CATHY: OK, so thank you so much for coming. So what we'll do today is we're pretty casual, encourage you to ask questions at any time. We also have reserved some time at the end for more questions. But please raise your hand if you have questions. So what I'll do is I'll start to skip-- for those of you who have been busy studying and not necessarily watching the news every five minutes, I'll give you a little quick outline of what's happened and then I'll pose some questions to our fabulous panelists.

So a few weeks ago, Elon bought 9%-- a 9% stake in Twitter. He filed a little late on that, and we'll have Professor Chapman talk about that later. On April 13, Elon sent a brief letter and a text message to Twitter before, offering to buy Twitter. At the time it seemed like kind of a novelty, a little bit strange. I wasn't sure whether it was going to happen. And indeed, a couple of days after that, Twitter adopted what's called a poison pill, which is a defense mechanism that makes a takeover much less likely.

Elon then announced that he was thinking about a tender offer. For those of you in M&A, you what that is. For those of you who don't what that is, teaching M&A again next year, or so go sign up early and often, if you don't make it year.

So, and then very recently, Twitter and Elon announced that they had reached a deal. They had gotten financing for the deal, which Chuck will talk about as well. This is subject to due diligence and regulatory approval, but my personal view is that I think it's likely to happen at this point, whereas if you'd asked me five days ago, I would have said, probably not.

So with that, let me turn it over. So, Chuck, my first question is for you. So a question that's on a lot of people's minds is why? Why does Elon even want to buy Twitter?

CHUCK: Of course you give me that one. For me to speculate about his state of mind, I'm not sure he knows his own state of mind, frankly. And that's not, this is a opinion of my-- my own opinion, and I know I'm not meant to be casting aspersions, but I think it was a megalomaniacal whim, frankly.

His-- because his business logic was-- so let's think about it that way. His business logic makes no sense. His business logic, to me, is that their business model is wrong. And if you think about the Twitter business model, it is ad supported. They have almost all of it is ad revenues. There's a small bit of their revenue, half a billion where they sell the data on an anonymized basis, so that other advertisers can play with the data and figure out affinity groups-- affinity groups, et cetera.

But, essentially, they sell ads. So ask yourself the following question, which is, what is the platform that is selling ads to mainstream advertisers-- Oreos, Wheaties, what is that platform need to look like in order to be an appropriate and effective ad collection engine?

Well, it should look pretty much like Twitter does, which is to say that it can't be-- it shouldn't be, at least in my opinion, it won't be as effective or as appealing a commercial vehicle for the advertisers if it is not a moderated set of discussions.

So Elon goes down the rabbit hole, again, my opinion--

CATHY: We usually call it a rabbit hole. [INAUDIBLE].

CHUCK: OK, it's just back to my-- I don't think he really understands what business they're in, frankly, because he talks about it as being a free speech zone. The company-- Twitter would say that they are the town hall of the internet. Those are very different statements of intent, and those are very different statements of intent because they need to be because Twitter as an excellent business, needs to figure out how to finance that.

They have hundreds of programmers and millions upon millions of dollars going into the content moderation activity. You should go to the website, there is a wealth of information. This is not an-- you can disagree with any individual decision, but they got a lot of people working on a very important problem, which is how do you take this magical, reality space that we have, and the internet is a very bizarre thing once you think about it.

It is a ubiquitous substrate of free communication on a worldwide basis. And we just kind of drop that in people's laps, in your laps as digital natives, and nobody really thought about the implications of that. This is-- so why does he want to own Twitter? What he will say-- what he has said publicy, what he has tweeted, which is an irony there.

What he is he has tweeted is that you need to open the aperture. We need to have more speech. More speech is better. He said two days ago, you'll know you're running a platform right if only 10% of the extremists are feeling bad about how their content is being moderated.

So that at least admits that he knows that there needs to be continuing content moderation, but it is-- if I'm an advertiser, I'm very careful about whether or not-- I can-- I'll go with-- I'll go with the avocado toast people over here at-- or I'll go to Facebook or I'll go to-- there are so many places. It's a competitive environment.

So it needs to be an attractive platform to attract advertisers, and I'm not sure he's going to get there. He's kind of turned it into politics, rather than economics. He's ignored the fact that 80% of the user base is OUS. It's only-- there's 30 million users in the US. There's 340 million total users. It's like, wait a minute, so-- and then he'll say-- he says things like it's essential for a functioning democracy.

Well, how does that work in Iran, again? It's like-- he's in a reality distortion field. So I don't get it. Other than he got, like I said, it was a whim. He said, I don't like their business practices. I think they're on the wrong path. So I'm going to do the billionaire thing today, and I'm going to say, no, I'm going to buy it.

AUDIENCE: Is this proof you can have too much money?

CHUCK: You can have too much-- well, it's really the admixture of money and sense. I have a lot of sense, so I could have a lot more money. But--

CATHY: So this is interesting. So one thing you say here is that it's like, it was kind of a whim. It's obviously been happening really fast. So professor Chapman, I wonder if you could talk a little bit about, given how fast it's been, what laws have already been kind of fudged in this process?

PROFESSOR CHAPMAN: I think the biggest is 13(d) and the securities regulations. It's hard to gauge what else could possibly be wrong, but, to me, I actually just pulled up the numbers and investors who sold him shares between 38.20 and 40.30 between March 24th and April 1st missed out on $165 million, assuming they would have jumped to the similar price.

I think that's too big for the SEC to ignore. $165 million to people like you and me, if that's who you bought from, and if we're thinking about what the SEC is supposed to do and who they're supposed to protect, I'm actually surprised we haven't heard anything from this.

CHUCK: I actually think-- I would be shocked, I'm kind of with you. If the SEC doesn't commence an enforcement action before the proxy statement, at some point before the proxy statement gets oped. It's hard to imagine that doesn't happen.

And just to see how blatant this is, when you go to the 13(d), 13(d) has on its cover, it says, Event giving rise to the filing the claim. The date, the date is March 14. It's 10 days to file, so it's March 14th. On the face of his filing he's admittedly violated the law.

So I don't see how the SEC can't go after this. It's kind of-- yeah, they can impose a fine and he might say who cares. I think the other thing you have to keep in mind here is, he's got an existing consent decree with the SEC. So he's a recidivist filers securities laws, And that will-- and he's also in that consent decree, there's a permanent injunction against his violating this provision of federal securities.

So he's also actually violated a court order because a consent decree is a court order. So he's violated a court order here.

CATHY: I just want to point out how funny it is that he has like, there's an injunction against him violating laws. The rest of us just don't violate laws. Not to be--

[INTERPOSING VOICES]

CHUCK: What it does is it gives them a huge hammer if they want-- it's just-- they can go after him for contempt.

[INTERPOSING VOICES]

Which just another way to say megalomaniac.

CATHY: Well, the other thing is, Cathy and I have spoken about his Twitter nanny. Like, not only does he have an SEC-- not only does she have a consent decree, his tweets are supposed to be reviewed. Right? He's not supposed to be tweeting at will. So it's-- I don't see how the SEC doesn't do something. I think thats-- they have to. Yes.

OK, so--

PETER: Twitter nanny? How is this allowed to happen?

[INTERPOSING VOICES]

CHUCK: --respect at Tesla

CATHY: So Peter, before we answer, I have to repeat the questions for whole story. So the question is, with a Twitter nanny, how is he allowed to tweet?

PROFESSOR CHAPMAN: Yeah so it is with respect to Tesla, but his collateral, his liquidity is Tesla. So I don't how anything he does isn't-- couldn't be inferred to be connected to Tesla.

CHUCK: Yeah, I think that's right.

CATHY: You know, I would at least think that, one, I think this Twitter nanny does nothing ever. There's no way--

CATHY: It's a bad nanny.

CATHY: It's a very bad nanny. But I would think that if the Twitter nanny did exist or had any teeth that he wouldn't have been able to tweet this.

PETER: See, I'm not sure I agree with that. I think that because-- because the way the consent decree works is if he makes comments about Tesla. He did-- why it might affect-- I hear there's an argument here. But I'm not sure I agree that that's the inevitable conclusion.

CHUCK: Oh, well, if the FCC doesn't bring the action, I'll bring a derivative action on behalf of the Tesla shareholders.

PETER: Well, actually--

CHUCK: I mean, this is a material event.

CATHY: This is a fun project for you--

[INTERPOSING VOICES]

CHUCK: And he did not follow the rules. It's like, wait a minute. You're the genius, the boy genius who invented Tesla.

PETER: Yuck. Yuck, yuck, that is. Well, that had to be settled in a lawsuit by the way.

CATHY: I know.

PETER: He was not a founder. But he has been judicially determined. But he was one of five co-founders.

They did it in some IP lawsuit. It's like, whoa, but in any event, if I'm a Tesla shareholder, this is material. It's like what do you mean you're going to spend all this dough and not run my company? Get out of here. That's not OK.

SPEAKER 4: And more than that--

PETER: That's a breach of fiduciary duty.

SPEAKER 4: And you're going to clobber the stock of Tesla because he's got to sell his only liquid asset. It will come [INAUDIBLE]. So we'll get to that.

CATHY: Yes, OK. So Peter, I'm going to ask you-- I know you're dying to talk about this. I'm going to let you do it. So if you were advising Musk, what would you have him do?

[INTERPOSING VOICES]

PETER: First-- oh, advising

CATHY: Musk, yes.

PETER: So if I was advising Elon Musk, first of all, I'd probably want to blow my brains out. But because-- he's basically-- I've been told that he basically fired every lawsuit in the Bay area, every law firm in the bay area. I mean, he's just-- and I've also been told he doesn't like to pay his bill. So I wouldn't like to represent Elon Musk [INAUDIBLE].

I think actually-- first of all, I would-- this was a self-inflicted wound to violate 13(d). It saved him-- maybe it saved him a few bucks. But it's all a rounding error in all this exercise. So first of all, get the 13(b) on file. By the way, he started with 13(g), not at all. Clear that. He was eligible for that, but put that aside.

CATHY: So let's just back up for one second for those students who haven't taken [INAUDIBLE] or something. If you buy more than 5% of a company, you have to make a filing. And that's what he didn't do.

PETER: And you have to do it within 10 calendar days of the day you cross the threshold. So that's what he didn't do. So first of all, I'd say, look, that was just-- there's no reason for that self-inflicted wound, own goal, however you want to describe it. But then, he went out there. So he made his initial proposal, I think-- I didn't take it seriously.

I started to take it seriously when he-- I don't about you guys. They started to take it seriously when he basically issued his financing. He made a commitment to put in $21 billion in care. I didn't actually think he was going to do that. But once he did that and then he's got [INAUDIBLE] put that on top of it, he became serious.

I think the way, I think, he played it over the weekend seems to actually have been reasonably smart . Because what I think he did-- and Chuck and I can argue about this. But I think what he did is he called up a few Twitter shareholders and said, hey, what do you think about this?

And basically said, I'm serious about this, $54.20. I got the money. He had to show he had the money before he could have that conversation with them, right? Otherwise, they wouldn't have had that meaningful discussion with him. I'm sure they called Twitter and said, $54.20? Don't let him out of the room.

He made calls-- and I've done this before-- where you basically get your shareholders to make calls to the target and say, hey, let's get this deal done. And so I think, also, the way he sent in a letter-- I actually thought it was smart. Because what he said was I'm giving you a very seller friendly deal.

He sent him a letter on Sunday and said, you don't even have to recommend me. Let the shareholders decide. Let them decide. Because I think he didn't think there was any competition. He was confident based on the conversations he's had with other shareholders that $54.20 would be attractive to them.

And so, I say, let the shareholders decide. I think he put a lot of pressure on the Twitter board. So I actually think he had some problems-- not legal problems. I think from a-- I don't how you feel. I think, tactically, his end game over the weekend was not bad from his perspective. I thought he played it reasonably well.

I'm not there. I think he completely blew it from the get go. Because remember, he said $54.20 is my best and final. You never say that. And the reason you don't say that is because that opens up a very powerful defense, which the dumbbells who were advising Twitter did not go down this path.

So what you do-- if somebody says $54.20, best and final, my highest offer, then you turn to your friendly neighborhood investment banker, you get an inadequacy opinion, and you say, just say no. [INAUDIBLE], we're not doing anything. See you, right?

CATHY: And $54.20 wasn't even the highest that Twitter had been trading.

PETER: No.

CATHY: Yeah, right?

PETER: I have a Morgan Stanley research report from the fourth quarter. It has the bull case on the stock is 84.

CATHY: With the average being 70. Yeah.

PETER: I mean, the price was not super compelling. And he said best and final. This is where his personality gets in the way of good tactics. He said that because I'm not going to screw with this. I'm going to tell them what I'm prepared to do. If they don't want to do it, I'm fine with that.

He schedules his day in six-minute increments, which those of you who go into corporate practice, you'll understand how relevant that is at some point in the future.

CHUCK: Yup, yup. But in any event--

CATHY: Tell us how you really feel, [INAUDIBLE].

PETER: --he said best and final. So what they should have said is sorry, inadequate, deal's in place, see you. What's he going to do? He can watch a tender offer. He can get the box full of shares, but with the pill in place he can't buy.

And more than that, the other thing that people typically do on the offense, we say, what you want to be able to do is launch a proxy contest to basically throw the board he's missed he's missed the filing deadline. The timing for this deal actually should have been about 60 days sooner. The way it works under their file, which is quite difficult, is if you want to nominate people to the board, they have to submit them 90 to 120 days prior to the annual meeting. That, we feel, is passed. The right time to launch this would have been in a couple of months.

CATHY: You're assuming he planned something.

PETER: Oh, of course.

CHUCK: Yeah.

[LAUGHTER]

CATHY: [INAUDIBLE] have you heard the story of the price? It's another for 420 joke.

PETER: Yeah.

CARLISS: That's why it's $54.20.

INTERVIEWER 1: So Carliss, this is a good segue. So Carliss, if you were advising the board of Twitter, would you have done what Chuck says here? If that inadequacy [INAUDIBLE], what would you have done?

CARLISS: Absolutely, I would get an adequacy opinion. My biggest concerns-- I tell my students, when I teach business associations, I'm going to speed through Revlon and Unocal, because nobody makes these mistakes anymore.

CHUCK: Right.

CARLISS: And then, I see this. And I'm like, the making Revlon Unlocal mistakes, are they are they actually seeking out the best price? Or are they being coercive? Are they actually making sure the company is properly valued? Are they paying attention to fiduciary duties? And I just don't feel like-- I haven't seen anything that is obviously a breach of fiduciary duties with what we see in the public. But that's my initial concern.

PETER: Well, I guess I'd say this. Do you think, and maybe we should ask, anybody here think that there was going to be a lot of interest by other people in paying more than $54.20 And the other--

CHUCK: Well, I was going to say, the only thing he gets out of saying $54.20 is my best and final, is he set the reserve price for the parties away right. So now you don't have to go through an elaborate dance with Microsoft or XYZ, and say, hey, guys, are you interested? And they say, well, maybe. We'd like to do some diligence blahdy blahdy, blah.

You just say, look, if you can clear 54-- if you get $54.21 we're done here on an acceptable merger agreement. So that-- actually, you can think about that is either a tactical error or you can think about it as a tactical genius, because I think from his perspective, he just said, look, that's my price. If somebody can beat it, I'm OK with that. So from his perspective, creating what you usually takes a number of weeks to develop in--

PETER: --he could be--

CHUCK: --the auction way. He just said, look, I get it now. Public companies have to deal with shareholders. So I'm just going to set the reserve price. If they can beat that, fine. I'm out.

CARLISS: Can we jump topics a little, Cathy, because I think it'd be interesting to talk about is it actually possible for anyone else to want or to acquire Twitter.

CATHY: I think that's a really good point. So we've talked-- various groups of us have talked about this before. There's not that many people, I think, who could actually make it happen in terms of who would want it, and who would want it who's not already doing something like it. Or could Facebook really by Twitter? I don't think so. I don't think it would pass antitrust.

CHUCK: No.

CARLISS: So I don't-- the rumors I had heard were Microsoft, I think Silver Lake was involved [INAUDIBLE].

PETER: Yeah, but some rights are private. You can't pencil up the numbers in a private-- deal private-equity business. That doesn't work.

CHUCK: Right.

CARLISS: I don't know who--

CHUCK: I mean, the continuing issue with Twitter has been it is the megaverse, the metaverse. Take any of their advertising assets out of Facebook. And if you do, the ratio of the number of users to the dollars generated, it blows this thing out of water. This is a very underperforming asset in terms of its ability to generate, given the user base, the amount of tweets, and all that traffic stuff. It doesn't generate very much advertising revenue. It's only $7 billion.

CATHY: And how many of you tweet?

CHUCK: Yeah, exactly.

CATHY: Wait, does nobody here tweet?

CARLISS: Brian Cane tweets? [LAUGHTER]

CATHY: Yeah.

PETER: We got another one.

CATHY: We had that discussion. It seems to be a Millennial, Gen X thing, not necessarily a--

PETER: This is an Instagram, TikTok--

CATHY: Do--

PETER: --group right here.

CATHY: Pete and Chuck, do you all tweet?

PETER: No.

CHUCK: No. But I don't--

PETE: But Chuck and I are old.

CATHY: We should pause here. Before we get into more stuff, any questions from the crew? Yeah, go ahead. And I'll repeat it for the [INAUDIBLE].

CREW: When [INAUDIBLE] $107 million loss script, how do--

CATHY: Oh, can you explain the loss? How do you explain their loss to shareholders.

CARLISS: So it's just a rough estimate about how many shares he bought and the prices between those days. And so it's an estimate that they-- and obviously, we don't exactly how many shares he sold on what day. But when you take the stock price between $28.20 and $40.30 between March 21 and April 1, those people lost out on $165 million.

PETER: Take a step back. The $40.30 is where the stock traded up to when he disclosed his stake. So the theory is the stock would have traded up to that level. And therefore, these people sold cheap. Because that's-- if he had disclosed the stock price--

CATHY: Then the stock price would have gone up They would have made money.

CARLISS: So the people who sold him at $28.30 lost out the difference between 28 and 40.

CHUCK: His disclosure was deceptive, which meant the market was inefficient. That's the way to think about it for my Darden School friends. It's-- and how inefficient was it? Well, it's the delta between where it went to when his disclosure first came out, and then he missed a day. So you look at all the trading volume for the days that he was under--

PETER: And there is a lawsuit filed by Twitter shareholders, a putative class action. For violation 13(b) there's a bit of a problem. There is no private-- in at least three circuits, it said there's no private right of action under 13(b), which is-- whether that's right or wrong, we could debate. But that is what three circuits have said. And so I think that's why this is [INAUDIBLE]. They can't just let this go.

CATHY: All right, next question, Reed Shorts.

REED: So while we're talking about the stock price, if we take the market price right now, there is some sort of signal of what investors are thinking. It's trading now [INAUDIBLE] a 7% discount. Do you think that's just the time value of money because now I'm closing, or what do we think--

[INTERPOSING VOICES]

CATHY: You can repeat the question. Repeat the question.

REED: So the stock is trading at a 7% discount from--

CHUCK: --from the offer price.

REED: --from the offer price. What does that represent? I'd say it's time value of money. I think that this deal should be done within 120 days is what I expect. And that should be, at the outside, it's time by money plus, I think, a little bit more of a discount because there is an Elon Musk flake factor. So normally, I think, Chuck, the discount would be a little less than that. But this is--

CHUCK: There are billions of risk-arbitrage capital that exists for this moment. And that is their only investment thesis. So it is the probability to close, which is a factor, something less than 100, and the time value. And they look for modest returns to-- used to be in the 80s it was a big crazy business. And now risk arb is just one of--

PETE: I think--

CHUCK: --one of many strategies that multi-strategy hedge funds do.

PETER: It would be some-- someone would say, hey, wait a minute. It should close within 90 to 120 days. But what if the government takes the antitrust authorities, because they're looking at a lot of really strange things these days, and they don't like big deals. And this is a big deal. He's a controversial-- so I think there is some risk that gets elongated just because the government looks at it, even though, substantively, there's not no there.

CATHY: Other questions. Yeah, Brian.

BRIAN: It's like this, [INAUDIBLE] borrowing and where the [INAUDIBLE] pretty short [INAUDIBLE] accepts an offer from a buyer [INAUDIBLE] it's a defensive mechanism I guess. Do you think that warrants any-- adds scrutiny that's [INAUDIBLE]? Do you already think that creates an opening for--

CATHY: What's up, Carliss?

CHUCK: [INAUDIBLE], Carliss.

CARLISS: So this question was, does a deal that moves this fast with someone they set up defense tactics against, does that warrant additional scrutiny? I think because of the pricing, and because no one else has come along, maybe not. But I'm interested in seeing the merger agreement. I really need to see more documents.

And one thing that has been driving me crazy about how fast all of this is moving is how little we're seeing. And so I'm giving the typical law professor, it depends, answer, purely because I feel like a merger agreement could come up this afternoon and my head will explode. Or something could be tweeted today, or could be being tweeted right now while we're here that [INAUDIBLE].

CATHY: What did we miss?

SPEAKER: Sorry, Chuck.

PETER: What I'd also say-- I'd also say I don't what the board did. Did the board make any outbound calls?

CHUCK: I bet you they did.

CATHY: I bet they did. Right? Yeah.

PETER: So they probably made a few outbound calls either they didn't to potential buyers, even if they didn't expect to get a positive response to help create a record that they did that. They also probably got advice from antitrust lawyers, which would have said, if there's an industry buyer, even if they come in, it's going to take that. It's going to have an extensive review that's going to take 9 to 12 months, which allows the board to say, gee, it's a very volatile situation. Do I really want this deal hanging out for 9 to 12 months, et cetera, et cetera.

So I'm guessing that the guys from the guys from Skadden created a good record here to basically on those issues--

CHUCK: But in the law-school-exam answer, we're in heightened scrutiny. We're Unocal. We're now in Revlon. But we started in Unocal.

[INTERPOSING VOICES]

So we ran Unocal with heightened scrutiny because we put the pill in. And now that we've agreed to sell it, I'll guarantee you dollars to donuts that the merger agreement's going to have a go shop. And it's probably going to have a very loose, long period, do whatever you want, you can give-- you don't have to notify us. You can give them any documents they ask for, yakkity, yakkity, yak.

CARLISS: What makes me feel good though is Twitter immediately got the best counsel, or some of the best-- they didn't go-- they didn't lag in retaining Skadden, talking to Goldman, they jumped--

PETER: That's right. They got Simpson [INAUDIBLE].

CARLISS: Was it--

PETER: Skadden, Skadden--

CARLISS: Skadden's on the--

PETER: Skadden's on the [INAUDIBLE]. I'm sorry, it's the other way around. CARLISS: yeah--

CATHY: They got acceptable counsel.

CARLISS: They all got-- they got counsel sooner than it seems like Elon did. So I feel like they know need to check their boxes.

PETER: And look, I'll tell you what. The guy from Allen Klein, from Simpson Thacher--

CATHY: Recorded--

PETER: Pardon?

CATHY: This is recorded.

PETER: Yeah, but Alan Klein is the head Simpson lawyer. I've worked with Allen Klein. He's a pro. I mean he's a pro. So I don't-- I'd be really surprised if the Simpson [INAUDIBLE] team made some unforced errors here.

CARLISS: It's what I mean when I tell my students people don't make Revlon Unocal mistakes anymore, because when I was in practice, there's no way in hell we were going to make a Revlon Unocal mistake on a big [INAUDIBLE].

CHUCK: If you're in Revlon, you either made a big ass mistake, or you're wanting to be there.

CARLISS: Exactly, exactly--

CHUCK: --it's only fair.

CARLISS: It's an affirmative choice.

CHUCK: But--

CATHY: I was going to say let's switch gears just given the time. Chuck, I want you to talk about the funding aspect of this. So early on, I think most of us, five days ago, would have said not happening because how is he going to get the money. Now he's going to get the money. And this is really your wheelhouse. So tell us about it.

CHUCK: Yeah, he got the money. Well--

PETER: He doesn't have it yet.

CHUCK: He got some of the money. So what he-- the only borrowing he's able to pull off against the asset he's buying is $13 billion of secured financing and a bunch of tranches. It doesn't really matter. But there's $2 billion of EBITDA-- hold that thought-- so that's 6 and 1/2 times forward leverage.

That's not excessive in today's world where capital is chasing deals. The rest of the money is either a margin loan-- he's got a $21 billion margin loan against Tesla shares that he owns, so you can't margin more than 50%. So he's got to put $42 billion of margin securities with his good friends at Morgan Stanley. And it's Morgan, and

PETER: It's rather than the usual suspects.

CHUCK: Yeah, exactly. And they are represented by DPW. And the DPW-- anyway. And then the rest of it is equity. So they did the capital structure upside down, the way if I was-- if Elon came to me and said, I want to buy this thing. How am I going to finance it? You start at the bottom and say how much can I borrow. And the rest, you're in charge.

So that's what they did. They went off and they said, can we maybe come up with $13 billion with non-exorbitant pricing and without a whole lot of covenants? And you're going to have to come up with the rest. And he said, OK, sure. How do I do that?

So the margin loan is the same group of lenders. And the equity's going to sell some stock. So he's got to sell a boatload of Tesla stock, which this gets back to-- if I'm the Tesla board, I'm going WTF, my man. What are you doing here? This is a full time and attention job. You don't get to buy $47 billion companies on the side and not tell me that you are full time and attention on your CEO job here.

Where they gave him-- they gave him-- all of this money came from this mega grant that he got six or seven years ago, which is-- that's a whole different story, and crazy in and of itself. But it doesn't surprise see that they financed part of it. But they're only financing a small part of it. So I think he needs-- if he owns 9 and it's 47, so he needs like 36 or 37 of fresh money.

CATHY: Billion, billion.

CHUCK: Yeah, billion.

PETER But he still has to sell--

CHUCK: Yeah he's got to sell a boatload. He's going to sell a boatload of Tesla stock.

CATHY: And that's going to hurt Tesla stock, right? And Tesla is the butter of his bread, right?

PETER: Tesla has traded down, as you'd expect, because they expect these shares to come on the market. And that's the other thing I think, people are going to be looking-- if I'm a Tesla investor, I'm going to look at the timing of this deal to try and figure out when they shoot the Tesla-- his Tesla shares will have to hit the market when he has to get his cash. So there's an arbitrary play there too.

CHUCK: Yeah, well the big question for the lenders is, well, a minute. That was $2 billion current of EBITDA current course and speed. You better tell me what the business model looks like there, Elon, because I'm not sure-- I'll guarantee you this asset will not be generating the same amount of EBITDA in three years as it would had it remained a public company--

CARLISS: Well that and the--

CHUCK: --guaranteed. There is no way.

CARLISS: --and just the pure market analysis says it can't. They're not tweeting. They're not making more of us. There are fewer and fewer people my age and older every day. And then have--

CATHY: --the circle of life, [INAUDIBLE].

CARLISS: Right, it's the circle of life, and how secure are you going to be if you're Nabisco or whoever else, continue to advertise when Elon Musk is in charge.

PETER: But again, he's also said publicly that advertising, making money is not what I'm in this for. I have to say there are--

CARLISS: That's one word-- that's what [INAUDIBLE] doing it for.

PETER: I used to represent banks. And you know what? They actually care about [INAUDIBLE].

CARLISS: It's weird. It's so weird how banks care about money.

CHUCK: I would love-- we're going to have to-- I haven't read the commitment papers, but I'd love to read the indenture, the full-loan agreements. There's going to have to be an out. There's got to be a coverage out, an EBITDA test, or something. So there's got to be something where they can pull the plug on them. And I think that is fairly likely here.

PETER: And it'll be interesting to see, Chuck, when they go to syndicate this, because when they go syndicate the loan, I'm fascinated to see what kind of projections they present to those lenders, because you have to have that in the syndication package, in the financial. And that will have a financial model.

CATHY: Explain to the lawyers with the syndication is.

PETER: So what the--

CATHY: I see the blank faces out there.

PETER: OK, sorry. So basically there are commitments that are very-- well, a half dozen, six or eight banks who've committed to this. But what they've said is, we don't actually want to put up all this money. We want to sell it to other people. We want to get other people to come in.

And when they go to do that, for a bank loan, it's called a syndication. And when they do that, they will go out to a bunch of other investors to get them to buy this paper so that they don't have to fund their entire commitment. So when you see that, you will see what that-- interesting to see what that's going to look like. And that will be-- is it going to be the current? If I'm going to try and buy that paper and say, OK, those were the old Twitter projections, what are the new Elon Twitter projections--

CHUCK: Right. And they're going to be-- well, they could-- conceivably, he could say they're a lot higher because I'm not going to have hundreds of people-- Jack Dorsey, they were doing a bunch of AIML stuff to try to figure out how to read the tweet stream in real time, and figure out what's objectionable, what's not, what's factually incorrect. But they were never-- they have a rule. The current Twitter has a rule that they never either block content or not tweet out without a human looking at it, which slows them down, but is a principle upon which they wanted to run the business.

Elon could say, I'm just going to do all that through compute cycles. And we'll write a better algorithm. He's said publicly, they're using the wrong algorithm.

PETER: But Chuck, I'd say this business, it's the revenue, stupid. And, yes--

CHUCK: I know. And it's--

PETER: I don't think that's going to pencil up.

CHUCK: The advertisers are going to run.

CATHY: All right. We're going to pause for a student question.

CHUCK: Oh, good.

CATHY: Max.

MAX: It's pretty clear once Elon makes this private that he would have duties to shareholders [INAUDIBLE]. But he will have to do is do the banks and to the investors [INAUDIBLE]. Are there going to be problems, given what he can do, that--

CATHY: [INAUDIBLE] repeat the question.

PETER: That's a good answer, probably. And we'll see soon enough. Because that stuff will be public, and will be published before [INAUDIBLE] was. So we'll have to [INAUDIBLE].

CATHY: So let's talk about some M&A stuff. So we've already seen a ton of M&A vocab kicked around with transactions. So for instance, a poison pill, a potential white knight. So for those of you who haven't taken M&A, a poison pill is an agreement, in this case, that says if Elon buys more than 15% of Twitter's shares, Twitters shareholders other than Elon will get to buy more shares of Twitter for a low price.

So this is the-- other Twitter shareholders actually exercise their options do this, which basically dilutes Elon's 15% share of company. So it makes it super, super, super hard for [INAUDIBLE] take it over. So Peter, the poison pill is still in place.

PETER: Yes.

CATHY: Tell us what happens.

PETER: So what this merger agreement will provide, almost certainly, is that they will disable the poison pill immediately before the close. So a poison pill, the board has the ability to basically amend it at any time. They can redeem it--

CATHY: Which means just cancel it.

PETER: --or cancel it. And what they'll probably do is amend it to cancel it, which they can do. And the merger agreement will provide that they're required to do that. And that'll be a condition that they do that. And they will do that. So they'll just eliminate it. They'll take it off the plate.

CATHY: Is it still legally possible for a white knight to come along? So white knight, for those of you again, is like another company or person who comes in to buy Twitter instead of Musk. It's still possible, but how we've already discussed, I don't who it would be. So legally, yes. Realistically, maybe not. And then talk strategically speaking--

CHUCK: So the merger agreement will have a term that says you can terminate to take a higher offer. There will be a--

CATHY: --go shop.

CHUCK: --a breakup. Well, there's probably going to be go shop--

CATHY: Which just means [INAUDIBLE] another person--

CHUCK: --starting from the day he signed the merger agreement. So that's already in place, my suspicion is. But if you found a buyer at $54.21, which would be the market-clearing price under Revlon, you would terminate the existing merger agreement. You're going to to pay a breakup fee, and then you sign the merger agreement with Party X-- Brand X, new guy.

CARLISS: I was going to say, they are calling this Project X.

CHUCK: Yes.

CATHY: Are they?

CARLISS: Yeah, yeah.

CATHY: I thought they were going to get more [INAUDIBLE].

CARLISS: It was a boring project?

CATHY: Yeah.

CHUCK: It's so classic.

[LAUGHTER]

This is--

CATHY: Chuck, tell us how you really feel.

CHUCK: Well this is Silicon Valley silliness of the nth degree, to the nth degree. But that's different [INAUDIBLE].

CATHY: So strategically speaking, Chuck, what do you think is up? What are your predictions about what's going to unfold here?

CHUCK: Well, I think-- I don't think there's a higher bid out there. We would it already as per my discussion earlier about saying his best and final was setting the reserve price, which is actually-- looks like a boneheaded move but ended up being actually a good move. So I don't think there's higher bid out there. I think the lenders are going to freak the heck out because insofar as he is even able to articulate a going-forward business case, it's going to be very different than the business case of Twitter as a public company.

So what will you be lending against? That's an interesting question if you're giving them $13 billion. So what's the business model? What's the revenue stream? And I'm sure the banks are going to go out and do a bunch of diligence with advertisers who are all going to say, I have frozen my budget at this place. And I'm going over to the avocado-toast place. So I'm going over here to any place else that-- So I think there's a real issue with will the financing close on its current terms. His answer would be, OK, fine, you want to lend me less money? I'll just sell more Tesla stock. Right, so--

PETER: But what they announced is that there is no financing condition in the merger, which wouldn't be surprising. The question then though is how much do you think Elon will owe them if there's a failure of-- if he doesn't close? I'm guessing it's somewhere-- it's either-- it's $21 billion or less. When you read his equity commitments--

CHUCK: Oh, yeah, his equity commitment will flex. So

PETER: It'll be--

CHUCK: That was already anticipated.

PETER: But I think it's-- but he's not going to-- if the financing doesn't come together, I think he's going to be forced to sell more Tesla stock, because otherwise he's going to have to just write them a check for a huge number. And it's going to be less than $21 billion. But I'm guessing maybe not much for us.

CATHY: All right, so I'm want to do final quick reactions from each person. I will go last. And then we'll do questions from the audience. So Peter, everyone should share one fun, inside baseball tidbit from this whole drama that you would just-- something that you want to-- what you want to do is bore your family was it over dinner, but instead we're going to talk [INAUDIBLE].

PETER: My life-- actually, so if you look at the lineup of advisors here, Twitter started out with Goldman Sachs. They brought in JP Morgan, which was, I think, a very smart move on Twitter's part. And I'm going to ask Chuck why was that a smart thing to do.

CHUCK: They're trying to dry up the debt market, but it didn't work.

PETER: It didn't work. The reason is JP Morgan is far and away the market leader in providing acquisition financing. So they brought them in on the sell side to basically take them off the playing field. It didn't work, but it was-- I thought that was-- I think that one was probably a smart thing for the Twitter--

CHUCK: The mighty Morgan Stanley stepped up.

[LAUGHTER]

PETER: Well, no--

CARLISS: He's not biased. He's not biased at all.

PETER: No, but they did a good job. I probably still have some stock [INAUDIBLE]. No, but I think that was a smart move. I thought that was smart. Carliss, fun fact.

CARLISS: To me, the fact that this price-- if this price really is another for 420 joke and there is no valuation or anything whatsoever involved in it, that will be my favorite tidbit. The idea that he has the ability to set a market price in that way, by making jokes-- he did it when he said he would take Tesla private at $4.20 And now he's doing it again with the $54.20 And so it just makes me question the power we give billionaires in general. Some people have way too much money for the United States. This is just [INAUDIBLE].

CHUCK: Here, here.

CATHY: All right, Chuck?

CHUCK: I'm reminded of Mr. Justice Holmes in dissent. This is-- Twitter is not the free marketplace of ideas. So if you go back and think about what the seditionists were doing in 1917, they were arrested. The case didn't get to the Supreme Court until 1919.

But they were pamphleteering, which implies that they had a well-thought-out, coherent point of view which had been written, which had been printed on a real printing press, and was being distributed on the street, both in English and Yiddish, which is a different question. But that is, in my mind, fundamentally different than 280 characters off the top of your head. And Twitter was regarded, in its early days, as haiku for the internet.

Because it started at 140 characters, leaving the syllabication aside, but it's like-- so if Elon is coming at this with a political mindset that it is about the free trade and ideas, this is not it. Or at least in my estimation, this shouldn't be it. That, I think, is the question for people of your age to really wrestle with, which is this is snap judgment, incoherent.

It has been overtaken by bots. There are all these-- there's some fascinating stuff you can pull up on *Ted Talks,* where if you look at how the Twitter universe works, you can see a little bit of human spark. And then you see all of the aggregation comes from this automated echo-chamber stuff.

So the fundamental irony here is what makes it a good advertising platform, which is to discover affinities through how the user interacts with the content, that's an incredibly powerful idea that we didn't have 20 years ago. Advertising started out as billboards you see on the highway. They don't know whether or not you're interested in buying whatever is-- now they know.

You're 17 clicks in. So you've created an affinity profile that works powerfully for advertisers. But it created the echo chamber in the politics.

And those are-- they are manifestations of-- they are essentially the same thing. One is a good economic thing. And one, my one man's opinion, is a horrible outcome, with respect.

So we need to redefine what it is. I just don't think you can-- I think he's got a fundamentally flawed, albeit very modern take on what it means to have political discourse and debate, and Twittering it. So that's my takeaway.

CARLISS: My fun fact is much less philosophical. My fun fact is that usually when you want to take over a company, and an unsolicited offer you send them a bear-hug letter, which is a short letter that says I'd like to take over your company for this price, and this is why I think. Elon sent a two-line letter and a text message. And I just love his-- I think this is history's first bear-hug text message, which I just think is extremely funny.

CHUCK: You should tell-- you should say his tagline.

CATHY: Oh, his tagline was like Twitter has incredible values, I will unlock it.

[LAUGHTER]

So questions final question. We have four minutes left. Yeah, go ahead.

STUDENT: Do you think, off the top of your head, [INAUDIBLE] tax-law issues is this-- I never wrote that--

CATHY: Tax law?

CARLISS: Tax, that seems like Peter Lyons.

PETER: I'll take a shot at that. So one of the questions would be, what is Elon Musk's basis in his shares? So how much tax does he owe? I think most of this is, Chuck--

CHUCK: Wait, his Tesla shares or--

PETER: His Tesla shares.

CHUCK: His Tesla shares, not. He's zero based. They're compensatory.

PETER: So compensatory. Now what he may do is try and engage in some derivatives transaction to defer that. There are a number of different-- there are collars. There are other things that he can do to try and defer that tax liability. So that's where the tax planning is on the-- for the Twitter shareholders, it's a cash transaction. I have to say there's not a lot of tax--

CHUCK: Tax people, those who pay taxes. [INAUDIBLE] but institutions don't. So it's 85% institutional hell.

PETER: They don't care.

CHUCK: They don't.

CATHY: And then didn't you-- you gave a number, before we talked, about how much value of Tesla stock he would have to sell to get to the $21 billion.

PETER: Well think about $21 billion if it's fully taxable and it's compensatory, so what does that get you to? Somewhere north of $30 billion.

CATHY: You have a question over there.

STUDENT: When he says-- Elon says that he wants to roll over as many of the shareholders-- would be impossible. [INAUDIBLE].

CATHY: All right, so the question is, Elon says he wants to roll over as many of the existing shareholders as you can into the private company. What do we mean? That's-- I don't-- if you roll over [INAUDIBLE], you're not taking [INAUDIBLE].

PETER: Well, and the answer is-- but he said it's still going to be a private company. So I think-- what inferred from what he said was that it's a cash deal, but then if you want, I'm going to make an opportunity for other people to invest their after-tax proceeds, if they pay taxes, into that, as opposed to making it part of the deal. Because he doesn't want-- if he doesn't want this to be a public company, and he said he doesn't, then he's going to have to do a subsequent transaction after the fact.

CATHY: So basically, let them invest.

PETER: Yeah--

CHUCK: He could have built another Twitter for a whole lot less than $47 billion.

CARLISS: He really could have.

CATHY: I read this--

CHUCK: Should we just-- so this is back to my opening comment about-- I don't what the guy is thinking. That's. What I would have done. I would have--

CATHY: --built a new one?

CHUCK: Oh, yes. Yeah.

PETER: Look, that's what the guys who invented TikTok came up to. They invented a new-- some people might say betterverse.

CARLISS: Well, and that's why I'm like, who knows what has happened since we've been in here? He could tell me, be like, oh, never mind.

CATHY: At some point he was-- he said something like, oh, never mind. And I thought he might, oh, never mind Twitter. But he was like, oh, never mind a different piece that he had.

CARLISS: Yeah.

CATHY: Like I'm going to stop picking on Bill Gates, I think was his [INAUDIBLE].

CARLISS: Oh yeah, yeah. Who knows?

CATHY: [INAUDIBLE]

CARLISS: Yeah, he'd just-- [INAUDIBLE].

STUDENT: [INAUDIBLE] violated [INAUDIBLE] that if they're not able to sustain that debt, he can't [INAUDIBLE].

CATHY: Yeah, so what happens if you can't sustain--

PETER: Well, it's called a bankruptcy.

CATHY: Yeah.

PETER: And everything's possible. Look if you can't repay-- remember this is the $12 billion-- [INAUDIBLE] the company debt. Then they could-- if they can't repay it, then that will lead to a restructuring, and eventually could lead to a bankruptcy where guess what? That may mean that unless he, once again, put more equity in it to pay off that debt, then the lenders will ultimately take over the company.

CARLISS: So where--

PETER: Again, I don't that's going to happen.

CARLISS: I could see him taking it private, totally failing, and just getting the company near bankruptcy, and going public again.

CHUCK: Oh, yeah, the commitment letters call for that. They call for that in the sense that if there are proceeds from a downstream IPO, it has to go first to pay down the debt.

CARLISS: Yep.

CATHY: All right, so that's all the time we have. But please feel free to pop up-- let's let them go. And then they can come up and ask question. All right.

[APPLAUSE]