twitter.com/en_us/topics/company/2020/covid-19#protecting, [https://perma.cc/JB68-JY2S] ("Effective November 23, 2022, Twitter is no longer enforcing the COVID-19 misleading information policy.") (last visited May 16, 2023).

[90] For a discussion of Twitter's COVID-19 misleading information policy, *see* Taylor Lorenz, *Twitter ends its ban on covid misinformation*, THE WASH. POST (November 29, 2022), https://www.washingtonpost.com/technology/2022/11/29/twitter-covid-misinformation-policy/ [https://perma.cc/K794-4HBG] (last visited May 16, 2023).

[91] This report is available at Twitter, *COVID-19 Misinformation*, https://transparency.twitter.com/en/reports/covid19.html#item1:2021-jul-dec: [https://perma.cc/WD3G-VSGD] (last visited May 16, 2023).

[92] For an example of one reinstated account, that of Rep. Marjorie Taylor Greene who was banned in January 2022 for violating the platform's COVID misinformation policies, see *Elon Musk's Twitter reinstates Rep. Marjorie Taylor Greene*, THE HILL (November 21, 2022), https://thehill.com/homenews/ap/ap-top-headlines/ap-elon-musks-twitter-reinstates-rep-marjorie-taylor-greene/ [https://perma.cc/X8VN-6HDG] (last visited May 16, 2023).

Electronic copy available at: https://ssrn.com/abstract=4330393

humanitarian crisis unfolding there."[93] This opposition to the Russian attack was expressed by Twitter suspending all advertising in Ukraine and Russia "to ensure critical public safety information is elevated and ads don't detract from it."[94] The company also moved to limit content from more than three hundred official Russian government accounts, including that of Russian President Vladimir Putin.[95] Moreover, after the EU announced a ban on broadcasts of the Russian state-backed channels RT and Sputnik in the European Union,[96] Twitter began labeling tweets containing links to Russian state media websites, stopped recommending tweets with these links, and blocked such tweets from appearing in its "Top Search" suggestions.[97]

Prior to signing the deal with Twitter, Musk already indicated he was more sympathetic or at least open to airing the views of the conflict expressed by Russian media sources. In particular, Musk tweeted that "Starlink [the satellite internet constellation that he runs through SpaceX] has been told by some governments (not Ukraine) to block Russian news sources. We will not do so unless at gunpoint. Sorry to be a free speech absolutist."[98] However, Twitter's leaders did not negotiate any contractual limitations or even soft pledges to address the risk that Musk could abandon the company's commitment to the Ukrainian cause.

After signing the deal, Musk seemed to confirm the risk that he would

---

[93] See Twitter, *Company*, https://blog.twitter.com/en_us/topics/company/2022/our-ongoing-approach-to-the-war-in-ukraine [https://perma.cc/EZY6-BEZY] (last visited May 16, 2023).

[94] See Twitter, *Company*, https://blog.twitter.com/en_us/topics/company/2022/our-ongoing-approach-to-the-war-in-ukraine [https://perma.cc/EZY6-BEZY] (last visited May 16, 2023).

[95] For a discussion of Twitter's actions to limit Russian government accounts, *see* James Clayton, *Twitter moves to limit Russian government accounts*, BBC (April 5, 2022), https://www.bbc.com/news/technology-60992373, [https://perma.cc/SSU3-CHNF] (last visited May 16, 2023).

[96] For a report about this ban, see Council of the EU Press release (March 2, 2022 12:40), *EU imposes sanctions on state-owned outlets RT/Russia Today and Sputnik's broadcasting in the EU*, https://www.consilium.europa.eu/en/press/press-releases/2022/03/02/eu-imposes-sanctions-on-state-owned-outlets-rt-russia-today-and-sputnik-s-broadcasting-in-the-eu/ [https://perma.cc/MJ45-4QKC] (last visited May 16, 2023).

[97] For a description of the measures adopted by Twitter with regard to the Russian media, *see* Elizabeth Dwoskin and Cat Zakrzewski, *Facebook and TikTok ban Russian state media in Europe*, THE WASH. POST (Feb. 28, 2022), https://www.washingtonpost.com/technology/2022/02/28/facebook-ukraine-russian-disinformation/ [https://perma.cc/7HSE-7PEB] (last visited May 16, 2023).

[98] See Elon Musk (@elonmusk), TWITTER (March 5, 2022, 7:15 AM), https://twitter.com/elonmusk/status/1499976967105433600 [https://perma.cc/7GQ8-A43K] (last visited May 16, 2023).

Electronic copy available at: https://ssrn.com/abstract=4330393

indeed abandon this Twitter commitment. He called Russian-owned media channels "quite entertaining" and added that they offer "some good points."[99] Furthermore, in a series of tweets, he proposed a peace agreement that would accommodate major Russian interests by holding a referendum for the "annexed regions" under UN supervision and would recognize Crimea as part of Russia.[100] Kremlin spokesman, Dmitri S. Peskov, in a conference call with reporters, referred to Musk's initiative as "very positive,"[101] while Ukrainian President Zelensky expressed strong opposition to this initiative.[102]

Since Musk assumed control of Twitter, various prominent Russian state media hosts and contributors have asked Musk to remove labels and shadow bans from their accounts.[103] As of this writing, it is not yet known whether and to what extent Musk will reverse Twitter's commitment on the subject. Certainly, however, Twitter's leaders did not attempt to lower or constrain this risk in any way.

2. Climate Risks and ESG Initiatives

Prior to entering into the deal with Musk, Twitter had described climate change as "one of the greatest challenges of our time." Furthermore, it had expressed its commitment "to protecting the environment, reducing our carbon footprint, and fostering long-term sustainability projects to play our

---

[99] For a discussion of Musk's comments, *see* Zach Schonfeld, *Musk said Russian media had 'lot of bulls—, but some good points too' after Ukraine invasion*, THE HILL (September 29, 2022), https://thehill.com/policy/technology/3667902-musk-said-russian-media-had-lot-of-bulls-but-some-good-points-too-after-ukraine-invasion/ [https://perma.cc/5HHE-YTK2] (last visited May 16, 2023).

[100] For the details of Musk proposal, see Elon Musk (@elonmusk), TWITTER (Oct. 3, 2022, 12:15 PM), https://twitter.com/elonmusk/status/1576969255031296000 [https://perma.cc/GJ4Y-AZ7P] (last visited May 16, 2023).

[101] For Peskov's remark, *see* Carly Olson, *Elon Musk weighs in on how to end the war in Ukraine*, THE NEW YORK TIMES (October 3, 2022), https://www.nytimes.com/2022/10/03/world/europe/elon-musk-ukraine-war-tweets.html [https://perma.cc/9K32-Z3LT] (last visited May 16, 2023).

[102] See Volodymyr Zelensky (@ZelenskyyUa), TWITTER (Oct. 3, 2022, 2:45 PM), https://twitter.com/ZelenskyyUa/status/1577006943499350016 [https://perma.cc/WDH2-GUK4] (last visited May 16, 2023) ("Which @elonmusk do you like more? One who supports Ukraine/One who support Russia").

[103] For a description of such requests *see* Cristiano Lima, *Russian state-media eyes Twitter resurgence under Musk*, THE WASHINGTON POST (Nov. 7, 2022), https://www.washingtonpost.com/politics/2022/11/07/russian-state-media-eyes-twitter-resurgence-under-musk/ [https://perma.cc/U6YG-CLD2] (last visited May 16, 2023).

Electronic copy available at: https://ssrn.com/abstract=4330393

part."[104]

Twitter acted on its commitment by taking a series of steps aimed at reducing its own carbon footprint.[105] Furthermore, and importantly, in April 2022 Twitter adopted a new "climate-forward approach to ads," banning "misleading advertisements on Twitter that contradict the scientific consensus on climate change."[106] The adoption of this approach was motivated by the company's commitment not to profit from what it considered climate denialism in light of its position that climate risks were recognized by authoritative sources, such as the reports of the United Nations' Intergovernmental Panel on Climate Change.[107]

In addition, in 2021, the company created a Risk Committee of the Board of Directors focused on Environment, Sustainability and Governance (ESG) issues and announced a commitment to "leverage the Sustainability Accounting Standards Board (SASB) to make sure we focus on the ESG risks and opportunities most relevant to our investors."[108]

Musk, despite having founded companies focused on renewable technologies, such as Tesla and Solar City, has recently begun expressing some skepticism with respect to the consensus on climate issues and on the ESG movement. In January 2022, he stated that he did not support

---

[104] See Twitter, *Investor Relations, Governance Resources, https://investor.twitterinc.com/corporate-governance/Governance-Resources/default.aspx#impact-report* [https://perma.cc/5SGH-4GT9] (last visited May 16, 2023).

[105] For example, in 2019, Twitter announced a goal of achieving 100% carbon-neutral power sourcing in their data centers by the end of 2022. For this announcement, *see* Twitter, *Company*, *Taking steps toward sustainability this Earth Day*, https://blog.twitter.com/en_us/topics/company/2019/taking-steps-toward-sustainability-this-earth-day [https://perma.cc/F3UN-QQTG] (last visited May 16, 2023).

Subsequently, Twitter announced in April 2021 that it had signed the Science-Based Target Initiative (SBTi), pledging to significantly reduce greenhouse gas emissions by 2030. For this announcement, see Twitter Global Government Affairs (@GlobalAffairs), TWITTER (Apr. 22, 2021, 11:20 AM), https://twitter.com/GlobalAffairs/status/1385252160619876359 [https://perma.cc/6ZEW-FAMA] (last visited May 16, 2023).

Furthermore, in February 2022, Twitter joined the EU Climate Pact, committing to transitioning to renewable electricity in all its EU leased operations, using 100% carbon-neutral energy in its directly leased buildings by 2025, and upping investments in carbon removal technologies. For a statement of this Twitter commitment, *see* Twitter Public Policy (@policy), TWITTER (Feb. 2, 2022, 5:01 PM), https://twitter.com/Policy/status/1488890378107424774?s=20&t=jkutu3xVvuB53nb-lZsLHQ [https://perma.cc/Q8KT-3JHV] (last visited May 16, 2023).

[106] See Twitter, *Accelerating our climate commitments on Earth Day* (April 22, 2022), https://blog.twitter.com/en_us/topics/company/2022/accelerating-our-climate-commitments-on-earth-day [https://perma.cc/GDL9-L9YQ] (last visited May 16, 2023).

[107] *Id.*

[108] *Id.*

Electronic copy available at: https://ssrn.com/abstract=4330393

government incentives to combat climate change.[109] Furthermore, in March and April 2022, just prior to signing the acquisition agreement, he repeatedly tweeted vigorous critiques of ESG rules and ratings; among other things, he wrote that "ESG rules have been twisted to insanity";[110] that "ESG should be deleted if not fixed";[111] that "I am increasingly convinced that corporate ESG is the Devil Incarnate";[112] and that "ESG ratings make no sense."[113]

Nonetheless, when negotiating the Musk deal, Twitter's leaders chose not to bargain for any effective protections or even soft commitments with respect to the climate issue. As a result, it is possible that in the future, Musk's control could lead to the abandonment in whole or in part of Twitter's environmentalism and ESG commitments.

3. Human Rights

Prior to signing the Musk deal, Twitter had expressed a strong commitment to using its platform to defend and respect human rights, professing that: "Defending and respecting the user's voice is one of our core values at Twitter. This value is a two-part commitment to freedom of expression and privacy. Transparency is also an important part of this commitment."[114] Twitter defined its commitment to protect human rights as a "global commitment . . . grounded in the United States Bill of Rights and the European Convention on Human Rights" and informed by "works such

---

[109] For a more detailed report on Musk's comments, *see* Margo Oge, *Where Does Elon Musk Really Stand On Fighting Climate Change?*, FORBES (Jan. 17, 2022), https://www.forbes.com/sites/margooge/2022/01/17/where-does-elon-musk-really-stand-on-fighting-climate-change/?sh=75d345e0471d [https://perma.cc/SY42-N4RZ] (last visited May 16, 2023).

[110] See Elon Musk (@elonmusk), TWITTER (Mar. 8, 2022, 8:54 AM), https://twitter.com/elonmusk/status/1501194770261098497.

[111] @elonmusk, TWITTER (Mar. 8, 2022, 1:26 PM), https://twitter.com/elonmusk/status/1501263095607574532 [https://perma.cc/VLH2-6HEA].

[112] @elonmusk, TWITTER (Apr. 3, 2022, 1:14 AM), https://twitter.com/elonmusk/status/1510485792296210434 [https://perma.cc/P6AU-V6D8].

[113] @elonmusk, TWITTER (Apr. 23, 2022, 2:34 AM), https://twitter.com/elonmusk/status/1517935052096778241 [https://perma.cc/48S7-AE56].

[114] Twitter, *Defending and respecting the rights of people using our service*, https://help.twitter.com/en/rules-and-policies/defending-and-respecting-our-users-voice#:~:text=Platform%20Use%20Guidelines-,Defending%20and%20respecting%20the%20rights%20of%20people%20using%20our%20service,important%20part%20of%20this%20commitment [https://perma.cc/S8KW-FS4B].

Electronic copy available at: https://ssrn.com/abstract=4330393

as [the] United Nations Principles on Business and Human Rights."[115]

Clearly, it could have been expected prior to closing the deal and during negotiations that Elon Musk's commitment to free speech absolutism and support for reducing content moderation could pose risks to the discourse regarding human rights on Twitter.[116] However, Twitter's corporate leaders chose not to negotiate any constraints, not even soft ones, with respect to this subject.

As a result, Musk's control of Twitter seems to be posing risks to the protection of human rights on the company's platform. Following the deal closing, Musk reportedly fired Twitter's entire human rights team.[117] This action alarmed the U.N. High Commissioner for Human Rights, Volker Türk, who issued an open letter to Musk urging him "to ensure human rights are central to the management of Twitter" and stressing that "[r]eports that Twitter's entire human rights team and all but two of its ethical AI team have been fired this week are not, from my perspective, an encouraging start."[118] The U.N. Commissioner also stressed how, until the Musk acquisition, Twitter had been "an active participant in the Community of Practice" of the U.N. B-Tech project, which seeks to apply the U.N. Guiding Principles on Business and Human rights in the technology sector.[119]

V. BEYOND TWITTER

Our analysis of the Twitter-Musk case has implications for three significant debates and discussions in the corporate governance field. We discuss each of them in turn briefly below.

---

[115] *Id.*

[116] See Frederike Kaltheuner & Amy Braunschweiger, *Interview: Elon Musk, Twitter, and Human Rights*, HUMAN RIGHTS WATCH (May 10, 2022, 12:09 AM EDT), https://www.hrw.org/news/2022/05/10/interview-elon-musk-twitter-and-human-rights [https://perma.cc/D9KN-BTGX]., for a discussion on the risks that the Twitter's acquisition by Musk would have posed on human rights.

[117] *See* Barbara Ortutay & Matt O'Brien, *Elon Musk defends Twitter layoffs as critics see a 'lack of care and thoughtfulness'*, FORTUNE (Nov. 5, 2022, 7:27 AM PDT), https://fortune.com/2022/11/05/elon-musk-twitter-layoffs-critics-lack-of-care-thoughtfulness/ [https://perma.cc/5K8K-WUAS] ("Several employees who tweeted about losing their jobs said Twitter eliminated their entire teams, including one focused on human rights.").

[118] *Open letter from Volker Türk, United Nations High Commissioner for Human Rights, to Mr. Elon Musk, Chief Executive Officer at Twitter* (Nov. 5, 2022), https://www.ohchr.org/sites/default/files/documents/press/2022-11-05/22-11-05_Letter_HC_to_Mr_Elon_Musk.pdf [https://perma.cc/P78A-2RRF].

[119] *Id.*

Electronic copy available at: https://ssrn.com/abstract=4330393

A. Implicit Promises/ Team Production Theories

The influential implicit promise theory of Coffee (1986) and Shleifer and Summers (1988),[120] and the well-known team production theory of Blair and Stout (1999),[121] took the view that corporate leaders should and do safeguard stakeholder interests in acquisition decisions. According to this view, such safeguarding serves the *ex ante* interest of shareholders by encouraging stakeholders to invest more in their relationship with the company, thereby contributing to the company's success.

These theories are premised on the argument that the success of a company in general, and its ability to obtain an attractive price when acquired, is likely to be enhanced by the cooperation and investments of stakeholders—such as employees—over time. Such investments would be encouraged if stakeholders could expect to receive part of the surplus produced by an acquisition to which their investment contributed. Accordingly, such *ex ante* investments by stakeholders would be enhanced, and the *ex ante* interests of shareholders in engaging in such investment would be served if corporate leaders could be relied upon to protect stakeholders' interests and ensure that they also benefit from the surplus produced in the event of an acquisition. Thus, supporters of the implicit promise and the team production theories advocate providing corporate leaders with substantial power to block acquisitions to ensure that they can be relied on to fulfill "implicit promises" to safeguard stakeholder interests.[122]

The findings of our study do not support the predictions of the implicit promises and team production theories. Instead, we have shown that, in contrast to these predictions, Twitter's leaders did not use the power they indeed had to impede a Musk's acquisition to look after the interests of Twitter stakeholders, including its employees. This finding thus casts doubt

---

120. *See generally* Andrei Shleifer & Lawrence H. Summers, *Breach of Trust in Hostile Takeovers*, *in* CORPORATE TAKEOVERS: CAUSES AND CONSEQUENCES 33 (Alan J. Auerbach ed., 1988); *see also* John C. Coffee, Jr., *Shareholders versus Managers: The Strain in the Corporate Web*, 85 MICH. L. REV. 1, 108 (1986).

121 *See generally* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999); *see also* Lynn A. Stout, *Do Antitakeover Defenses Decrease Shareholder Wealth? The Ex Post/Ex Ante Valuation Problem*, 55 STAN. L. REV. 845 (2002).

122. See, for example, Coffee, *supra* note 120 at 83-86; John C. Coffee, Jr., *The Uncertain Case for Takeover Reform: An Essay on Stockholders, Stakeholders and Bust-Ups*, 1988 WIS. L. REV. 435, 448-49 (1988); and Stout, *supra* note 121, at 847, for statements expressing such support.

Electronic copy available at: https://ssrn.com/abstract=4330393

on the claims by supporters of these theories that corporate leaders should and can be expected to ensure that employees and other stakeholders share in the surplus produced by an acquisition. Thus, this evidence also questions the arguments in favor of management power over acquisitions advanced by supporters of these theories.

B. Stakeholder Governance

Stakeholder governance ("stakeholderism") refers to the increasingly influential view that corporate leaders should be encouraged and relied on to use their discretion to serve stakeholders and not only shareholders.[123] Evidence that stakeholderism has been increasingly supported by a large number of business leaders can be seen in a widely heralded statement issued in 2019 by the Business Roundtable (BRT), in which many CEOs of major companies expressed their commitment to deliver value to all stakeholders.[124] A manifesto subsequently issued by the World Economic Forum urged companies to abandon shareholder primacy and embrace stakeholder capitalism.[125] Stakeholderism has also been receiving support from legal scholars[126] as well as from economics, finance, and management scholars.[127]

Stakeholder governance also has had its critics, however. In particular, the agency critique of stakeholderism argues that corporate leaders have incentives not to protect stakeholder interests beyond what would serve the

123. See Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 103-115 (2020), for an overview of the debate on stakeholder governance,

124. *See generally Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy that Serves All Americans'*, BUS. ROUNDTABLE (Aug. 19, 2019), https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans [https://perma.cc/3FFB-YV5V].

125. *See generally* Klaus Schwab, *Davos Manifesto 2020: The Universal Purpose of a Company in the Fourth Industrial Revolution*, WORLD ECON. F. (Dec. 2, 2019), https://www.weforum.org/agenda/2019/12/davos-manifesto-2020-the-universal-purpose-of-a-company-in-the-fourth-industrial-revolution/ [https://perma.cc/U6QT-YPBJ].

126. See, for example, Tamara Belinfanti & Lynn Stout, *Contested Visions: The Value of Systems Theory for Corporate Law*, 166 U. PA. L. REV. 579 (2018); Einer Elhauge, *The Inevitability and Desirability of the Corporate Discretion to Advance Stakeholder Interests*, 106 CORNELL L. REV. 1819 (2021); and Stavros Gadinis & Amelia Miazad, *Corporate Law and Social Risk*, 73 VAND. L. REV. 1401 (2020), for articles taking such positions.

127. Three influential books by such scholars are COLIN MAYER, PROSPERITY (2018); ALEX EDMANS, GROW THE PIE: CREATING PROFIT FOR INVESTORS AND VALUE FOR SOCIETY 12 (2020); and REBECCA HENDERSON, REIMAGINING CAPITALISM IN A WORLD OF FIRE (2020).

Electronic copy available at: https://ssrn.com/abstract=4330393

interests of shareholders.[128] As a result, the agency critique suggests, corporate leaders should not be expected to or relied upon to protect stakeholders, and pledges by corporate leaders to do so are mostly for appearances.

The high-profile Twitter-Musk deal provides an excellent setting for testing the competing views of stakeholderism and its agency critique. Our findings support the agency critique and the view that pro-stakeholder rhetoric, such as the pro-stakeholder commitments that Twitter consistently proclaimed prior to entering the Musk deal, are mostly for show.

C. Corporate Mission and Purpose Statements

Along with the rise of support for stakeholderism in recent years, various commentators have been advocating that companies adopt statements of purpose or mission. These commentators have also called for monitoring such adoption by companies, and some companies have been responsive to the calls for adopting such statements. For example, the prominent law firm Wachtell, Lipton, Rosen & Katz issued a memo urging corporate leaders to provide a statement of corporate purpose that supplies "clear guideposts for action and engagement,"[129] and Robert Eccles and Tim Youmans of Harvard Business School have recommended that all boards of directors of public companies adopt a statement identifying the company's significant constituencies, priorities, and time frames for delivering value to these constituencies.[130] The "Enacting Purpose Initiative"—a partnership between the University of Oxford; the University of California, Berkeley; the

128. *See, e.g.,* Bebchuk & Tallarita, *supra* note 123 (developing such an agency critique). Other recent examples of articles discussing the incentive problems of stakeholderism include James D. Cox & Randall S. Thomas, *A Revised Monitoring Model Confronts Today's Movement Toward Managerialism*, 99 TEX. L. REV. 1275, 1276-80 (2021); and Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have a Purpose?* 99 TEX. L. REV. 1309, 1331-34 (2021).

129 Martin Lipton et al., *On the Purpose and Objective of the Corporation*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Aug. 5, 2020), https://corpgov.law.harvard.edu/2020/08/05/on-the-purpose-and-objective-of-the-corporation/ [https://perma.cc/EY3W-FU2Y].

130. Robert G. Eccles & Tim Youmans, *Materiality in Corporate Governance: The Statement of Significant Audiences and Materiality*, 28 J. APPLIED CORP. FIN. 39, 43 (2016) ("We have proposed that the board issue each year a one-page forward-looking 'Statement of Significant Audiences and Materiality (The Statement).' Such a statement would aim to inform management, providers of financial capital, and all other stakeholders the board believes to be critical to the long-run profitability and survival of the corporation. More specifically, such a statement would communicate the board's intent to invest resources and management attention in all significant audiences along with the time frames over which they are expected to materialize.").

Electronic copy available at: https://ssrn.com/abstract=4330393

consulting giant BCG BrightHouse; the investment firm of Federated Hermes; and the British Academy—provided a framework intended to facilitate corporate adoption of purpose statements.[131] In fact, consulting firms have been monitoring and issuing reports on such adoption.[132]

However, our study of the Musk-Twitter deal suggests that the importance attached to purpose and mission statements is misplaced. Twitter's corporate leaders had for long engaged in substantial pro-stakeholder rhetoric regarding the company's mission and purposes. Nonetheless, when negotiating the acquisition by Musk, Twitter's leaders disregarded these statements and attached little if any weight to protecting the mission, purpose, and core values to which they had publicly been committed to earlier. Thus, the evidence in this case is consistent with the agency critique view that purpose and mission statements are mostly for appearances; such statements should not be expected to have a material effect on the substance of corporate decisions or to produce about significant improvements in the treatment of stakeholders.

---

131. Enacting Purpose Initiative, *Enacting Purpose Within the Modern Corporation: A Framework for Boards of Directors* 9 (2020), https://www.sbs.ox.ac.uk/sites/default/files/2020-08/Enacting%20Purpose%20Initiative%20-%20EU%20Report%20August%202020.pdf [https://perma.cc/FAM8-ACNG] ("Profit with purpose is the responsibility of directors as they rebuild better, and investors have a shared responsibility to work with boards and senior management to deliver this.").

132 See, for example, Sebastian Leape et al., *More than a mission statement: How the 5Ps embed purpose to deliver valu*e, MCKINSEY Q. (Nov. 5, 2020), for materials issued by such consulting firms.

Electronic copy available at: https://ssrn.com/abstract=4330393

european corporate governance institute

about ECGI

The European Corporate Governance Institute has been established to improve *corporate governance through fostering independent scientific research and related activities.*

The ECGI will produce and disseminate high quality research while remaining close to the concerns and interests of corporate, financial and public policy makers. It will draw on the expertise of scholars from numerous countries and bring together a critical mass of expertise and interest to bear on this important subject.

The views expressed in this working paper are those of the authors, not those of the ECGI or its members.

www.ecgi.global

Electronic copy available at: https://ssrn.com/abstract=4330393

european corporate governance institute

ECGI Working Paper Series in Law

Editorial Board

Editor	Amir Licht, Professor of Law, Radzyner Law School, Interdisciplinary Center Herzliya
Consulting Editors	Hse-Yu Iris Chiu, Professor of Corporate Law and Financial Regulation, University College London
	Martin Gelter, Professor of Law, Fordham University School of Law
	Geneviève Helleringer, Professor of Law, ESSEC Business School and Oxford Law Faculty
	Kathryn Judge, Professor of Law, Coumbia Law School
	Wolf-Georg Ringe, Professor of Law & Finance, University of Hamburg
Editorial Assistant	Asif Malik, ECGI Working Paper Series Manager

https://ecgi.global/content/working-papers

Electronic copy available at: https://ssrn.com/abstract=4330393

european corporate governance institute

Electronic Access to the Working Paper Series

The full set of ECGI working papers can be accessed through the Institute's Web-site (https://ecgi.global/content/working-papers) or SSRN:

Finance Paper Series	http://www.ssrn.com/link/ECGI-Fin.html
Law Paper Series	http://www.ssrn.com/link/ECGI-Law.html

https://ecgi.global/content/working-papers

Electronic copy available at: https://ssrn.com/abstract=4330393

european corporate governance institute

About ECGI

ECGI is an international non-profit membership organisation that provides a platform for debate and dialogue among academics, policymakers, and business leaders, with a focus on major corporate governance, ESG, and stewardship issues.

The views expressed in this working paper are those of the authors, not those of the ECGI or its members.

www.ecgi.global

european corporate governance institut

ECGI Working Paper Series in Law

Editorial Board

Editor
Amir Licht, Professor of Law, Harry Radzyner Law School, Reichman University

Consulting Editors
Hse-Yu Iris Chiu, Professor of Corporate Law and Financial, Regulation, University College London
Martin Gelter, Professor of Law, Fordham University School of Law
Geneviève Helleringer, Professor of Law, ESCP and Oxford Law Faculty
Kathryn Judge, Professor of Law, Columbia Law School
Wolf-Georg Ringe, Professor of Law & Finance, University of Hamburg

Series Manager
Asif Malik, ECGI Working Paper Series Manager

https://www.ecgi.global/publications/working-papers