



Musk Speaking To Co-Investors As Twitter Board Adopts “Poison Pill” To Thwart Hostile Takeover

Description

USA: (Update: 20:00ET): In an attempt to move along his hostile takeover following Twitter’s adoption of a poison pill takeover defense (see below), the NY Post reports that Elon Musk is speaking to potential co-investors who could partner with him on a bid for the social network, and cites sources according to whom a new plan that includes partners could be announced within days.

One possibility is teaming with private-equity firm Silver Lake Partners, which was planning to co-invest with him in 2018 when he was considering taking Tesla private, and whose Co-CEO Egon Durban is already a Twitter board member and led Musk’s deal team during the 2018 failed effort to take Tesla private, sources said. Silver Lake declined to comment.

Whether Musk would present Twitter with an entirely new offer — perhaps raising his current bid — or whether new partners would simply go in on a purchase with him isn’t clear. A Musk spokesperson declined to comment.

As we predicted earlier (see below), one way to circumvent Twitter’s Poison Pill is for Musk “to be joined by one or more like-minded, anti-censorship investors such as Peter Thiel who either build up stakes through the poison pill 15% limit in the process making a management and board replacement by proxy vote the simple outcome.” And indeed, the Post writes now that the “pill may not stop other entities or people from acquiring their own shares of up to 15% of the company. Those owners could partner with Musk to force a sale, make changes in the executive ranks or push for other overhauls of the company.”

“This is not over,” a source close to the situation told the Post.

It sure isn't because separately, [Bloomberg](#), Reuters and the [Post](#) all report that besides Musk's offer, **Twitter has been fielding takeover interest from other parties, including technology-focused private equity firm Thoma Bravo**, which is considering making a rival offer. The New York Post reported Thoma Bravo's interest on Thursday.

Additionally, Bloomberg Intelligence analyst Mandeep Singh writes that **"Musk could decide to partner with Oracle, whose co-founder Larry Ellison sits on Tesla's board and has expressed interest in acquiring social media company TikTok's U.S. assets, and a private equity consortium that includes Thoma Bravo to thwart Twitter's poison pill, while raising the bid 10-15% to about \$50 billion."**

* * *

As was widely expected and [reported](#) in the aftermath of Elon Musk going hostile on Friday morning, on Saturday morning Twitter adopted a measure that will shield it from hostile acquisition bids in a desperate step to prevent billionaire Elon Musk's offer to take the company private and make it a bastion of free speech.

The board set up a shareholder rights plan, also known as a "poison pill" which as we clarified yesterday for the benefit of the company's overly dramatic, overly literal and overly snowflake employees, ***is not literal...***

Uhm, someone should probably advise employees "poison pill" is not literal...

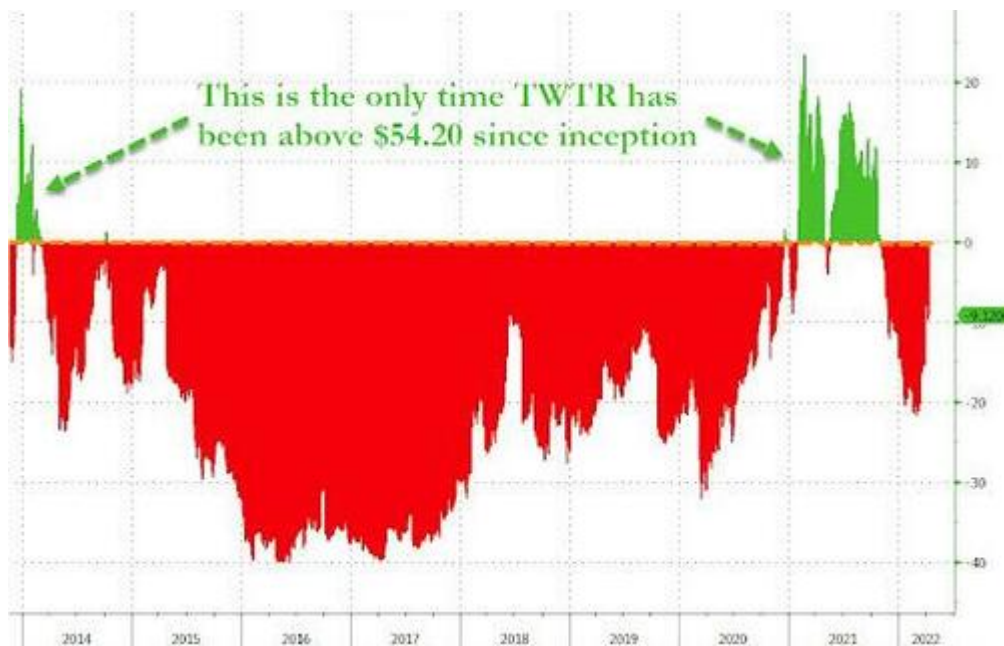
— zerohedge (@zerohedge) [April 14, 2022](#)

... and which is exercisable **if a party – read Elon Musk – acquires 15% of the stock without prior approval**, lasting for one year (if the pill had expired the day after the midterms it may have been a bit too obvious). The plan seeks to ensure that anyone taking control of Twitter through open market accumulation pays all shareholders an appropriate control premium, according to a statement Friday.

For a company that has struggled greatly with value creation – **on Friday TWTR stock closed at \$45.08, or 18 cents higher than where it closed on its first day as a public company, or \$44.90** – a poison pill defense strategy allows existing shareholders the right to purchase additional shares at a discount, effectively diluting the ownership interest of the hostile party. Poison pills are common among companies under fire from activist investors or in hostile takeover situations.

Under Twitter's plan, each right will entitle its holder to purchase, at the then-current exercise price, additional shares of common stock having a then-current market value of twice the exercise price of the right.

Twitter enacted the plan to buy time, Bloomberg reported citing a person familiar with the matter, although it wasn't clear time for what: at \$54.20, **Musk's offer represents a premium to the historical TWTR price since IPO on 92% of the time.**



And since the [Twitter board](#), whose constituents are listed below...

cy	Bret Taylor Independent Board Chair; Co-CEO, Salesforce	▼
	Parag Agrawal CEO, Twitter	▼
	Mimi Alemayehou Senior Vice President for Public – Private Partnership at Mastercard	▼
	Jack Dorsey Co-Founder, Twitter; CEO and Co-Founder, Square	▼
	Egon Durban Co-CEO, Silver Lake	▼
	Martha Lane Fox Founder and Chairperson, Lucky Voice Group; Former Co-Founder and Managing Director of lastminute.com ; Crossbench Peer, House of Lords	▼
	Omid Kordestani Former Executive Chairman, Twitter	▼
	Dr. Fei-Fei Li Professor at Stanford	▼
	Patrick Pichette General Partner, Inovia Capital; Former Senior Vice President and Chief Financial Officer, Google	▼
	David Rosenblatt CEO, 1stdibs.com, Inc.	▼
	Robert Zoellick Former Chairman of the Board of Directors of AllianceBernstein Holding L.P.	▼

... is about to get bombarded with a barrage of lawsuits claiming it violated its fiduciary duty, the board also said it wants to be able to analyze and negotiate any deal, and may still accept it (spoiler alert: it won't).

Twitter's board met Thursday to review Musk's proposal – which according to the world's richest man was his "best and final" offer and who had already accrued a stake of more than 9% in Twitter since earlier this year – to determine if it was in the best interest of the company and all of its shareholders.

Included in Musk's securities filing disclosing the bid Thursday morning was a script of text he sent to the company. In it he said, "it's a high price and your shareholders will love it." Hilariously, one

prominent – and former – investor said the offer was too low and the market reaction appeared to agree. Saudi Arabia's Prince Alwaleed bin Talal said the deal doesn't "*come close to the intrinsic value*" of the popular social media platform. Which is, well, **hilarious** since as [we showed yesterday](#), it appears the Prince no longer has direct ownership of even one share of Twitter stock.

Holder Name	Portfolio Name	2016	2017	2018	2019	2020	2021	2022
1. Vanguard Group Inc/The		44,177,825	53,644,397	73,062,801	81,089,227	83,109,525	70,175,258	82,403,665
2. Williams Evan Clark		43,202,476	32,145,192	13,728,360	10,506,292	10,509,292		0
3. Al Saud Alwaleed Bin Talal Bin Abdulaziz		34,948,975	34,948,975	34,948,975				0
4. Morgan Stanley		11,441,332	34,430,773	43,311,099	46,005,326	64,287,588	67,033,579	67,033,579
5. Clearbridge LLC		31,240,987	34,734,629	27,367,825	24,949,321	20,749,678	16,733,505	16,733,505
6. BlackRock Inc.		28,514,776	31,788,930	46,144,230	51,753,333	53,086,357	52,095,502	52,095,502
7. Ballmer Steve		27,052,178	27,052,178					0
8. Benchmark Capital Partners IV LP		26,299,877						0
9. Dorney Jack Patrick		15,042,428	16,042,428	16,042,428	16,042,428	17,594,131	18,042,428	18,042,428
10. State Street Corp		10,722,398	11,829,308	27,628,201	33,590,685	35,786,433	36,363,324	36,363,324
11. SIG HOLDING LLC		9,287,276	5,038,564	2,656,018	8,965,584	602,377	787,954	787,954
12. Benchmark Capital Holdings Co LLC		7,517,831	7,517,831					0
13. Allianz SE		7,444,468	1,129,892	1,106,185	607,345	232,535	441,414	441,414
14. Oppenheimer Holdings Inc		7,088,738	3,048,824	3,119,605	3,095,870	3,068,268	60,255	60,255
15. FMR LLC		6,946,880	4,650,127	7,947,532	4,960,240	10,045,613	18,458,770	18,458,770
16. Contrarius Investment Management Ltd	CONTRARIUS INVESTMENT M...	6,016,872	5,751,636	4,042,217	954,799	23,557	0	0
17. First Trust Advisors LP		5,919,446	7,485,451	7,244,529	8,644,423	5,382,062	4,658,581	4,697,692
18. Northern Trust Corp	NORTHERN TRUST CORPORAL...	4,775,099	7,318,900	10,706,757	11,533,632	11,937,720	8,504,333	8,504,333
19. Gampetroni John Angelo		4,501,716						0
20. Rizvi Suhail Raza		4,479,729						0

Speaking later Thursday at a TED conference, Musk said he wasn't sure he "will actually be able to acquire it." He added that his intent was to also retain "as many shareholders as is allowed by the law," rather than keeping sole ownership of the company himself.

After initially surging, Twitter shares dropped 1.7% in New York on Thursday, reflecting the market's view that the deal is likely to be rejected or to fall through.

Musk first disclosed his Twitter stake on April 4, making him the largest individual investor. At the TED conference, he indicated that he has a Plan B if Twitter's board rejects his offer. He declined to elaborate. But in his filing earlier in the day, he said he would rethink his investment if the bid failed.

"If the deal doesn't work, given that I don't have confidence in management nor do I believe I can drive the necessary change in the public market, I would need to reconsider my position as a shareholder," said Musk.

* * *

Previewing the poison pill defense, on Thursday, Cameron Winklevoss, founder of the Gemini cryptocurrency exchange, tweeted (of course) that "Twitter is considering a poison pill to thwart @elonmusk's offer." In response, Musk said that a "poison pill" move would be a "breach" of the board's fiduciary duty and could expose Twitter's board to "titanic" legal liability.

If the current Twitter board takes actions contrary to shareholder interests, they would be breaching their fiduciary duty.

The liability they would thereby assume would be titanic in scale.

— Elon Musk (@elonmusk) [April 14, 2022](#)

Winklevoss alleged in his tweet that, by adopting the poison pill tactic, Twitter was demonstrating its

commitment to preserving the status quo even if it has a negative impact on existing shareholders.

“They would rather self-immolate than give up their censorship programs. This shows you how deeply committed they are to Orwellian control of the narratives and global discourse. Scary,” he wrote. Twitter has repeatedly suppressed and “shadowbanned” conservative viewpoints, allegations the company has repeatedly denied.

Adam Candeub, a law professor at Michigan State University, said that Twitter’s board could face legal consequences if they turn down an offer that’s financially lucrative to shareholders.

“Twitter’s owned by shareholders, and the directors have to act in a way that’s in their best interests, not in the way that allows them to keep control of the corporation,” Candeub told The Epoch Times.

“If they turn down a very favorable price, there will be dereliction of their legal duty, and there could be lots of legal consequences.”

* * *

Now that his original plan has been thwarted, Musk has said that he has a “Plan B” in stock for the company although he did not disclose what it is. As Mark Cuban pointed out yesterday...

Want to see the whole world lose their shit ? Get Peter Thiel to partner with Elon and raise the bid for Twitter

— Mark Cuban (@mcuban) [April 14, 2022](#)

... one possible response is for Elon to be joined by one or more like-minded, anti-censorship investors such as Peter Thiel who either build up stakes through the poison pill 15% limit in the process making a management and board replacement by proxy vote the simple outcome, or they just raise the takeover price to a level that even the woke Twitter board can not reject.

Or skip the whale investor approach entirely, and open up twitter to a mass investor buyout, in the form of a DAO, where “token holders will get to vote on what’s trending and who gets verified.”

And of course a decentralized group of supporters for “the current thing” will create a DAO to buy Twitter. Token holders will get to vote on what’s trending and who gets verified. Ok I’ll stop now ?

— Mark Cuban (@mcuban) [April 14, 2022](#)

Alternatively, Musk can take his appeal directly to his 82 million twitter followers (a quarter of Twitter’s total 217 million global Daily Active Users) and have them all buy several shares, then pledge them for Elon during the next proxy vote. Because as much as Twitter wants to reject **any** buyout offer that will prevent it from imposing the censorship its liberal board and employees love so much, there is only so much it can do.

In the end, however, the only question is how dedicated is Musk to control Twitter, because if he really

wants it, he will get it.

by Tyler Durden

Category

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