TMTG
TRUMP MEDIA AND TECHNOLOGY GROUP
Sarasota, FL 34232

February 27, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable James Comer
Chairman
Committee on Oversight and Reform
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen McHenry, Comer, and Jordan:

I write to request your urgent assistance in investigating egregious conduct and blatant politicization of the Securities and Exchange Commission ("SEC") in connection with the planned merger between Digital World Acquisition Corp. ("DWAC") and Trump Media & Technology Group Corp. ("TMTG").

As detailed in the enclosed letters TMTG sent to SEC on February 15 and February 25, 2023, the agency has capriciously delayed the planned merger between DWAC and TMTG, and this deliberate action has harmed retail investors and needlessly destroyed substantial public shareholder value. Moreover, as outlined below, the obvious bias of SEC leadership irrevocably taints the agency's ability to conduct an impartial inquiry. We therefore seek immediate congressional action to investigate these abuses, ensure documents are preserved, and uphold the rule of law.

About TMTG

America's cherished free speech tradition is under unprecedented attack by Big Tech companies working hand-in-glove with censorious government agencies, powerful media outlets, and well-connected political operatives.[1]

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[1] Office of Missouri Attorney General Eric Schmitt, "Missouri and Louisiana Attorneys General Ask Court to Compel Department of Justice to Produce Communications Between Top Officials and Social Media Companies," September 1, 2022, https://ago.mo.gov/home/news/2022/09/01/missouri-and-louisiana-attorneys-general-ask-court-to-compel-department-of-justice-to-produce-communications-between-top-officials-and-social-media-companies;

Former president Donald Trump founded TMTG and hired Devin Nunes, former Chairman of the House Intelligence Committee, as Chief Executive Officer. Together, they assembled an expert team to launch TMTG's flagship product, Truth Social, with a mission to end Big Tech's assault on free speech by opening up the Internet and giving the American people their voices back. Truth Social is now one of the fastest-growing social media platforms in history.

Since TMTG has built Truth Social without relying on Big Tech companies, hostile political activists have grasped at new methods of cancellation, including unsuccessfully attempting to block our availability on the Apple App and Google Play stores. This attempt to sabotage TMTG for political purposes continues today through SEC's unlawful efforts to block our access to capital markets.

SEC's Inexcusable Delay of the DWAC-TMTG Merger

On October 20, 2021, TMTG announced a merger agreement with DWAC, a special purpose acquisition company ("SPAC"). Tens of thousands of retail investors—whom SEC is chartered to protect—have purchased DWAC securities in anticipation of the merger, which will provide financing to capitalize TMTG's business plans and the development of Truth Social.

Days later, the *New York Times* published a story—relying exclusively on anonymous sources— which speculated that DWAC may have improperly conducted its merger negotiations with TMTG.[2] A few weeks later, on November 17, 2021, Senator Elizabeth Warren sent SEC Chairman Gary Gensler a letter requesting that SEC probe the DWAC-TMTG merger, citing the anonymously-sourced *New York Times* article as the sole evidence that DWAC and TMTG "may have violated securities laws."[3] On or about January 11, 2022, SEC's Division of Enforcement launched an investigation into DWAC. These circumstances suggest that improper political considerations underpin SEC's decision to target the DWAC-TMTG merger.

On May 16, 2022, in furtherance of its planned merger with TMTG, DWAC filed with SEC a registration statement on Form S-4. On May 27, 2022, before meaningfully commencing its standard review of the S-4, SEC issued a rare "order of examination" to DWAC pursuant to Section 8(e) of the Securities Act of 1933, as amended. Given that SEC had already purported to initiate an investigation, the 8(e) examination served no clear purpose except to thwart DWAC and TMTG's proposed business combination.

On June 21, 2022, SEC staff member Joshua Shainess informed DWAC's counsel that the Division of Corporation Finance had "indefinitely suspended" its review of the S-4, without citing any valid legal basis for such suspension. SEC thus failed to provide comments on the S-4 within the customary 30 days. As of today, SEC has *still* failed to provide substantive feedback on

Jacob Siegel, "Invasion of the Fact-Checkers," *Tablet Magazine*, March 21, 2022, https://www.tabletmag.com/sections/news/articles/invasion-fact-checkers.

[2] Matthew Goldstein, Lauren Hirsch, and David Enrich, "Trump's $300 Million SPAC Deal May Have Skirted Securities Laws," *New York Times*, October 29, 2021, https://www.nytimes.com/2021/10/29/business/trump-spac-digital-world.html.

[3] Sen. Elizabeth Warren to SEC Chairman Gary Gensler, November 17, 2021, https://www.warren.senate.gov/imo/media/doc/11.17.2021%20Trump%20SPAC%20Letter.pdf.

DWAC's S-4—which was filed more than nine months ago. The S-4 will soon have lingered for longer than the time between SEC filing and SEC effectiveness for *any* of the 100+ SPAC transactions that closed in 2022.[4]

The Costs of Delay

The U.S. Congress created SEC in 1934 to protect investors and facilitate capital formation. Yet SEC's conduct in this matter is diametrically opposed to both those elements of its mission. DWAC investors voted overwhelmingly on November 22, 2022, to continue with the merger. By stalling the deal, however, SEC has destroyed approximately $17 billion in enterprise value. Billions of dollars of these losses have been borne by DWAC investors, who are overwhelmingly retail investors, not institutional investors. Furthermore, SEC's actions have prevented TMTG from implementing its overall business plan while allowing short sellers to profit on the backs of retail investors.

SEC's Conflicts of Interest and Disparate Treatment

In its handling of the DWAC-TMTG merger, SEC has also failed to address multiple, severe conflicts of interest. Most notably, SEC Chairman Gary Gensler's animus and bias toward TMTG Board Chairman Donald Trump is well established by publicly available facts.

During the 2016 presidential campaign, Gensler served as Chief Financial Officer for the campaign of Trump's general election opponent, Hillary Clinton. In that position, Gensler and the Democratic National Committee (DNC) commissioned and paid for the salacious and debunked "Steele Dossier" via law firm Perkins Coie and political intelligence firm Fusion GPS. According to the sworn testimony of Clinton campaign chairman John Podesta, Gensler was ultimately responsible for funding the Dossier and approving the payments to Perkins Coie.

By subpoenaing Fusion GPS's bank records, current TMTG CEO Devin Nunes, in his previous position as Chairman of the House Intelligence Committee, exposed the dossier as a dirty trick funded by Trump's political opponents.[5] The Federal Election Commission later fined both the Clinton Campaign and the DNC for laundering the payments for the Steele Dossier through their law firm and hiding their true purpose.[6] Thus Gensler has strong motivation to target a company whose board is chaired by his former chief political opponent, Donald Trump, and which is run by the former representative who revealed Gensler's malfeasance, Devin Nunes.

Furthermore, disgraced FBI agent Peter Strzok played a central role in concocting the baseless investigation into the Trump Campaign's ostensible collusion with Russia. Strzok, who authored the Electronic Communication that opened the investigation, was a primary collusion

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[4] Freshfields, "2022 De-SPAC Debrief," January 2023, https://www.freshfields.us/48fcfe/globalassets/noindex/documents/ 2022-de-spac-debrief.pdf.

[5] *See* House Permanent Select Committee on Intelligence, Executive Session Interview of John Podesta, December 4, 2017, https://republicans-intelligence.house.gov/uploadedfiles/john_podesta_testimony_dec_4_2017.pdf; John Solomon, "SEC chairman's role in Steele dossier payments adds to questions about Trump probe conflicts," *Just The News*, September 8, 2022.

[6] Ben Kesslen, "Clinton campaign, DNC fined by FEC for lying about Steele dossier payments," *New York Post*, March 30, 2022.

investigator for the FBI and later, for Special Counsel Robert Mueller, until he was removed and later fired due to his vitriolic anti-Trump text messages, including his vow to "stop" Trump from being elected president. Strzok's wife, Melissa Hodgman, was SEC's Acting Director of Enforcement when Chairman Gensler took office in early 2021 and has remained in a senior role as an "instrumental advisor" to Gensler throughout the pendency of the above-referenced investigation.[7]

The facts set forth above cannot be squared with the requirement that SEC proceedings be so completely devoid of bias—or the appearance of bias—that every step of the process is vested with "the very appearance of complete fairness." It is therefore deeply alarming that SEC has refused to reveal whether Chairman Gensler and Associate Director Hodgman have recused themselves from matters related to TMTG.[8]

SEC's mistreatment of TMTG stands in stark contrast to its handling of the merger between Stable Road Acquisition Corp. ("Stable Road") and Momentus, Inc., which is the only case we have identified in which an SEC investigation of a SPAC was being conducted contemporaneously with an S-4 review. In that case, SEC allowed the merger to complete in 2021 despite charging the SPAC, its sponsor, and its CEO with violating securities laws. In the Stable Road matter, then-Acting Director of Enforcement Hodgman even boasted that "[o]ur enforcement team worked with incredible speed, efficiency, and creativity" so that the deal could close.[9]

TMTG has fully cooperated with SEC's inquiries and clearly communicated that anyone involved in wrongdoing should be held accountable. Unlike the Stable Road case, however, SEC has not announced a finding of *any* wrongdoing by DWAC or anyone else involved in the TMTG-DWAC merger. Yet even a firm with established legal violations like Stable Road received more fair and timely consideration from SEC than TMTG has.

Congressional Action

SEC's endless investigation of the DWAC-TMTG merger clearly constitutes an unprecedented attempt to kill the deal without any finding of wrongdoing. Given DWAC's impending deadline to conclude the merger and the obvious pattern of unlawful conduct by SEC, we respectfully submit that your committees should immediately investigate the matters described herein and make the relevant criminal referrals to the Department of Justice, including for violations of the following statutes:

- 18 U.S.C. § 241
- 18 U.S.C. § 242

[7] U.S. Securities and Exchange Commission, "Sanjay Wadhwa Named Deputy Director of Enforcement Division," press release, August 18, 2021, https://www.sec.gov/news/press-release/2021-157.
[8] Greg Piper, "SEC won't say if Clinton campaign CFO, Strzok's wife are recused from its Truth Social probe," *Just The News*, August 25, 2022, https://justthenews.com/government/federal-agencies/sec-wont-say-if-clinton-campaign-cfo-strzoks-wife-are-recused-its-truth.
[9] U.S. Securities and Exchange Commission, "SEC Charges SPAC, Sponsor, Merger Target, and CEOs for Misleading Disclosures Ahead of Proposed Business Combination," press release, July 13, 2021, https://www.sec.gov/news/ press-release/2021-124.

- 18 U.S.C. § 371
- 18 U.S.C. § 401(3)
- 18 U.S.C. § 641
- 18 U.S.C. §1503

We also recommend that you demand that SEC preserve all relevant records, as well as seek documents from, and take depositions of, the following individuals:

- Gary Gensler
- Melissa Hodgman
- Gurbir Grewal
- Sanjay Wadhwa
- Joseph Sansone
- Thomas P. Smith, Jr.
- Andrew McFall
- Patrick McCluskey
- David Bennett
- Erik Gerding
- Renee Jones
- Joshua Shainess

Furthermore, we urge Congress, as a co-equal branch of government, to use its own authority to hold any non-cooperative SEC officials accountable through the following actions:

- Initiate contempt proceedings;
- Levy fines;
- Reduce or withhold salaries;
- Cut and/or condition funding for SEC; and
- Commence impeachment proceedings.

Thank you for your prompt attention to this matter. We look forward to cooperating with your efforts.

Sincerely,

TRUMP MEDIA & TECHNOLOGY GROUP CORP.

By: /s/ Scott L. Glabe
Scott L. Glabe
General Counsel

Enclosures

Cc: The Honorable Kevin McCarthy & U.S. House of Representatives Leadership
The Honorable Marco Rubio
The Honorable Rick Scott
The Honorable John Cornyn
The Honorable Ted Cruz
Florida U.S. House Delegation
Texas U.S. House Delegation

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February 15, 2023

VIA OVERNIGHT COURIER
and EMAIL: BARBEROM@SEC.GOV

Ms. Megan Barbero, Esq.
General Counsel
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549

Re: *In the Matter of Digital World Acquisition Corp.* (NY-10498)
Order Directing Examination and Designating Officers Pursuant to Section 8(e)of the Securities Act of 1933

Dear Ms. Barbero:

This firm and KAREN COOK, PLLC, together represent Trump Media & Technology Group Corp. ("TMTG") in connection with the above-referenced Division of Enforcement investigation, a Division of Corporation Finance examination ("Corp Fin"), and related matters. This representation is in addition to the attorneys and firms for TMTG with whom the agency's Staff have previously communicated.

The purpose of this letter is to bring to your attention an unprecedented and urgent dilemma that has arisen in connection with the above-referenced investigation and examination, one which has indefinitely stalled the Form S-4 review and approval process in Corp Fin for the registration and planned merger of Digital World Acquisition Corp. ("DWAC") and TMTG. As outlined below, the delay threatens unnecessarily to upend the merger—which must be completed on a short timeframe. The disparate treatment involving these parties places the SEC outside its constitutional and statutory mandates, and we seek to remedy the situation before further damage is done. We are asking that the Corp Fin review of DWAC's Form S-4—which is now a record nine months delayed—commence right away. We also seek a meeting with you or your designee within the next week to facilitate an expeditious resolution to this pending matter.

Brief History

DWAC is a special purpose acquisition company ("SPAC") that entered into a merger agreement with TMTG on or about October 20, 2021. On or about January 11, 2022—following a letter from Senator Elizabeth Warren that cited an anonymously-sourced *New York Times* article—the Division of Enforcement commenced an investigation by the purported authority of an "Order Directing Private Investigation and Designating Officers to Take Testimony" ("Formal Order").

On May 16, 2022, DWAC filed a registration statement on Form S-4. In short order, a rare Order of Examination was issued on or about May 27, 2022, reciting the appointment of officers to conduct an examination pursuant to Section 8(e) of the Securities Act of 1933 (the "Order of Examination"). After the issuance of the Order of Examination, the Staff of Corp Fin reportedly declared, on or about June 21, 2022, that its review of the S-4 was *"indefinitely suspended,"* without citing a valid basis for doing so.

The SEC's Delay — and Its Costs

As you are no doubt aware, a proposed merger under the auspices of a SPAC has a short shelf life, and such delay—by itself—can vitiate the whole transaction, in this case destroying tens of billions of dollars in shareholder and enterprise value. If the S-4 review continues to be blocked, that is exactly what will happen.

To our knowledge, there has been no communication of any kind from Corp Fin to DWAC since June 21 of last year, despite repeated inquiries. The timely registration process embodied in Section 8 of the Securities Act of 1933, 15 U.S.C. § 77h, and the agency review process contemplated by 17 C.F.R. § 230.473—procedures which are well established and followed consistently by Corp Fin—have been totally thwarted.

We are aware of no factual or legal basis for effectively cancelling the standard review-and-comment process. That Corp Fin has been unable to articulate any such basis, maintaining absolute silence for some eight months, would indicate that no such basis exists. We are unaware of any other remotely-similar S-4 that has been subjected to such intentional and inexplicable delay in processing, or to a blackout on communications with the registrant.

In fact, our extensive research reveals *no prior case* in which the Commission has issued a stop order involving a Form S-4 registration statement. In cases where the Commission has brought an enforcement action in connection with a SPAC merger, the registration statement has always been processed in a timely fashion and each merger has been allowed to proceed despite the related enforcement action. In this context, this unprecedented, endless delay in this case would lead a disinterested observer to conclude that it constitutes an attempt to kill the merger without ever properly conducting the review.

With respect to Enforcement inquiries, the initial investigation has now dragged on for over a year. Moreover, although the law governing the Order of Examination and issues raised by the contents of registration statements contemplates a hearing before the Commission on fifteen days' notice, the SEC has failed to follow the statutory timeline and denied the parties the process they are due to determine whether a "stop order" should issue. Instead, Corp Fin has accomplished the functional equivalent of a stop order by unilaterally preventing the review and comment process from ever moving forward, circumventing the legal framework for securities registrations mandated by Congress. There is a reason why the SEC has never done this before.

As noted above, this extended inaction has imposed grievous harm— including on ordinary retail investors whom the Commission is chartered to protect and who purchased DWAC securities in anticipation of a merger with TMTG. At its peak, DWAC was the most valuable SPAC *ever*, with a total implied equity market capitalization of $20 billion. In the wake of the SEC's long-running inquiries, DWAC has plummeted to $15.31 per share as of February 1. This represents a loss of approximately *$17 billion* to TMTG, DWAC, and DWAC shareholders. While the Truth Social platform is thriving despite the SEC's hindrance of the merger, TMTG and its equity holders have been denied access to over $1 billion in capital and more than 85 million shares of DWAC common stock. Additionally, TMTG's lack of access to such capital—which is attributable to the SEC's delay—has exacerbated these losses by unnecessarily attenuating the timeline for implementing TMTG's business plans and growth strategies.

At the same time, short sellers—including those seemingly engaged in unlawful "naked" short selling—have profited handsomely from the cloud the SEC has placed over the merger, and DWAC has repeatedly appeared on the Reg SHO watchlist. The status quo is therefore enabling sophisticated insiders to profit on the backs of retail investors.

In short, this extraordinary and unexplained S-4 processing delay is now on course to subvert the registration statement and the proposed merger entirely, all for reasons that contradict the letter and spirit of the Securities Act, or for no tenable reason at all. Enforcing the securities laws and vetting registration statements need not impose further harm on investors, and these processes can—and should—proceed simultaneously in this case. As one respected commentator has observed, despite the investigations referenced above, "[T]here is absolutely no investor-protection purpose served by blocking the [DWAC-TMTG] deal."[1]

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1 See Levine, Matt, The Trump SPAC Has SEC Trouble, *Bloomberg*, October 25, 2022, at https://www.bloomberg.com/opinion/articles/2022-10-25/the-trump-spac-has-sec-trouble.

Resolution

To date, TMTG has fully cooperated with the Division of Enforcement's inquiries, and we understand that DWAC has done the same. To the extent we understand the issues being investigated, none of them would justify suspending, indefinitely or otherwise, the processing of the S-4 or holding up the merger. TMTG and DWAC are prepared to promptly address any and all comments by Corp Fin about the pending S-4. TMTG has no reason to believe the allegations under investigation are true. However, to the extent that the Division of Enforcment has identified wrongdoing by DWAC officials or other parties, TMTG expects that the SEC will use the tools at its disposal to uphold the law while protecting shareholders, and we will work to actively facilitate the expeditious resolution of any enforcement issues.

From a constitutional, statutory and regulatory standpoint, the pending Enforcement investigation should not hold up the S-4 comment process or permitting the registration to go effective. TMTG stands with the patriotic Americans and Main Street investors who support and believe in this important transaction. Those shareholders deserve an immediate resolution to the matters discussed herein and to a regulator that will follow its statutory mandate regardless of the agency's subjective perceptions of any of the stakeholders.

Without waiving any other arguments it might subsequently make regarding the above-referenced matters, TMTG requests that Corp Fin start processing the S-4 right away and provide any comments to DWAC. We further request a response from your office within the next ten days or an opportunity to meet to expedite a resolution to the issues discussed herein. The stakes are high, and time is of the essence. We look forward to your response.

Best regards,

S. MICHAEL McCOLLOCH

cc: Gurbir Grewal, Director of Division of Enforcement
Via Email: Grewalg@sec.gov

Renee Jones, Director of Division of Corporation Finance
Via Email: JonesR@sec.gov

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February 25, 2023

VIA OVERNIGHT COURIER
and EMAIL: BARBEROM@SEC.GOV

Ms. Megan Barbero, Esq.
General Counsel
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, DC 20549

Re: *In the Matter of Digital World Acquisition Corp.* (NY-10498)
Order Directing Examination and Designating Officers Pursuant to Section 8(e)of the Securities Act of 1933

Dear Ms. Barbero:

I write to follow up on a letter sent to you on February 15, 2023, which described a grave situation which has arisen in connection with the SPAC merger registration of Digital World Acquisition Corp. (DWAC) and target company Trump Media & Technology Group Corp. (TMTG).

The February 15 letter explained that, despite the limited timeframe permitted for effectiveness of the registration and consummation of the merger, the Division of Corporation Finance had "suspended" the standard review process of the S-4 indefinitely soon after its filing, without explanation. To make matters worse, Corp Fin has refused to communicate with the registrant for over eight months. This has left both companies, and their shareholders and noteholders, bereft of any administrative options or recourse, and no way to achieve the public registration and merger to which they are legally entitled.

Because of this unprecedented suspension and information blackout, TMTG has been forced to retain the undersigned and attorney Karen Cook to attempt to determine the cause of the SEC's actions and, if possible, resolve the impasse in an amicable and collaborative fashion. If these efforts do not appear to be imminently effective, TMTG will have no choice but to take additional measures and pursue other remedies. Before doing so, we have reached out to you, both as a professional courtesy and because you are in a position best situated to provide guidance and coordination among the relevant divisions within the agency.

We asked that you acknowledge our inquiry within ten days, but your office did not respond, either to the letter or to our subsequent telephone calls. Under the circumstances, we are forced to take the agency at its word—virtually the only word it has spoken—and conclude that the SEC has truly dug in its heels as an institution, determined to delay the processing of the DWAC S-4 "indefinitely" until the whole transaction dies on the vine.

At this point, it is difficult to conceive of any benign explanation for this extended intransigence, and indeed there is considerable evidence to suggest that the SEC is engaged in a deliberate run-out-the-clock artifice which is illegal, unconstitutional, and motivated by political animus. This is most unfortunate, not only for the mistreated companies and the tens of thousands of victimized Main Street investors, but also for the broader American public, which is deprived of a neutral and professional regulator of the securities market, one which is required to objectively call balls and strikes in the execution of the securities laws.

This conduct is also very hazardous to the SEC itself, having already sustained serious recent blows to its practices at the hands of the courts.[1] In this light, it is difficult to see how the willful abdication of its statutory responsibility to timely process a registration statement will withstand scrutiny.

Corp Fin's "pocket veto" of the DWAC/TMTG S-4 cannot be justified by the ongoing Enforcement investigation, either as a matter of law or the SEC's own historical practices. It takes little effort to glean the agency's record in cases where such investigations are launched while de-SPAC registrations are under review in Corp Fin. In the most recent such case, Stable Road Acquisition Corp., the 2021 Enforcement investigation proceeded with "incredible speed"[2] while Corp Fin

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1 *See, e.g., Lucia v. SEC,* 138 S.Ct. 2044 (2018); *Jarkesy v. SEC,* 34 F.4th 446 (5th Cir. 2022).

2 Melissa Hodgman, then-Acting Director of Division of Enforcement, quoted in SEC Press Release 21-124, "SEC Charges SPAC, Sponsor, Merger Target, and CEOs for Misleading Disclosures Ahead of Proposed Business Combination," July 13, 2021. Acting Director Hodgman

timely processed the SPAC's S-4, which went effective despite Enforcement's findings of *multiple fraudulent disclosures* in the S-4. As it should, the SEC managed to perform both statutory functions at the same time, recognizing that it was required by law to process the S-4 even though its sister department was simultaneously prosecuting the parties for fraudulent statements and omissions in the same document. The offending parties settled with Enforcement, and the SPAC's S-4 went effective.

For its part, Enforcement appears to be slow-walking its investigation in this case, not exactly proceeding with "incredible speed." The investigation has taken more than a year, and TMTG understands that subpoenaed parties responded many months ago. That investigation may drag on for months or years, but that is no excuse for Corp Fin's continuing and unprecedented refusal to act, or its refusal to explain to the registrant its failure to act.

The SEC's singling out of this transaction for unorthodox treatment has also led it to take legal shortcuts that cannot be reconciled with fundamental constitutional requirements and recent judicial precedents. For example, neither the Formal Order of January 11, 2022, nor the Order of Examination of May 27, 2022, appears to constitutionally or legally authorize the Division of Enforcement investigation or Section 8(e) examination, including the issuance of the June 24 subpoena served upon TMTG. The Formal Order recites on its face that it was issued by the Division of Enforcement "[f]or the Commission" pursuant to "delegated authority" from the Commission. In other words, the Division of Enforcement *appointed itself* to conduct the investigation. It appears certain that this violates Article II's Appointments Clause, U.S. CONST. art II § 2 cl. 2, and the terms of 15 U.S.C. §§ 77s(c) and 78u(b). The orders also contravene U.S. CONST. art. II, § 3 (the Take Care Clause). All of this means that the Enforcement investigation and Sec. 8(e) examination were never legally authorized.

Because the SEC now seems inexplicably committed, as an institution, to break with its own history, obstruct its own procedures, and violate its own authorizing statutes to defeat this important SPAC merger, TMTG is compelled to pursue its remedies for these and other constitutional and statutory violations, including due process, equal protection, and the provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551–559. In this regard, TMTG is obligated to demand

expressly acknowledged the need for swift investigative work in the context of a time-limited SPAC merger.

that the SEC[3] preserve all electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files which the SEC maintains, relevant to this dispute.[4] At the appropriate time TMTG anticipates that it and co-plaintiffs will be seeking in discovery electronic data in the SEC's custody and control that is relevant to this action, including without limitation emails and other information contained on the SECs computer systems and any electronic storage systems. TMTG considers these electronic data and paper files to be valuable and irreplaceable sources of discoverable information in this matter. In addition, TMTG places the SEC on notice not to allow the deletion of any electronic communications, such as emails, relating to this dispute. We are confident that the SEC already has taken steps to preserve these data since it has an obligation to preserve relevant evidence. Thus, no procedures should have been implemented to alter any active, deleted or fragmented data. Moreover, no electronic data should have been disposed of or destroyed. We further trust that the SEC will continue to preserve such electronic data and paper files throughout this litigation.

Corp Fin's placement of the S-4 in a deep freeze for nearly 300 days will soon break the record for the amount of actual processing time it took for any SPAC registrations last year, and much longer than most. The median time from filing to effectiveness for SPAC registrations in 2021 was 93 days (3.0 months) and in 2022 was 134 days (4.4 months).[5] Moreover, those 102 registration filings were processed without an indefinite suspension and without an indefinite information blackout. Then again, none of those registration statements involved anyone with the name "Trump," apparently leaving the agency with no motivation to manipulate the process and depart from statutory and constitutional mandates.

That the parties involved in this S-4 have been subject to disparate and unequal treatment is beyond dispute. The SEC will be hard pressed to identify

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[3] As used in this paragraph, "SEC" refers to any and all officers, employees or agents of the Securities and Exchange Commission, and specifically includes the Commission, the individual Commissioners, the staff of the Commission, and the General Counsel's office. The SEC's "agents" include, without limitation, Berkeley Research Group LLC.

[4] "This dispute" refers to all actions taken, and actions forsaken and delayed, by the SEC in any way related to the DWAC S-4 filed on May 16, 2022, by any and all divisions within the agency, including but not limited to activity in connection with the issuance of the Formal Order issued January 11, 2022, NY-10498, and the Order of Examination issued May 27, 2022, both before and after such orders were issued.

[5] 2022 De-SPAC Debrief, Freshfields Bruckhaus Deringer, January 2023, at 10, available at https: //www.freshfields.us/48fcfe/globalassets/noindex/documents/2022-de-spac-debrief.pdf.

other, comparable SPAC S-4's which have been subject to an extended and unauthorized "suspension" and information blackout. Equally concerning are the due process implications stemming from the well-known animus of SEC leadership as it pertains to the former President. To TMTG's knowledge, neither Chairman Gensler nor Associate Director of Enforcement Hodgman have recused themselves from either the Enforcement matter or the Sec. 8(e) examination. Their histories in connection with former President Trump are well established and documented, compromising the SEC as an institution in the context of any investigation of a corporate transaction involving President Trump. These circumstances also render it impossible for Chairman Gensler or Associate Director Hodgman to assist in oversight or participate personally in any of the ongoing agency proceedings.

As you know, the "principles of due process apply to administrative adjudications." *Amos Treat & Co. v. SEC*, 306 F.2d 260, 264 (D.C. Cir. 1962). In the context of multi-member boards of federal agencies, due process requires the commissioners to remain "neutral and detached" throughout the proceedings. *See Ass'n of Nat'l Advertisers, Inc. v. F.T.C.*, 627 F.2d 1151, 1168 (D.C. Cir. 1979). Each of the five members of the Commission must be devoid of bias or the mere appearance of bias during the full course of proceedings until final decisions are made. *Id.* Even a commissioner making a good faith effort to remain neutral cannot overcome the documented series of circumstances and past conduct that particularly plague Chairman Gensler's participation in a securities transaction that in any material way involves President Trump—here, the Chairman of the target company.

A biased Commissioner—one who has manifested an animus toward a party, or even appears to have done so—is disqualified as a matter of law, nullifying the proceeding, *nunc pro tunc*.[6] The participation of such biased Commissioner strips from the proceedings "the very appearance of complete fairness," invalidating the proceedings as a denial of due process.[7] Unless they have recused themselves, the involvement of the Chairman and the Assistant Director—inherent by virtue of their positions within the agency—strips the ongoing proceedings of fairness according to the case law, and nullifies the constitutional vitality of the Enforcement investigation and the Corp Fin review—suspended or not.

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6 *See Antoniu v. SEC*, 77 F.2d 721 (8th Cir. 1989), cert. denied, 110 S. Ct. 1296 (1990); *Gilligan, Will & Co. v. SEC*, 267 F.2d 461, 469 (2d Cir.), cert. denied, 361 U.S. 896 (1959).

7 *Texaco, Inc. v. FTC*, 336 F.2d 754 (D.C. Cir. 1964), *vacated on other grounds*, 85 S. Ct. 1798 (1965); *see also, Cinderella Career & Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 590 (D.C. Cir. 1970).

All of this—the suspended Corp Fin review, the delayed Enforcement investigation, the defective orders, and the failure to recuse—have ignited a constitutional and statutory dumpster fire, one of the SEC's own making and one which could be easily extinguished, if the agency had any desire to do so. That the SEC has not done so, and compounded the dilemma for the victimized stakeholders by its wholesale failure to communicate, unfortunately leaves the parties on the brink of another fire—but this one a controlled burn in a courtroom.

Although time is short, the opportunity still exists to avoid the expense and exposure of litigation, which is certainly the preference of TMTG. Under the circumstances, TMTG is compelled to demand:

(1) That Chairman Gary Gensler and Assistant Director Hodgman recuse themselves at once from oversight or participation in any matter or proceeding in any way involving the DWAC S-4; and

(2) That the SEC immediately lift its unlawful processing suspension of the S-4, commence review and provide comments to DWAC counsel, and allow the registration to go active within twenty (20) days from this date.

We are disappointed that the SEC has rebuffed all of our attempts to learn why the S-4 has been mishandled and how we can rectify this injustice. Nevertheless, we are still open for such discussion. In this regard, a supervisor in Corp Fin just yesterday agreed to convene a group call with us next week. But because an agency-wide solution appears necessary to resolve the deadlock, we would urgently renew our request that your office contact me or co-counsel Karen Cook by email, telephone, text message, or otherwise. We are available to meet nearly any time, at your convenience. We look forward to hearing from you in the next several days.

Best regards,

S. MICHAEL McCOLLOCH

cc: Gurbir Grewal, Director of Division of Enforcement
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