United States Senate
WASHINGTON, DC 20510

September 22, 2021

Michael Klein
Founder and Managing Partner
M. Klein & Associates, Inc.
640 Fifth Ave, 12th Floor
New York, NY 10019

Dear Mr. Klein:

We are writing regarding your creation and operation of Special Purpose Acquisition Companies, or "SPACs," amid increasing concerns that the operators of these entities have "employed a range of maneuvers — some of them downright astonishing to the uninitiated — to win even when investors lose."[1] If these reports are accurate, they reveal significant market dysfunction, with insiders taking advantage of legislative and regulatory gaps at the expense of ordinary investors. We seek information about your use of SPACs in order to understand what sort of Congressional or regulatory action may be necessary to better protect investors and market integrity and ensure a fair, orderly, and efficient marketplace.

SPACs have exploded in popularity in recent years, with sponsors asserting that SPACs present a faster and cheaper alternative to a traditional initial public offering (IPO).[2] SPAC creators, or "sponsors," raised over $83 billion in 2020, a more than six-fold increase compared to the $13 billion raised in 2019.[3] In just the first seven months of this year, SPAC sponsors have already exceeded those numbers, raising approximately $125.7 billion through 435 IPOs.[4] While the SPAC market has retreated in recent weeks[5], its growth to date has reshaped financial markets: as of last year, SPACs outpaced traditional IPOs as the preferred method for taking a company public.[6] This meteoric rise is concerning because, as detailed below, the SPAC process often

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[1] Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

[2] Letter from Americans for Financial Reform and the Consumer Federation of America to the U.S. House Financial Services Committee, February 16, 2021, pp. 2, https://ourfinancialsecurity.org/wp-content/uploads/2021/02/AFR-Letter-on-SPACs-to-HFSC-FINAL.pdf; Written testimony of Usha R. Rodrigues to the U.S. House Financial Services Committee, May 24, 2021, pp. 2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-rodriguesu-20210524.pdf.

[3] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/; CNBC, "A SPAC frenzy earlier this year could lead to riskier deals. Here's why," Carmen Reinicke, June 2, 2021, https://www.cnbc.com/2021/06/02/a-spac-frenzy-this-year-could-lead-to-riskier-deals-heres-why.html.

[4] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/ (as of September 17, 2021).

[5] Wall Street Journal, "SPAC Rout Erases $75 Billion in Startup Value," Amrith Ramkumar, September 2, 2021, https://www.wsj.com/articles/spac-rout-erases-75-billion-in-startup-value-11630575180.

[6] Business Insider India, "219 'blank-check' companies raised $73 billion in 2020, outpacing traditional IPOs to make this the year of the SPAC, according to Goldman Sachs," Matthew Fox, December 18, 2020, https://www.businessinsider.in/stock-market/news/219-blank-check-companies-raised-73-billion-in-2020-outpacing-traditional-ipos-to-make-this-the-year-of-the-spac-according-to-goldman-sachs/articleshow/79801298.cms; Congressional Research Service, "SPAC IPO: Background and Policy Issues," Eva Su, April 5, 2021, pp. 1, https://crsreports.congress.gov/product/pdf/IF/IF11655.

appears to be structured to exploit retail investors to the benefit of large institutional investors such as hedge funds, venture capital insiders, and investment banks.[7]

SPACs are publicly traded "shell companies that raise money with the sole purpose of buying a private company to take it public."[8] A SPAC sponsor first raises capital by completing an IPO for a shell company. During the IPO, investors purchase "units" that typically consist of one share priced at $10 and a warrant that entitles the holder to buy additional shares at a slightly higher price, often $11.50 a share.[9] This structuring allows SPACs to skirt existing rules that govern "blank check companies" with stock prices below $4 per share.[10]

Sponsors are typically required to acquire or merge with a private company (in what is known as a "de-SPAC" transaction) within two years, or they must return funds to investors.[11] Importantly, because the vast majority of compensation for SPAC sponsors occurs with a merger, this time limit creates significant pressure on SPAC sponsors to complete a deal quickly. There is a risk that SPAC sponsors will fail to perform adequate diligence on merger targets or will negotiate low-quality deals, because the sponsors' financial incentives are not fully aligned with the investors for whom they are negotiating.

After negotiating a proposed deal with a target, SPAC sponsors then present the proposed merger deal terms to shareholders for a vote. Shareholders may instead decide to sell their shares or redeem them at the original purchase price of $10 plus interest, while retaining the warrant.[12] When the merger is consummated, the sponsor often receives 20% of the SPAC's shares as compensation (a "promote"), regardless of the quality of the deal with the acquired company.[13] The sponsor's promote reduces the cash per share for the investors, a cost borne only by those who did not redeem their shares.

Industry insiders can take advantage of ordinary investors throughout this process. Prior to a merger, sponsors may exploit perceived gaps in securities laws to make overly optimistic statements about target companies. In a traditional IPO, a firm seeking to go public must submit disclosures on its financial health, operations, and strategy to the Securities and Exchange Commission ("SEC") for review.[14] Under the Securities Act of 1933, issuing companies,

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[7] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf; Pitchbook, "VC firms sat out the early SPAC crazy. Now many are changing their tune," Marina Temkin, March 9, 2021, https://pitchbook.com/news/articles/venture-capital-spac-sponsorship-craze.

[8] The Wall Street Journal, "Led by 'Mr. SPAC,' Credit Suisse Cashes In on Blank-Check Spree," Margot Patrick and Amrith Ramkumar, February 5, 2021, https://www.wsj.com/articles/led-by-mr-spac-credit-suisse-cashes-in-on-blank-check-spree-11612527389.

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[10] *Id, pp. 2.*

[11] *Id, pp. 1.*

[12] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[13] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, pp. 2-3, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

[14] U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, "Investor Bulletin: Investing in an IPO," pp. 1-4, https://www.sec.gov/files/ipo-investorbulletin.pdf; Memorandum from U.S. House

directors, and underwriters are liable for misstatements and omissions in their public offering disclosures.[15] In contrast, statements by SPAC sponsors to convince shareholders to vote in favor of a merger may not have to meet the same disclosure standards.[16]

Examples abound of SPAC sponsors and their targets making hyperbolic claims about their technology, operations, and prospects. Your company MultiPlan is facing a class action lawsuit alleging that the SPAC's board "misle[d] the SPAC's investors into approving a badly underpriced deal with Multiplan by concealing that it was about to 'crater' when UnitedHealth Group Inc., its top customer, not only withdrew from their relationship but created a competing business unit."[17] Similarly, two electric vehicle companies that recently went public via SPAC transactions are facing class action lawsuits for misleading statements, including claims about the number of pre-orders placed for the vehicle[18] and even whether a prototype vehicle was fully functional.[19]

Sponsors and institutional investors also benefit at ordinary investors' expense at the time of the merger. Sponsors typically receive 20% of a company's shares as a promote upon the merger. They therefore "make, on average, several times their initial investment," "even if the company they take public struggles."[20] As a result sponsors' "incentive is thus to do any deal they can, at lofty prices if necessary."[21] SPAC creators have found additional creative ways to profit at this stage. Your SPAC reportedly paid your own investment bank for consulting services, funneling millions in fees from the SPAC's investors to you.[22] Another SPAC creator struck a merger deal with his own company: billionaire Tilman Fertitta's SPAC acquired a division of Fertitta's Golden Nugget hotel and casino and agreed to pay half of Golden Nugget's debt as part of the

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Committee on Financial Services Majority Staff to Members, May 19, 2021, pp. 1-2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-20210524-sd001.pdf.

[15] 15 U.S.C. 77k; 15 U.S.C. 77l.
[16] U.S. Securities and Exchange Commission, "SPACs, IPOs and Liability Risk under the Securities Laws," John Coates, April 8, 2021, https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.
[17] Bloomberg Law, "SPAC Pioneer M. Klein Sued Over MultiPlan Blank-Check Merger," Mike Leonard, March 25, 2021, https://news.bloomberglaw.com/mergers-and-acquisitions/spac-pioneer-m-klein-sued-over-multiplan-blank-check-merger.
[18] The Business Journal, "Lordstown Motors Faces Fifth Class Action Lawsuit," Dan O'Brien, May 14, 2021, https://businessjournaldaily.com/lordstown-motors-faces-fifth-class-action-lawsuit/.
[19] The Truth About Cars, "Nikola Embarrassed After Internal Review, Now Downsizing," Matt Posky, February 26, 2021, https://www.thetruthaboutcars.com/2021/02/nikola-embarrassed-after-internal-review-now-downsizing; CNBC, "Nikola admits ousted chairman misled investors as legal costs mount," Michael Wayland, February 25, 2021, https://www.cnbc.com/2021/02/25/nikola-is-paying-8point1-million-in-legal-fees-for-ousted-chairman-milton.html.
[20] Wall Street Journal, "SPAC Insiders Can Make Millions Even When the Company They Take Public Struggles," Amrith Ramkumar, April 25, 2021, https://www.wsj.com/articles/spac-insiders-can-make-millions-even-when-the-company-they-take-public-struggles-11619343000.
[21] The Economist, "The uneasy partnership between private equity and SPACs," July 10, 2021, https://www.economist.com/finance-and-economics/2021/07/10/the-uneasy-partnership-between-private-equity-and-spacs.
[22] Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

deal.[23] These sorts of maneuvers ensure that sponsors win regardless of the performance of the merged company.

Meanwhile, early investors, who are often hedge funds, "will actively purchase various SPACs, and then sell all their shares before the merger is completed, while still holding onto what are effectively lottery tickets in the form of the warrants they received for free during the initial SPAC listing, and that they can exercise for a profit if the stock does end up rising above $11.50/share."[24] This allows investors to benefit from wild or unsubstantiated speculation regarding potential merger targets or terms. A recent study found that "97 per cent of hedge funds sold their shares or redeemed before a deal was consummated."[25] As the hedge funds redeem, the remaining investors are left to bear the brunt of the dilution in the cash value of shares caused by the sponsor's promote.

The resulting inequality in performance is staggering. Between January 19, 2019 and January 22, 2021, the average SPAC sponsor saw returns of 958%.[26] The average investor that sold its stock and warrants right before a merger averaged a 40% return.[27] In contrast, a study of SPAC transactions between 2019 and 2020 found that after paying the sponsor and redeeming the initial investors, the median SPAC issued at $10/share ended up with only $6.67/share after the merger.[28] "SPAC investors are bearing the cost of the dilution built into the SPAC structure, and in effect subsidizing the companies they bring public."[29] What's more, SPACs often perform poorly post-merger: "[b]etween 2010 and 2018, the average one-year return following a merger was -15.6%."[30] As one pundit bluntly put it, "Most SPACs are losers"[31] – at least, for ordinary investors and the public markets overall.

We are concerned about the misaligned incentives between SPACs' creators and early investors on the one hand, and retail investors on the other. To better determine how Congress and regulators can best protect investors and ensure a fair and transparent marketplace, we ask that you provide answers to the following questions no later than October 8, 2021:

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[23] *Id.*

[24] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf;

[25] Financial Times, "How hedge funds are fueling the Spac boom," Ortenca Aliaj and Miles Kruppa, March 11, 2021, https://www.ft.com/content/812b243b-4831-4c65-92b2-f72bfdc6eff6; Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[26] J.P. Morgan, "Hydraulic Spacking: The SPAC capital raising boom, and why Biden's early stage policies are more likely to increase oil imports rather than reduce emissions," Michael Cembalest, February 8, 2021, pp. 2, https://privatebank.jpmorgan.com/content/dam/jpm-wm-aem/global/pb/en/insights/eye-on-the-market/hydraulic-spacking.pdf.

[27] *Id, pp. 2.*

[28] Harvard Law School Forum on Corporate Governance, "A Sober Look at SPACs," Michael Klausner, Michel Ohlrogge, and Emily Ruan, November 19, 2020, https://corpgov.law.harvard.edu/2020/11/19/a-sober-look-at-spacs/.

[29] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[30] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

[31] Seeking Alpha, "The Greatest SPAC Winners – From Nikola To DraftKings and Virgin Galactic," Chris DeMuth Jr., July 13, 2020, https://seekingalpha.com/article/4358116-greatest-spac-winners-from-nikola-to-draftkings-and-virgin-galactic.

1. Please identify by name each SPAC in which you have been involved as a sponsor, investor, underwriter, or consultant.

2. For each SPAC identified in response to Question 1, please identify your relationship to the SPAC and outline any investments made or work performed. This should include whether you were acting as an investor, underwriter, sponsor, consultant, or in another capacity.

3. For each SPAC identified in response to Question 1, please describe your process and communications with potential or actual investors related to:

    a. Soliciting investments in the SPAC;

    b. Past or projected performance of a proposed acquisition or merger target; and

    c. Voting on a proposed acquisition or merger transaction.

4. For each SPAC identified in response to Question 1, please identify each transaction by you related to the SPAC, target company, or merged entity, including (1) the dollar amount, (2) the number of shares, units, options, or other financial products acquired, (3) the terms of such financial products (e.g., exercise prices), and (4) whether the transaction was an acquisition or disposition of interest.

5. For each SPAC identified in response to Question 1, please:

    a. Describe in general terms how you were compensated;

    b. Describe in detail the total cash and non-cash compensation you received as a result of your involvement with the SPAC; and

    c. Indicate whether, and if so, detail how, such compensation was tied to the performance of the stock price of the merged entity.

6. For each SPAC identified in response to Question 1, has the SPAC, target, or merged entity entered any financial or business arrangement with any other entity in which you have a financial stake? If so, please describe the nature and terms of the financial or business arrangement, including any payments or other compensation made, the entity that received these payments, and the rationale for these payments.

7. For each SPAC identified in response to Question 1, has the SPAC acquired or merged with an entity in which you have a financial stake or business

arrangement? If so, please list all such transactions and describe the nature of the transactions, and the terms and conditions.

8. For each SPAC identified in response to Question 1, are you aware of any lawsuits or regulatory actions regarding the SPAC, its target company, the merged entity, or yourself for allegedly misleading investors? If so, please describe each such lawsuit or regulatory action.

Thank you for your consideration of this important matter, and we look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Tina Smith
United States Senator

Chris Van Hollen
United States Senator

CC:

Gary Gensler, Chair, Securities and Exchange Commission
Robert W. Cook, President and Chief Executive Officer, Financial Industry Regulatory Authority

September 22, 2021

Stephen Girsky
Managing Partner
VectoIQ, LLC
104 West 40th Street, Suite 400
New York, NY 10018

Dear Mr. Girsky:

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[33] Letter from Americans for Financial Reform and the Consumer Federation of America to the U.S. House Financial Services Committee, February 16, 2021, pp. 2, https://ourfinancialsecurity.org/wp-content/uploads/2021/02/AFR-Letter-on-SPACs-to-HFSC-FINAL.pdf; Written testimony of Usha R. Rodrigues to the U.S. House Financial Services Committee, May 24, 2021, pp. 2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-rodriguesu-20210524.pdf.

[34] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/; CNBC, "A SPAC frenzy earlier this year could lead to riskier deals. Here's why," Carmen Reinicke, June 2, 2021, https://www.cnbc.com/2021/06/02/a-spac-frenzy-this-year-could-lead-to-riskier-deals-heres-why.html.

[35] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/ (as of September 17, 2021).

[36] Wall Street Journal, "SPAC Rout Erases $75 Billion in Startup Value," Amrith Ramkumar, September 2, 2021, https://www.wsj.com/articles/spac-rout-erases-75-billion-in-startup-value-11630575180.

[37] Business Insider India, "219 'blank-check' companies raised $73 billion in 2020, outpacing traditional IPOs to make this the year of the SPAC, according to Goldman Sachs," Matthew Fox, December 18, 2020, https://www.businessinsider.in/stock-market/news/219-blank-check-companies-raised-73-billion-in-2020-outpacing-traditional-ipos-to-make-this-the-year-of-the-spac-according-to-goldman-sachs/articleshow/79801298.cms; Congressional Research Service, "SPAC IPO: Background and Policy Issues," Eva Su, April 5, 2021, pp. 1, https://crsreports.congress.gov/product/pdf/IF/IF11655.

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[41] *Id, pp. 2.*

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[43] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

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[48] Bloomberg Law, "SPAC Pioneer M. Klein Sued Over MultiPlan Blank-Check Merger," Mike Leonard, March 25, 2021, https://news.bloomberglaw.com/mergers-and-acquisitions/spac-pioneer-m-klein-sued-over-multiplan-blank-check-merger.
[49] Business Journal, "Lordstown Motors Faces Fifth Class Action Lawsuit," Dan O'Brien, May 14, 2021, https://businessjournaldaily.com/lordstown-motors-faces-fifth-class-action-lawsuit/.
[50] The Truth About Cars, "Nikola Embarrassed After Internal Review, Now Downsizing, Matt Potsky, February 26, 2021, https://www.thetruthaboutcars.com/2021/02/nikola-embarrassed-after-internal-review-now-downsizing; CNBC, "Nikola admits ousted chairman misled investors as legal costs mount," Michael Wayland, February 25, 2021, https://www.cnbc.com/2021/02/25/nikola-is-paying-8point1-million-in-legal-fees-for-ousted-chairman-milton.html.
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The resulting inequality in performance is staggering. Between January 19, 2019 and January 22, 2021, the average SPAC sponsor saw returns of 958%.[57] The average investor that sold its stock and warrants right before a merger averaged a 40% return.[58] In contrast, a study of SPAC transactions between 2019 and 2020 found that after paying the sponsor and redeeming the initial investors, the median SPAC issued at $10/share ended up with only $6.67/share after the merger.[59] "SPAC investors are bearing the cost of the dilution built into the SPAC structure, and in effect subsidizing the companies they bring public."[60] What's more, SPACs often perform poorly post-merger: "[b]etween 2010 and 2018, the average one-year return following a merger was -15.6%."[61] As one pundit bluntly put it, "Most SPACs are losers"[62] – at least, for ordinary investors and the public markets overall.

We are concerned about the misaligned incentives between SPACs' creators and early investors on the one hand, and retail investors on the other. To better determine how Congress and regulators can best protect investors and ensure a fair and transparent marketplace, we ask that you provide answers to the following questions no later than October 8, 2021:

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[54] *Id.*
[55] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf;
[56] Financial Times, "How hedge funds are fueling the Spac boom," Ortenca Aliaj and Miles Kruppa, March 11, 2021, https://www.ft.com/content/812b243b-4831-4c65-92b2-f72bfdc6eff6; Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.
[57] J.P. Morgan, "Hydraulic Spacking: The SPAC capital raising boom, and why Biden's early stage policies are more likely to increase oil imports rather than reduce emissions," Michael Cembalest, February 8, 2021, pp. 2, https://privatebank.jpmorgan.com/content/dam/jpm-wm-aem/global/pb/en/insights/eye-on-the-market/hydraulic-spacking.pdf.
[58] *Id, pp. 2.*
[59] Harvard Law School Forum on Corporate Governance, "A Sober Look at SPACs," Michael Klausner, Michel Ohlrogge, and Emily Ruan, November 19, 2020, https://corpgov.law.harvard.edu/2020/11/19/a-sober-look-at-spacs/.
[60] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.
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[62] Seeking Alpha, "The Greatest SPAC Winners – From Nikola To DraftKings and Virgin Galactic," Chris DeMuth Jr., July 13, 2020, https://seekingalpha.com/article/4358116-greatest-spac-winners-from-nikola-to-draftkings-and-virgin-galactic.

1. Please identify by name each SPAC in which you have been involved as a sponsor, investor, underwriter, or consultant.

2. For each SPAC identified in response to Question 1, please identify your relationship to the SPAC and outline any investments made or work performed. This should include whether you were acting as an investor, underwriter, sponsor, consultant, or in another capacity.

3. For each SPAC identified in response to Question 1, please describe your process and communications with potential or actual investors related to:

    a. Soliciting investments in the SPAC;

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4. For each SPAC identified in response to Question 1, please identify each transaction by you related to the SPAC, target company, or merged entity, including (1) the dollar amount, (2) the number of shares, units, options, or other financial products acquired, (3) the terms of such financial products (e.g., exercise prices), and (4) whether the transaction was an acquisition or disposition of interest.

5. For each SPAC identified in response to Question 1, please:

    a. Describe in general terms how you were compensated;

    b. Describe in detail the total cash and non-cash compensation you received as a result of your involvement with the SPAC; and

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6. For each SPAC identified in response to Question 1, has the SPAC, target, or merged entity entered any financial or business arrangement with any other entity in which you have a financial stake? If so, please describe the nature and terms of the financial or business arrangement, including any payments or other compensation made, the entity that received these payments, and the rationale for these payments.

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arrangement? If so, please list all such transactions and describe the nature of the transactions, and the terms and conditions.

8. For each SPAC identified in response to Question 1, are you aware of any lawsuits or regulatory actions regarding the SPAC, its target company, the merged entity, or yourself for allegedly misleading investors? If so, please describe each such lawsuit or regulatory action.

Thank you for your consideration of this important matter, and we look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Tina Smith
United States Senator

Chris Van Hollen
United States Senator

CC:

Gary Gensler, Chair, Securities and Exchange Commission
Robert W. Cook, President and Chief Executive Officer, Financial Industry Regulatory Authority

September 22, 2021

Tilman Fertitta
Chairman and CEO
Fertitta Entertainment, Inc.
1510 W. Loop South
Houston, TX 77027

Dear Mr. Fertitta:

We are writing regarding your creation and operation of Special Purpose Acquisition Companies, or "SPACs," amid increasing concerns that the operators of these entities have "employed a range of maneuvers — some of them downright astonishing to the uninitiated — to win even when investors lose."[63] If these reports are accurate, they reveal significant market dysfunction, with insiders taking advantage of legislative and regulatory gaps at the expense of ordinary investors. We seek information about your use of SPACs in order to understand what sort of Congressional or regulatory action may be necessary to better protect investors and market integrity and ensure a fair, orderly, and efficient marketplace.

SPACs have exploded in popularity in recent years, with sponsors asserting that SPACs present a faster and cheaper alternative to a traditional initial public offering (IPO).[64] SPAC creators, or "sponsors," raised over $83 billion in 2020, a more than six-fold increase compared to the $13 billion raised in 2019.[65] In just the first seven months of this year, SPAC sponsors have already exceeded those numbers, raising approximately $125.7 billion through 435 IPOs.[66] While the SPAC market has retreated in recent weeks[67], its growth to date has reshaped financial markets: as of last year, SPACs outpaced traditional IPOs as the preferred method for taking a company public.[68] This meteoric rise is concerning because, as detailed below, the SPAC process often

[63] Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

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[65] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/; CNBC, "A SPAC frenzy earlier this year could lead to riskier deals. Here's why," Carmen Reinicke, June 2, 2021, https://www.cnbc.com/2021/06/02/a-spac-frenzy-this-year-could-lead-to-riskier-deals-heres-why.html.

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[67] Wall Street Journal, "SPAC Rout Erases $75 Billion in Startup Value," Amrith Ramkumar, September 2, 2021, https://www.wsj.com/articles/spac-rout-erases-75-billion-in-startup-value-11630575180.

[68] Business Insider India, "219 'blank-check' companies raised $73 billion in 2020, outpacing traditional IPOs to make this the year of the SPAC, according to Goldman Sachs," Matthew Fox, December 18, 2020, https://www.businessinsider.in/stock-market/news/219-blank-check-companies-raised-73-billion-in-2020-outpacing-traditional-ipos-to-make-this-the-year-of-the-spac-according-to-goldman-sachs/articleshow/79801298.cms; Congressional Research Service, "SPAC IPO: Background and Policy Issues," Eva Su, April 5, 2021, pp. 1, https://crsreports.congress.gov/product/pdf/IF/IF11655.

appears to be structured to exploit retail investors to the benefit of large institutional investors such as hedge funds, venture capital insiders, and investment banks.[69]

SPACs are publicly traded "shell companies that raise money with the sole purpose of buying a private company to take it public."[70] A SPAC sponsor first raises capital by completing an IPO for a shell company. During the IPO, investors purchase "units" that typically consist of one share priced at $10 and a warrant that entitles the holder to buy additional shares at a slightly higher price, often $11.50 a share.[71] This structuring allows SPACs to skirt existing rules that govern "blank check companies" with stock prices below $4 per share.[72]

Sponsors are typically required to acquire or merge with a private company (in what is known as a "de-SPAC" transaction) within two years, or they must return funds to investors.[73] Importantly, because the vast majority of compensation for SPAC sponsors occurs with a merger, this time limit creates significant pressure on SPAC sponsors to complete a deal quickly. There is a risk that SPAC sponsors will fail to perform adequate diligence on merger targets or will negotiate low-quality deals, because the sponsors' financial incentives are not fully aligned with the investors for whom they are negotiating.

After negotiating a proposed deal with a target, SPAC sponsors then present the proposed merger deal terms to shareholders for a vote. Shareholders may instead decide to sell their shares or redeem them at the original purchase price of $10 plus interest, while retaining the warrant.[74] When the merger is consummated, the sponsor often receives 20% of the SPAC's shares as compensation (a "promote"), regardless of the quality of the deal with the acquired company.[75] The sponsor's promote reduces the cash per share for the investors, a cost borne only by those who did not redeem their shares.

Industry insiders can take advantage of ordinary investors throughout this process. Prior to a merger, sponsors may exploit perceived gaps in securities laws to make overly optimistic statements about target companies. In a traditional IPO, a firm seeking to go public must submit disclosures on its financial health, operations, and strategy to the Securities and Exchange Commission ("SEC") for review.[76] Under the Securities Act of 1933, issuing companies,

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[69] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf; Pitchbook, "VC firms sat out the early SPAC crazy. Now many are changing their tune," Marina Temkin, March 9, 2021, https://pitchbook.com/news/articles/venture-capital-spac-sponsorship-craze.
[70] The Wall Street Journal, "Led by 'Mr. SPAC,' Credit Suisse Cashes In on Blank-Check Spree," Margot Patrick and Amrith Ramkumar, February 5, 2021, https://www.wsj.com/articles/led-by-mr-spac-credit-suisse-cashes-in-on-blank-check-spree-11612527389.
[71] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, pp. 1, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.
[72] *Id, pp. 2.*
[73] *Id, pp. 1.*
[74] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.
[75] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, pp. 2-3, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.
[76] U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, "Investor Bulletin: Investing in an IPO," pp. 1-4, https://www.sec.gov/files/ipo-investorbulletin.pdf; Memorandum from U.S. House

directors, and underwriters are liable for misstatements and omissions in their public offering disclosures.[77] In contrast, statements by SPAC sponsors to convince shareholders to vote in favor of a merger may not have to meet the same disclosure standards.[78]

Examples abound of SPAC sponsors and their targets making hyperbolic claims about their technology, operations, and prospects. Frequent SPAC creator Michael Klein's company MultiPlan is facing a class action lawsuit alleging that the SPAC's board "misle[d] the SPAC's investors into approving a badly underpriced deal with Multiplan by concealing that it was about to 'crater' when UnitedHealth Group Inc., its top customer, not only withdrew from their relationship but created a competing business unit."[79] Similarly, two electric vehicle companies that recently went public via SPAC transactions are facing class action lawsuits for misleading statements, including claims about the number of pre-orders placed for the vehicle[80] and even whether a prototype vehicle was fully functional.[81]

Sponsors and institutional investors also benefit at ordinary investors' expense at the time of the merger. Sponsors typically receive 20% of a company's shares as a promote upon the merger. They therefore "make, on average, several times their initial investment," "even if the company they take public struggles."[82] As a result sponsors' "incentive is thus to do any deal they can, at lofty prices if necessary."[83] SPAC creators have found additional creative ways to profit at this stage. One paid himself for consulting services: Michael Klein's SPACs hired Klein's own investment bank for consulting services, funneling millions in fees from the SPACs' investors to Klein.[84] You reportedly struck a merger deal with your own company: your SPAC acquired a division of the Golden Nugget hotel and casino, which you own, and agreed to pay half of

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Committee on Financial Services Majority Staff to Members, May 19, 2021, pp. 1-2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-20210524-sd001.pdf.

[77] 15 U.S.C. 77k; 15 U.S.C. 77l.
[78] U.S. Securities and Exchange Commission, "SPACs, IPOs and Liability Risk under the Securities Laws," John Coates, April 8, 2021, https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.
[79] Bloomberg Law, "SPAC Pioneer M. Klein Sued Over MultiPlan Blank-Check Merger," Mike Leonard, March 25, 2021, https://news.bloomberglaw.com/mergers-and-acquisitions/spac-pioneer-m-klein-sued-over-multiplan-blank-check-merger.
[80] The Business Journal, "Lordstown Motors Faces Fifth Class Action Lawsuit," Dan O'Brien, May 14, 2021, https://businessjournaldaily.com/lordstown-motors-faces-fifth-class-action-lawsuit/.
[81] The Truth About Cars, "Nikola Embarrassed After Internal Review, Now Downsizing," Matt Posky, February 26, 2021, https://www.thetruthaboutcars.com/2021/02/nikola-embarrassed-after-internal-review-now-downsizing; CNBC, "Nikola admits ousted chairman misled investors as legal costs mount," Michael Wayland, February 25, 2021, https://www.cnbc.com/2021/02/25/nikola-is-paying-8point1-million-in-legal-fees-for-ousted-chairman-milton.html.
[82] Wall Street Journal, "SPAC Insiders Can Make Millions Even When the Company They Take Public Struggles," Amrith Ramkumar, April 25, 2021, https://www.wsj.com/articles/spac-insiders-can-make-millions-even-when-the-company-they-take-public-struggles-11619343000.
[83] The Economist, "The uneasy partnership between private equity and SPACs," July 10, 2021, https://www.economist.com/finance-and-economics/2021/07/10/the-uneasy-partnership-between-private-equity-and-spacs.
[84] Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

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[89] *Id, pp. 2.*

[90] Harvard Law School Forum on Corporate Governance, "A Sober Look at SPACs," Michael Klausner, Michel Ohlrogge, and Emily Ruan, November 19, 2020, https://corpgov.law.harvard.edu/2020/11/19/a-sober-look-at-spacs/.

[91] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

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[93] Seeking Alpha, "The Greatest SPAC Winners – From Nikola To DraftKings and Virgin Galactic," Chris DeMuth Jr., July 13, 2020, https://seekingalpha.com/article/4358116-greatest-spac-winners-from-nikola-to-draftkings-and-virgin-galactic.

1. Please identify by name each SPAC in which you have been involved as a sponsor, investor, underwriter, or consultant.

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5. For each SPAC identified in response to Question 1, please:

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Thank you for your consideration of this important matter, and we look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Tina Smith
United States Senator

Chris Van Hollen
United States Senator

CC:

Gary Gensler, Chair, Securities and Exchange Commission
Robert W. Cook, President and Chief Executive Officer, Financial Industry Regulatory Authority

September 22, 2021

David T. Hamamoto
CEO & Chairman
DiamondHead Holdings Corp.
250 Park Avenue, 7th Floor
New York, NY 10177

Dear Mr. Hamamoto:

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[100] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf; Pitchbook, "VC firms sat out the early SPAC crazy. Now many are changing their tune," Marina Temkin, March 9, 2021, https://pitchbook.com/news/articles/venture-capital-spac-sponsorship-craze.

[101] The Wall Street Journal, "Led by 'Mr. SPAC,' Credit Suisse Cashes In on Blank-Check Spree," Margot Patrick and Amrith Ramkumar, February 5, 2021, https://www.wsj.com/articles/led-by-mr-spac-credit-suisse-cashes-in-on-blank-check-spree-11612527389.

[102] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, pp. 1, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

[103] *Id, pp. 2.*

[104] *Id, pp. 1.*

[105] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[106] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, pp. 2-3, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

[107] U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, "Investor Bulletin: Investing in an IPO," pp. 1-4, https://www.sec.gov/files/ipo-investorbulletin.pdf; Memorandum from U.S. House

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Examples abound of SPAC sponsors and their targets making hyperbolic claims about their technology, operations, and prospects. Frequent SPAC creator Michael Klein's company MultiPlan is facing a class action lawsuit alleging that the SPAC's board "misle[d] the SPAC's investors into approving a badly underpriced deal with Multiplan by concealing that it was about to 'crater' when UnitedHealth Group Inc., its top customer, not only withdrew from their relationship but created a competing business unit."[110] Similarly, two electric vehicle companies that recently went public via SPAC transactions are facing class action lawsuits for misleading statements, including claims about whether a prototype vehicle was fully functional[111] or, for your SPAC, the number of pre-orders placed for the vehicle.[112]

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Committee on Financial Services Majority Staff to Members, May 19, 2021, pp. 1-2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-20210524-sd001.pdf.

[108] 15 U.S.C. 77k; 15 U.S.C. 77l.
[109] U.S. Securities and Exchange Commission, "SPACs, IPOs and Liability Risk under the Securities Laws," John Coates, April 8, 2021, https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.
[110] Bloomberg Law, "SPAC Pioneer M. Klein Sued Over MultiPlan Blank-Check Merger," Mike Leonard, March 25, 2021, https://news.bloomberglaw.com/mergers-and-acquisitions/spac-pioneer-m-klein-sued-over-multiplan-blank-check-merger.
[111] The Truth About Cars, "Nikola Embarrassed After Internal Review, Now Downsizing, Matt Potsky, February 26, 2021, https://www.thetruthaboutcars.com/2021/02/nikola-embarrassed-after-internal-review-now-downsizing; CNBC, "Nikola admits ousted chairman misled investors as legal costs mount," Michael Wayland, February 25, 2021, https://www.cnbc.com/2021/02/25/nikola-is-paying-8point1-million-in-legal-fees-for-ousted-chairman-milton.html.
[112] Business Journal, "Lordstown Motors Faces Fifth Class Action Lawsuit," Dan O'Brien, May 14, 2021, https://businessjournaldaily.com/lordstown-motors-faces-fifth-class-action-lawsuit/.
[113] Wall Street Journal, "SPAC Insiders Can Make Millions Even When the Company They Take Public Struggles," Amrith Ramkumar, April 25, 2021, https://www.wsj.com/articles/spac-insiders-can-make-millions-even-when-the-company-they-take-public-struggles-11619343000.
[114] The Economist, "The uneasy partnership between private equity and SPACs," July 10, 2021, https://www.economist.com/finance-and-economics/2021/07/10/the-uneasy-partnership-between-private-equity-and-spacs.
[115] Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

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Meanwhile, early investors, who are often hedge funds, "will actively purchase various SPACs, and then sell all their shares before the merger is completed, while still holding onto what are effectively lottery tickets in the form of the warrants they received for free during the initial SPAC listing, and that they can exercise for a profit if the stock does end up rising above $11.50/share."[117] This allows investors to benefit from wild or unsubstantiated speculation regarding potential merger targets or terms. A recent study found that "97 per cent of hedge funds sold their shares or redeemed before a deal was consummated."[118] As the hedge funds redeem, the remaining investors are left to bear the brunt of the dilution in the cash value of shares caused by the sponsor's promote.

The resulting inequality in performance is staggering. Between January 19, 2019 and January 22, 2021, the average SPAC sponsor saw returns of 958%.[119] The average investor that sold its stock and warrants right before a merger averaged a 40% return.[120] In contrast, a study of SPAC transactions between 2019 and 2020 found that after paying the sponsor and redeeming the initial investors, the median SPAC issued at $10/share ended up with only $6.67/share after the merger.[121] "SPAC investors are bearing the cost of the dilution built into the SPAC structure, and in effect subsidizing the companies they bring public."[122] What's more, SPACs often perform poorly post-merger: "[b]etween 2010 and 2018, the average one-year return following a merger was -15.6%."[123] As one pundit bluntly put it, "Most SPACs are losers"[124] – at least, for ordinary investors and the public markets overall.

We are concerned about the misaligned incentives between SPACs' creators and early investors on the one hand, and retail investors on the other. To better determine how Congress and regulators can best protect investors and ensure a fair and transparent marketplace, we ask that you provide answers to the following questions no later than October 8, 2021:

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[116] *Id.*

[117] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf;

[118] Financial Times, "How hedge funds are fueling the Spac boom," Ortenca Aliaj and Miles Kruppa, March 11, 2021, https://www.ft.com/content/812b243b-4831-4c65-92b2-f72bfdc6eff6; Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[119] J.P. Morgan, "Hydraulic Spacking: The SPAC capital raising boom, and why Biden's early stage policies are more likely to increase oil imports rather than reduce emissions," Michael Cembalest, February 8, 2021, pp. 2, https://privatebank.jpmorgan.com/content/dam/jpm-wm-aem/global/pb/en/insights/eye-on-the-market/hydraulic-spacking.pdf.

[120] *Id, pp. 2.*

[121] Harvard Law School Forum on Corporate Governance, "A Sober Look at SPACs," Michael Klausner, Michel Ohlrogge, and Emily Ruan, November 19, 2020, https://corpgov.law.harvard.edu/2020/11/19/a-sober-look-at-spacs/.

[122] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[123] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

[124] Seeking Alpha, "The Greatest SPAC Winners – From Nikola To DraftKings and Virgin Galactic," Chris DeMuth Jr., July 13, 2020, https://seekingalpha.com/article/4358116-greatest-spac-winners-from-nikola-to-draftkings-and-virgin-galactic.

1. Please identify by name each SPAC in which you have been involved as a sponsor, investor, underwriter, or consultant.

2. For each SPAC identified in response to Question 1, please identify your relationship to the SPAC and outline any investments made or work performed. This should include whether you were acting as an investor, underwriter, sponsor, consultant, or in another capacity.

3. For each SPAC identified in response to Question 1, please describe your process and communications with potential or actual investors related to:

    a. Soliciting investments in the SPAC;

    b. Past or projected performance of a proposed acquisition or merger target; and

    c. Voting on a proposed acquisition or merger transaction.

4. For each SPAC identified in response to Question 1, please identify each transaction by you related to the SPAC, target company, or merged entity, including (1) the dollar amount, (2) the number of shares, units, options, or other financial products acquired, (3) the terms of such financial products (e.g., exercise prices), and (4) whether the transaction was an acquisition or disposition of interest.

5. For each SPAC identified in response to Question 1, please:

    a. Describe in general terms how you were compensated;

    b. Describe in detail the total cash and non-cash compensation you received as a result of your involvement with the SPAC; and

    c. Indicate whether, and if so, detail how, such compensation was tied to the performance of the stock price of the merged entity.

6. For each SPAC identified in response to Question 1, has the SPAC, target, or merged entity entered any financial or business arrangement with any other entity in which you have a financial stake? If so, please describe the nature and terms of the financial or business arrangement, including any payments or other compensation made, the entity that received these payments, and the rationale for these payments.

7. For each SPAC identified in response to Question 1, has the SPAC acquired or merged with an entity in which you have a financial stake or business

arrangement? If so, please list all such transactions and describe the nature of the transactions, and the terms and conditions.

8. For each SPAC identified in response to Question 1, are you aware of any lawsuits or regulatory actions regarding the SPAC, its target company, the merged entity, or yourself for allegedly misleading investors? If so, please describe each such lawsuit or regulatory action.

Thank you for your consideration of this important matter, and we look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Tina Smith
United States Senator

Chris Van Hollen
United States Senator

CC:

Gary Gensler, Chair, Securities and Exchange Commission
Robert W. Cook, President and Chief Executive Officer, Financial Industry Regulatory Authority

September 22, 2021

Howard W. Lutnick
Chairman & CEO
Cantor Fitzgerald
110 East 59th Street
New York, NY 10022

Dear Mr. Lutnick:

We are writing regarding your creation and operation of Special Purpose Acquisition Companies, or "SPACs," amid increasing concerns that the operators of these entities have "employed a range of maneuvers — some of them downright astonishing to the uninitiated — to win even when investors lose."[125] If these reports are accurate, they reveal significant market dysfunction, with insiders taking advantage of legislative and regulatory gaps at the expense of ordinary investors. We seek information about your use of SPACs in order to understand what sort of Congressional or regulatory action may be necessary to better protect investors and market integrity and ensure a fair, orderly, and efficient marketplace.

SPACs have exploded in popularity in recent years, with sponsors asserting that SPACs present a faster and cheaper alternative to a traditional initial public offering (IPO).[126] SPAC creators, or "sponsors," raised over $83 billion in 2020, a more than six-fold increase compared to the $13 billion raised in 2019.[127] In just the first seven months of this year, SPAC sponsors have already exceeded those numbers, raising approximately $125.7 billion through 435 IPOs.[128] While the SPAC market has retreated in recent weeks[129], its growth to date has reshaped financial markets: as of last year, SPACs outpaced traditional IPOs as the preferred method for taking a company public.[130] This meteoric rise is concerning because, as detailed below, the SPAC process often

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[125] Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

[126] Letter from Americans for Financial Reform and the Consumer Federation of America to the U.S. House Financial Services Committee, February 16, 2021, pp. 2, https://ourfinancialsecurity.org/wp-content/uploads/2021/02/AFR-Letter-on-SPACs-to-HFSC-FINAL.pdf; Written testimony of Usha R. Rodrigues to the U.S. House Financial Services Committee, May 24, 2021, pp. 2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-rodriguesu-20210524.pdf.

[127] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/; CNBC, "A SPAC frenzy earlier this year could lead to riskier deals. Here's why," Carmen Reinicke, June 2, 2021, https://www.cnbc.com/2021/06/02/a-spac-frenzy-this-year-could-lead-to-riskier-deals-heres-why.html.

[128] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/ (as of September 17, 2021).

[129] Wall Street Journal, "SPAC Rout Erases $75 Billion in Startup Value," Amrith Ramkumar, September 2, 2021, https://www.wsj.com/articles/spac-rout-erases-75-billion-in-startup-value-11630575180.

[130] Business Insider India, "219 'blank-check' companies raised $73 billion in 2020, outpacing traditional IPOs to make this the year of the SPAC, according to Goldman Sachs," Matthew Fox, December 18, 2020, https://www.businessinsider.in/stock-market/news/219-blank-check-companies-raised-73-billion-in-2020-outpacing-traditional-ipos-to-make-this-the-year-of-the-spac-according-to-goldman-sachs/articleshow/79801298.cms; Congressional Research Service, "SPAC IPO: Background and Policy Issues," Eva Su, April 5, 2021, pp. 1, https://crsreports.congress.gov/product/pdf/IF/IF11655.

appears to be structured to exploit retail investors to the benefit of large institutional investors such as hedge funds, venture capital insiders, and investment banks.[131]

SPACs are publicly traded "shell companies that raise money with the sole purpose of buying a private company to take it public."[132] A SPAC sponsor first raises capital by completing an IPO for a shell company. During the IPO, investors purchase "units" that typically consist of one share priced at $10 and a warrant that entitles the holder to buy additional shares at a slightly higher price, often $11.50 a share.[133] This structuring allows SPACs to skirt existing rules that govern "blank check companies" with stock prices below $4 per share.[134]

Sponsors are typically required to acquire or merge with a private company (in what is known as a "de-SPAC" transaction) within two years, or they must return funds to investors.[135] Importantly, because the vast majority of compensation for SPAC sponsors occurs with a merger, this time limit creates significant pressure on SPAC sponsors to complete a deal quickly. There is a risk that SPAC sponsors will fail to perform adequate diligence on merger targets or will negotiate low-quality deals, because the sponsors' financial incentives are not fully aligned with the investors for whom they are negotiating.

After negotiating a proposed deal with a target, SPAC sponsors then present the proposed merger deal terms to shareholders for a vote. Shareholders may instead decide to sell their shares or redeem them at the original purchase price of $10 plus interest, while retaining the warrant.[136] When the merger is consummated, the sponsor often receives 20% of the SPAC's shares as compensation (a "promote"), regardless of the quality of the deal with the acquired company.[137] The sponsor's promote reduces the cash per share for the investors, a cost borne only by those who did not redeem their shares.

Industry insiders can take advantage of ordinary investors throughout this process. Prior to a merger, sponsors may exploit perceived gaps in securities laws to make overly optimistic statements about target companies. In a traditional IPO, a firm seeking to go public must submit disclosures on its financial health, operations, and strategy to the Securities and Exchange Commission ("SEC") for review.[138] Under the Securities Act of 1933, issuing companies,

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[131] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf; Pitchbook, "VC firms sat out the early SPAC crazy. Now many are changing their tune," Marina Temkin, March 9, 2021, https://pitchbook.com/news/articles/venture-capital-spac-sponsorship-craze.
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[134] *Id, pp. 2.*
[135] *Id, pp. 1.*
[136] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.
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139 15 U.S.C. 77k; 15 U.S.C. 77l.

140 U.S. Securities and Exchange Commission, "SPACs, IPOs and Liability Risk under the Securities Laws," John Coates, April 8, 2021, https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.

141 Bloomberg Law, "SPAC Pioneer M. Klein Sued Over MultiPlan Blank-Check Merger," Mike Leonard, March 25, 2021, https://news.bloomberglaw.com/mergers-and-acquisitions/spac-pioneer-m-klein-sued-over-multiplan-blank-check-merger.

142 The Business Journal, "Lordstown Motors Faces Fifth Class Action Lawsuit," Dan O'Brien, May 14, 2021, https://businessjournaldaily.com/lordstown-motors-faces-fifth-class-action-lawsuit/.

143 The Truth About Cars, "Nikola Embarrassed After Internal Review, Now Downsizing," Matt Posky, February 26, 2021, https://www.thetruthaboutcars.com/2021/02/nikola-embarrassed-after-internal-review-now-downsizing; CNBC, "Nikola admits ousted chairman misled investors as legal costs mount," Michael Wayland, February 25, 2021, https://www.cnbc.com/2021/02/25/nikola-is-paying-8point1-million-in-legal-fees-for-ousted-chairman-milton.html.

144 Wall Street Journal, "SPAC Insiders Can Make Millions Even When the Company They Take Public Struggles," Amrith Ramkumar, April 25, 2021, https://www.wsj.com/articles/spac-insiders-can-make-millions-even-when-the-company-they-take-public-struggles-11619343000.

145 The Economist, "The uneasy partnership between private equity and SPACs," July 10, 2021, https://www.economist.com/finance-and-economics/2021/07/10/the-uneasy-partnership-between-private-equity-and-spacs.

146 Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

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[149] Financial Times, "How hedge funds are fueling the Spac boom," Ortenca Aliaj and Miles Kruppa, March 11, 2021, https://www.ft.com/content/812b243b-4831-4c65-92b2-f72bfdc6eff6; Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

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[151] *Id, pp. 2.*

[152] Harvard Law School Forum on Corporate Governance, "A Sober Look at SPACs," Michael Klausner, Michel Ohlrogge, and Emily Ruan, November 19, 2020, https://corpgov.law.harvard.edu/2020/11/19/a-sober-look-at-spacs/.

[153] Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[154] Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

[155] Seeking Alpha, "The Greatest SPAC Winners – From Nikola To DraftKings and Virgin Galactic," Chris DeMuth Jr., July 13, 2020, https://seekingalpha.com/article/4358116-greatest-spac-winners-from-nikola-to-draftkings-and-virgin-galactic.

1. Please identify by name each SPAC in which you have been involved as a sponsor, investor, underwriter, or consultant.

2. For each SPAC identified in response to Question 1, please identify your relationship to the SPAC and outline any investments made or work performed. This should include whether you were acting as an investor, underwriter, sponsor, consultant, or in another capacity.

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Thank you for your consideration of this important matter, and we look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Tina Smith
United States Senator

Chris Van Hollen
United States Senator

CC:

Gary Gensler, Chair, Securities and Exchange Commission
Robert W. Cook, President and Chief Executive Officer, Financial Industry Regulatory Authority

September 22, 2021

Chamath Palihapitiya
Co-Founder and CEO
The Social+Capital Partnership, L.L.C.
317 University Avenue, Suite 200
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Dear Mr. Palihapitiya:

We are writing regarding your creation and operation of Special Purpose Acquisition Companies, or "SPACs," amid increasing concerns that the operators of these entities have "employed a range of maneuvers — some of them downright astonishing to the uninitiated — to win even when investors lose."[156] If these reports are accurate, they reveal significant market dysfunction, with insiders taking advantage of legislative and regulatory gaps at the expense of ordinary investors. We seek information about your use of SPACs in order to understand what sort of Congressional or regulatory action may be necessary to better protect investors and market integrity and ensure a fair, orderly, and efficient marketplace.

SPACs have exploded in popularity in recent years, with sponsors asserting that SPACs present a faster and cheaper alternative to a traditional initial public offering (IPO).[157] SPAC creators, or "sponsors," raised over $83 billion in 2020, a more than six-fold increase compared to the $13 billion raised in 2019.[158] In just the first seven months of this year, SPAC sponsors have already exceeded those numbers, raising approximately $125.7 billion through 435 IPOs.[159] While the SPAC market has retreated in recent weeks[160], its growth to date has reshaped financial markets: as of last year, SPACs outpaced traditional IPOs as the preferred method for taking a company public.[161] This meteoric rise is concerning because, as detailed below, the SPAC process often

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[156] Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

[157] Letter from Americans for Financial Reform and the Consumer Federation of America to the U.S. House Financial Services Committee, February 16, 2021, pp. 2, https://ourfinancialsecurity.org/wp-content/uploads/2021/02/AFR-Letter-on-SPACs-to-HFSC-FINAL.pdf; Written testimony of Usha R. Rodrigues to the U.S. House Financial Services Committee, May 24, 2021, pp. 2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-wstate-rodriguesu-20210524.pdf.

[158] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/; CNBC, "A SPAC frenzy earlier this year could lead to riskier deals. Here's why," Carmen Reinicke, June 2, 2021, https://www.cnbc.com/2021/06/02/a-spac-frenzy-this-year-could-lead-to-riskier-deals-heres-why.html.

[159] SPAC Research, "US SPAC IPO Issuance," https://www.spacresearch.com/ (as of September 17, 2021).

[160] Wall Street Journal, "SPAC Rout Erases $75 Billion in Startup Value," Amrith Ramkumar, September 2, 2021, https://www.wsj.com/articles/spac-rout-erases-75-billion-in-startup-value-11630575180.

[161] Business Insider India, "219 'blank-check' companies raised $73 billion in 2020, outpacing traditional IPOs to make this the year of the SPAC, according to Goldman Sachs," Matthew Fox, December 18, 2020, https://www.businessinsider.in/stock-market/news/219-blank-check-companies-raised-73-billion-in-2020-outpacing-traditional-ipos-to-make-this-the-year-of-the-spac-according-to-goldman-sachs/articleshow/79801298.cms; Congressional Research Service, "SPAC IPO: Background and Policy Issues," Eva Su, April 5, 2021, pp. 1, https://crsreports.congress.gov/product/pdf/IF/IF11655.

appears to be structured to exploit retail investors to the benefit of large institutional investors such as hedge funds, venture capital insiders, and investment banks.[162]

SPACs are publicly traded "shell companies that raise money with the sole purpose of buying a private company to take it public."[163] A SPAC sponsor first raises capital by completing an IPO for a shell company. During the IPO, investors purchase "units" that typically consist of one share priced at $10 and a warrant that entitles the holder to buy additional shares at a slightly higher price, often $11.50 a share.[164] This structuring allows SPACs to skirt existing rules that govern "blank check companies" with stock prices below $4 per share.[165]

Sponsors are typically required to acquire or merge with a private company (in what is known as a "de-SPAC" transaction) within two years, or they must return funds to investors.[166] Importantly, because the vast majority of compensation for SPAC sponsors occurs with a merger, this time limit creates significant pressure on SPAC sponsors to complete a deal quickly. There is a risk that SPAC sponsors will fail to perform adequate diligence on merger targets or will negotiate low-quality deals, because the sponsors' financial incentives are not fully aligned with the investors for whom they are negotiating.

After negotiating a proposed deal with a target, SPAC sponsors then present the proposed merger deal terms to shareholders for a vote. Shareholders may instead decide to sell their shares or redeem them at the original purchase price of $10 plus interest, while retaining the warrant.[167] When the merger is consummated, the sponsor often receives 20% of the SPAC's shares as compensation (a "promote"), regardless of the quality of the deal with the acquired company.[168] The sponsor's promote reduces the cash per share for the investors, a cost borne only by those who did not redeem their shares.

Industry insiders can take advantage of ordinary investors throughout this process. Prior to a merger, sponsors may exploit perceived gaps in securities laws to make overly optimistic statements about target companies. In a traditional IPO, a firm seeking to go public must submit disclosures on its financial health, operations, and strategy to the Securities and Exchange Commission ("SEC") for review.[169] Under the Securities Act of 1933, issuing companies,

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162 Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf; Pitchbook, "VC firms sat out the early SPAC crazy. Now many are changing their tune," Marina Temkin, March 9, 2021, https://pitchbook.com/news/articles/venture-capital-spac-sponsorship-craze.

163 The Wall Street Journal, "Led by 'Mr. SPAC,' Credit Suisse Cashes In on Blank-Check Spree," Margot Patrick and Amrith Ramkumar, February 5, 2021, https://www.wsj.com/articles/led-by-mr-spac-credit-suisse-cashes-in-on-blank-check-spree-11612527389.

164 Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, pp. 1, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

165 *Id, pp. 2.*

166 *Id, pp. 1.*

167 Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

168 Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, pp. 2-3, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

169 U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, "Investor Bulletin: Investing in an IPO," pp. 1-4, https://www.sec.gov/files/ipo-investorbulletin.pdf; Memorandum from U.S. House

directors, and underwriters are liable for misstatements and omissions in their public offering disclosures.[170] In contrast, statements by SPAC sponsors to convince shareholders to vote in favor of a merger may not have to meet the same disclosure standards.[171]

Examples abound of SPAC sponsors and their targets making hyperbolic claims about their technology, operations, and prospects. Frequent SPAC creator Michael Klein's company MultiPlan is facing a class action lawsuit alleging that the SPAC's board "misle[d] the SPAC's investors into approving a badly underpriced deal with Multiplan by concealing that it was about to 'crater' when UnitedHealth Group Inc., its top customer, not only withdrew from their relationship but created a competing business unit."[172] Similarly, two electric vehicle companies that recently went public via SPAC transactions are facing class action lawsuits for misleading statements, including claims about the number of pre-orders placed for the vehicle[173] and even whether a prototype vehicle was fully functional.[174]

Sponsors and institutional investors also benefit at ordinary investors' expense at the time of the merger. Sponsors typically receive 20% of a company's shares as a promote upon the merger. They therefore "make, on average, several times their initial investment," "even if the company they take public struggles."[175] As a result sponsors' "incentive is thus to do any deal they can, at lofty prices if necessary."[176] SPAC creators have found additional creative ways to profit at this stage. One paid himself for consulting services: Michael Klein's SPACs hired Klein's own investment bank for consulting services, funneling millions in fees from the SPACs' investors to Klein.[177] Another struck a merger deal with his own company: billionaire Tilman Fertitta's SPAC acquired a division of Fertitta's Golden Nugget hotel and casino and agreed to pay half of

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Committee on Financial Services Majority Staff to Members, May 19, 2021, pp. 1-2, https://financialservices.house.gov/uploadedfiles/hhrg-117-ba16-20210524-sd001.pdf.

170 15 U.S.C. 77k; 15 U.S.C. 77l.
171 U.S. Securities and Exchange Commission, "SPACs, IPOs and Liability Risk under the Securities Laws," John Coates, April 8, 2021, https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws.
172 Bloomberg Law, "SPAC Pioneer M. Klein Sued Over MultiPlan Blank-Check Merger," Mike Leonard, March 25, 2021, https://news.bloomberglaw.com/mergers-and-acquisitions/spac-pioneer-m-klein-sued-over-multiplan-blank-check-merger.
173 The Business Journal, "Lordstown Motors Faces Fifth Class Action Lawsuit," Dan O'Brien, May 14, 2021, https://businessjournaldaily.com/lordstown-motors-faces-fifth-class-action-lawsuit/.
174 The Truth About Cars, "Nikola Embarrassed After Internal Review, Now Downsizing," Matt Posky, February 26, 2021, https://www.thetruthaboutcars.com/2021/02/nikola-embarrassed-after-internal-review-now-downsizing; CNBC, "Nikola admits ousted chairman misled investors as legal costs mount," Michael Wayland, February 25, 2021, https://www.cnbc.com/2021/02/25/nikola-is-paying-8point1-million-in-legal-fees-for-ousted-chairman-milton.html.
175 Wall Street Journal, "SPAC Insiders Can Make Millions Even When the Company They Take Public Struggles," Amrith Ramkumar, April 25, 2021, https://www.wsj.com/articles/spac-insiders-can-make-millions-even-when-the-company-they-take-public-struggles-11619343000.
176 The Economist, "The uneasy partnership between private equity and SPACs," July 10, 2021, https://www.economist.com/finance-and-economics/2021/07/10/the-uneasy-partnership-between-private-equity-and-spacs.
177 Bloomberg, "The SPAC Man Method: Inside the Billionaire Rush for Riches," Heather Perlberg, June 23, 2021, https://www.bloomberg.com/news/features/2021-06-23/spac-stocks-wall-street-billionaires-make-millions-while-investors-lose-money.

Golden Nugget's debt as part of the deal.[178] These sorts of maneuvers ensure that sponsors win regardless of the performance of the merged company.

Meanwhile, early investors, who are often hedge funds, "will actively purchase various SPACs, and then sell all their shares before the merger is completed, while still holding onto what are effectively lottery tickets in the form of the warrants they received for free during the initial SPAC listing, and that they can exercise for a profit if the stock does end up rising above $11.50/share."[179] This allows investors to benefit from wild or unsubstantiated speculation regarding potential merger targets or terms. A recent study found that "97 per cent of hedge funds sold their shares or redeemed before a deal was consummated."[180] As the hedge funds redeem, the remaining investors are left to bear the brunt of the dilution in the cash value of shares caused by the sponsor's promote.

The resulting inequality in performance is staggering. Between January 19, 2019 and January 22, 2021, the average SPAC sponsor saw returns of 958%.[181] The average investor that sold its stock and warrants right before a merger averaged a 40% return.[182] In contrast, a study of SPAC transactions between 2019 and 2020 found that after paying the sponsor and redeeming the initial investors, the median SPAC issued at $10/share ended up with only $6.67/share after the merger.[183] "SPAC investors are bearing the cost of the dilution built into the SPAC structure, and in effect subsidizing the companies they bring public."[184] What's more, SPACs often perform poorly post-merger: "[b]etween 2010 and 2018, the average one-year return following a merger was -15.6%."[185] As one pundit bluntly put it, "Most SPACs are losers"[186] – at least, for ordinary investors and the public markets overall.

We are concerned about the misaligned incentives between SPACs' creators and early investors on the one hand, and retail investors on the other. To better determine how Congress and regulators can best protect investors and ensure a fair and transparent marketplace, we ask that you provide answers to the following questions no later than October 8, 2021:

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178 *Id.*

179 Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf;

180 Financial Times, "How hedge funds are fueling the Spac boom," Ortenca Aliaj and Miles Kruppa, March 11, 2021, https://www.ft.com/content/812b243b-4831-4c65-92b2-f72bfdc6eff6; Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

181 J.P. Morgan, "Hydraulic Spacking: The SPAC capital raising boom, and why Biden's early stage policies are more likely to increase oil imports rather than reduce emissions," Michael Cembalest, February 8, 2021, pp. 2, https://privatebank.jpmorgan.com/content/dam/jpm-wm-aem/global/pb/en/insights/eye-on-the-market/hydraulic-spacking.pdf.

182 *Id, pp. 2.*

183 Harvard Law School Forum on Corporate Governance, "A Sober Look at SPACs," Michael Klausner, Michel Ohlrogge, and Emily Ruan, November 19, 2020, https://corpgov.law.harvard.edu/2020/11/19/a-sober-look-at-spacs/.

184 Yale Journal on Regulation, "A Sober Look at SPACs," Michael Klausner, Michael Ohlrogge, and Emily Ruan, April 2021, 2020, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

185 Written testimony of Andrew Park to the U.S. House Financial Services Committee, May 24, 2021, https://ourfinancialsecurity.org/wp-content/uploads/2021/05/Andrew-Park-HFSC-SPAC-Testimony-5.24.21.pdf.

186 Seeking Alpha, "The Greatest SPAC Winners – From Nikola To DraftKings and Virgin Galactic," Chris DeMuth Jr., July 13, 2020, https://seekingalpha.com/article/4358116-greatest-spac-winners-from-nikola-to-draftkings-and-virgin-galactic.

1. Please identify by name each SPAC in which you have been involved as a sponsor, investor, underwriter, or consultant.

2. For each SPAC identified in response to Question 1, please identify your relationship to the SPAC and outline any investments made or work performed. This should include whether you were acting as an investor, underwriter, sponsor, consultant, or in another capacity.

3. For each SPAC identified in response to Question 1, please describe your process and communications with potential or actual investors related to:

    a. Soliciting investments in the SPAC;

    b. Past or projected performance of a proposed acquisition or merger target; and

    c. Voting on a proposed acquisition or merger transaction.

4. For each SPAC identified in response to Question 1, please identify each transaction by you related to the SPAC, target company, or merged entity, including (1) the dollar amount, (2) the number of shares, units, options, or other financial products acquired, (3) the terms of such financial products (e.g., exercise prices), and (4) whether the transaction was an acquisition or disposition of interest.

5. For each SPAC identified in response to Question 1, please:

    a. Describe in general terms how you were compensated;

    b. Describe in detail the total cash and non-cash compensation you received as a result of your involvement with the SPAC; and

    c. Indicate whether, and if so, detail how, such compensation was tied to the performance of the stock price of the merged entity.

6. For each SPAC identified in response to Question 1, has the SPAC, target, or merged entity entered any financial or business arrangement with any other entity in which you have a financial stake? If so, please describe the nature and terms of the financial or business arrangement, including any payments or other compensation made, the entity that received these payments, and the rationale for these payments.

7. For each SPAC identified in response to Question 1, has the SPAC acquired or merged with an entity in which you have a financial stake or business

arrangement? If so, please list all such transactions and describe the nature of the transactions, and the terms and conditions.

8. For each SPAC identified in response to Question 1, are you aware of any lawsuits or regulatory actions regarding the SPAC, its target company, the merged entity, or yourself for allegedly misleading investors? If so, please describe each such lawsuit or regulatory action.

Thank you for your consideration of this important matter, and we look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

Sherrod Brown
United States Senator

Tina Smith
United States Senator

Chris Van Hollen
United States Senator

CC:

Gary Gensler, Chair, Securities and Exchange Commission
Robert W. Cook, President and Chief Executive Officer, Financial Industry Regulatory Authority