

November 17, 2021

Gary Gensler
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Chairman Gensler,

I am writing regarding recent reports indicating that Digital World Acquisition Corp. (DWAC), the Special Purpose Acquisition Company (SPAC) that in October 2021 announced its plan to merge with former President Donald Trump's Trump Media and Technology Group,¹ may have committed securities violations by holding private and undisclosed discussions about the merger as early as May 2021, while omitting this information in U.S. Securities and Exchange Commission (SEC) filing and other public statements.

I have been concerned for some time about the misaligned incentives underlying SPAC deals,² which are often structured to exploit retail investors to the benefit of large institutional investors such as hedge funds, venture capital insiders, and investment banks.³ In September 2021, I opened an investigation of potential abuses by these entities.⁴ You and other SEC officials have also raised concerns about the need to ensure that SPACs are appropriately regulated,⁵ and other

¹ Trump Media and Technology Group, press release, October 20, 2021, <https://www.tmtgcorp.com/press-releases/announcement-10-20-2021/>.

² Senator Elizabeth Warren, "Warren, Brown, Smith, and Van Hollen Request Information from SPAC Creators Amid 'Astonishing' Reports of Abuse and Market Dysfunction," press release, September 22, 2021, <https://www.warren.senate.gov/oversight/letters/warren-brown-smith-and-van-hollen-request-information-from-spac-creators-amid-astonishing-reports-of-abuse-and-market-dysfunction>.

³ 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 craze. Now many are changing their tune," Marina Temkin, March 9, 2021, <https://pitchbook.com/news/articles/venture-capital-spac-sponsorship-craze>.

⁴ Senator Elizabeth Warren, "Warren, Brown, Smith, and Van Hollen Request Information from SPAC Creators Amid 'Astonishing' Reports of Abuse and Market Dysfunction," press release, September 22, 2021, <https://www.warren.senate.gov/oversight/letters/warren-brown-smith-and-van-hollen-request-information-from-spac-creators-amid-astonishing-reports-of-abuse-and-market-dysfunction>.

⁵ John Coates, Acting Director of the Securities & Exchange Commission's Corporate Division, Statement on SPACs, IPOs and Liability Risk under the Securities Laws, April 8, 2021, <https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws>; Securities & Exchange Commission, "Prepared Remarks by Chair Gary Gensler Before the Small Business Capital Formation Advisory Committee," September 27, 2021, <https://www.sec.gov/news/public-statement/gensler-sbcfac-2021-09-27>.

SEC officials indicated that the Commission would take a more aggressive posture towards actions by SPACs that could run afoul of SEC rules.⁶

The reports about DWAC and Trump Media and Technology Group⁷ appear to be a textbook example of a SPAC misleading shareholders and the public about materially important information. Press reports and the corporation's own SEC filings⁸ appear to indicate that the actions taken by DWAC and Trump Media and Technology Group violated the Securities Act of 1933, which bars individuals from "mak[ing] any untrue statement of a material fact or to omit to state a material fact"⁹ about the sale of a security, and includes criminal penalties for filing SEC statements that are "false or misleading with respect to any material fact."¹⁰ Under this provision, SPACs are required to disclose any direct or indirect conversations with potential target companies, protecting both the early investors and retail investors joining at the initial public offering.

But DWAC and Trump Media and Technology Group appear to have brazenly flouted these rules. DWAC indicated in numerous SEC filings between May 25, 2021 and September 8, 2021 that the organization stated, "[w]e have not selected any specific business combination target and we have not, nor has anyone on our behalf, initiated any substantive discussions, directly or indirectly, with any business combination target."¹¹ However, one press report indicates that Patrick Orlando, the SPAC's sponsor, was discussing a deal with former President Trump as early as March 2021, months prior to the SPAC's initial filing in May 2021 and public offering in September 2021.¹² These appeared to have been detailed discussions: at the March meeting, "[t]he investor presentation about the planned deal envisioned the combined company, which would offer a social media app, films, events and eventually a variety of technology services, being worth \$15 billion and rivaling tech giants like Netflix and the cloud divisions of Amazon and Google."¹³

⁶ John Coates, Acting Director of the Securities & Exchange Commission's Corporate Division, and Paul Munter, Acting Chief Accountant, Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies ("SPACs"), April 12, 2021, https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs?utm_medium=email&utm_source=govdelivery; Wall Street Journal, "Regulators Step Up Scrutiny of SPACs With New View on Warrants," Dave Michaels, April 12, 2021, https://www.wsj.com/articles/regulators-step-up-scrutiny-of-spacs-with-new-view-on-warrants-11618273937?mod=article_inline.

⁷ New York Times, "Trump's \$300 Million SPAC Deal May Have Skirted Securities Laws," Matthew Goldstein, Lauren Hirsch, and David Enrich, October 29, 2021, <https://www.nytimes.com/2021/10/29/business/trump-spac-digital-world.html>.

⁸ Digital World Acquisition Corp., Form S-1 Registration Statement, May 25, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921071982/tm2117087d1_s1.htm.

⁹ Securities Act of 1933 Section 10b-5, as implemented by SEC Rule 10b-5, 17 C.F.R. § 240.10b-5.

¹⁰ Securities Act of 1934 17 CFR § 240.14c-6.

¹¹ Digital World Acquisition Corp., Form S-1 Registration Statement, July 8, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921090302/tm2117087d2_s1a.htm.

¹² New York Times, "Trump's \$300 Million SPAC Deal May Have Skirted Securities Laws," Matthew Goldstein, Lauren Hirsch, and David Enrich, October 29, 2021, <https://www.nytimes.com/2021/10/29/business/trump-spac-digital-world.html>.

¹³ *Id.*

DWAC’s failure to disclose these talks during the process appears to be an omission of material information necessary for both early institutional investors and retail investors in the SPAC’s public offering. Indeed, by filing SEC prospectuses in which company officials claimed that “[w]e have not selected any specific business combination target and we have not, nor has anyone on our behalf, initiated any substantive discussions, directly or indirectly, with any business combination target,” the SPAC appears to have misled regulators and the public on multiple occasions.¹⁴

This omission had the result of enriching big investors while trapping retail investors in a stock bubble. After DWAC announced their proposed merger with Trump Media and Technology Group, at least four institutional investors—including D.E. Shaw, Lighthouse Investment Partners, ATW Spac Management, and Saba Capital—sold their unrestricted shares.¹⁵ There is enormous potential for these investors to profit; at times during the SPAC’s public offering, the units owned by hedge funds were worth more than \$1 billion.¹⁶ Much of these profits were due to retail investors piling into the newly announced deal.¹⁷ During its first week of trading, shares of Digital World Acquisition Corp. rose by as much as 1,657%,¹⁸ eventually falling from \$175 a unit to \$56.50.¹⁹ As of the close of the market on Tuesday, November 16, the value of the shares had dropped to \$59.99²⁰ – leaving the transaction looking suspiciously like a scheme in which “the salesmen behind all of this should be fine, even if those who fall for their sales pitch get

¹⁴ Digital World Acquisition Corp., Form S-1 Registration Statement, May 25, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921071982/tm2117087d1_s1.htm; Digital World Acquisition Corp., Amendment No. 1 to Form S-1 Registration Statement, July 8, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921090302/tm2117087d2_s1a.htm; Digital World Acquisition Corp., Amendment No. 2 to Form S-1 Registration Statement, July 26, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921095891/tm2117087d3_s1a.htm; Digital World Acquisition Corp., Amendment No. 3 to Form S-1 Registration Statement, August 10, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921102633/tm2124624d1_s1a.htm; Digital World Acquisition Corp., Amendment No. 5 to Form S-1 Registration Statement, August 30, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921110771/tm2124624d3_s1a.htm; Digital World Acquisition Corp., Prospectus, September 8, 2021, https://www.sec.gov/Archives/edgar/data/0001849635/000110465921113541/tm2127035d1_424b4.htm.

¹⁵ Forbes, “Trump’s SPAC Is Screwing His Own Supporters While Enriching Wall Street Elites,” Dan Alexander, October 28, 2021, <https://www.forbes.com/sites/danalexander/2021/10/28/trumps-spac-is-screwing-his-own-supporters-while-enriching-wall-street-elites/?sh=51c6eda51902>; New York Times, “Trump’s \$300 Million SPAC Deal May Have Skirted Securities Laws,” Matthew Goldstein, Lauren Hirsch, and David Enrich, October 29, 2021, <https://www.nytimes.com/2021/10/29/business/trump-spac-digital-world.html>; Bloomberg, .

¹⁶ Financial Times, “Hedge funds make millions as shares in Trump media Spac jump,” Arash Massoudi, Antoine Gara, and James Fontanella-Khan, October 21, 2021, <https://www.ft.com/content/d266e746-27af-46c8-a6d9-4081cfe3cc00>.

¹⁷ Bloomberg, “Trump-Tied SPAC Fuels Day Trader Return To Blank-Check Stocks,” Bailey Lipschultz, October 28, 2021, <https://www.bloomberg.com/news/articles/2021-10-28/trump-tied-spac-fuels-retail-trader-return-to-blank-check-stocks>.

¹⁸ CNN, “Trump SPAC slumps after wild week of trading,” Rob McLean and Jill Disis, October 26, 2021, <https://www.cnn.com/2021/10/26/investing/dwac-stock-price-trump-spac/index.html>.

¹⁹ CNBC, “GOP Rep. Larry Bucshon is the second House lawmaker to disclose Trump SPAC stock purchase,” Yun Li, November 2, 2021, <https://www.cnbc.com/2021/11/02/gop-rep-larry-bucshon-bought-stock-in-trump-spac.html>.

²⁰ CNBC, Digital World Acquisition Corp., November 17, 2021, <https://www.cnbc.com/quotes/DWAC>.

screwed.”²¹ *Forbes* reported that in a “disaster scenario,” the Trump Media and Technology Group owners’ shares would still be worth at least \$430 million, with the potential for those stocks to be worth up to \$5.6 billion at a higher stock valuation.²²

The lack of a core business model for Trump Media and Technology Group also raises questions about the extent to which DWAC may be profiteering off the SPAC model and its inherent disclosure failures. A corporate overview of the Trump Media and Technology Group fails to list any officers, employees, or operations, instead relying on the brand of former President Trump and aspirational statements about the company’s ability to compete with existing social media giants, the traditional news media, and streaming services, including Netflix and Disney Plus.²³ It “appeared to consist of little more than a hackable Twitter prototype and ambitions to do a lot of other business.”²⁴

If these reports are true, the agency has a responsibility to act. In June 2021, SPACs were added to the SEC’s regulatory agenda,²⁵ and in August 2021, the SEC Advisory Panel released recommendations for SEC regulation of SPACs,²⁶ including that the agency “regulate SPACs more intensively by exercising enhanced focus and stricter enforcement of existing disclosure rules under the Securities Exchange Act of 1934.”²⁷ The agency has also stepped up regulatory actions, in what has been viewed as a warning to the sponsors and investors in SPACs that the agency would use its full suite of tools to address risks to investors and the markets from SPACs.²⁸

While the number of SPAC deals fell by 90% in April 2021 following reports that the SEC was considering greater regulatory scrutiny of the market,²⁹ DWAC’s acquisition of Trump Media and Technology may reignite the market. *Bloomberg* reported that following the SPAC’s

²¹ *Forbes*, “Trump’s SPAC Is Screwing His Own Supporters While Enriching Wall Street Elites,” Dan Alexander, October 28, 2021, <https://www.forbes.com/sites/danalexander/2021/10/28/trumps-spac-is-screwing-his-own-supporters-while-enriching-wall-street-elites/?sh=51c6eda51902>.

²² *Id.*

²³ CNBC, “Shares of Trump-linked SPAC close up 350% following news of social media deal,” Dan Mangan, Yun Li, and Christina Wilkie, October 21, 2021, <https://www.cnbc.com/2021/10/21/trump-linked-spac-shares-soar-more-than-40percent-on-news-of-social-media-deal.html>; Trump Media and Technology Group, Company Overview, October 2021, <https://www.tmtgcorp.com/company-overview>.

²⁴ *Forbes*, “Trump’s SPAC Is Screwing His Own Supporters While Enriching Wall Street Elites,” Dan Alexander, October 28, 2021, <https://www.forbes.com/sites/danalexander/2021/10/28/trumps-spac-is-screwing-his-own-supporters-while-enriching-wall-street-elites/?sh=51c6eda51902>.

²⁵ Securities & Exchange Commission, “SEC Announces Annual Regulatory Agenda,” press release, June 11, 2021, <https://www.sec.gov/news/press-release/2021-99>.

²⁶ Securities & Exchange Commission Investor Advisory Committee, “Recommendations of the Investor as Purchaser and Investor as Owner Subcommittees of the SEC Investor Advisory Committee regarding Special Purpose Acquisition Companies,” August 26, 2021, <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf>.

²⁷ *Id.*

²⁸ *New York Magazine*, “The Big SPAC Crackdown,” Michelle Celarier, September 2, 2021, <https://nymag.com/intelligencer/2021/09/the-big-spac-crackdown.html>.

²⁹ *Observer*, “SPAC Bubble Pops: Deals Drop 90% in April After SEC Warns of Crackdown,” Sissi Cao, April 22, 2021, <https://observer.com/2021/04/spac-deal-ipo-slowdown-april-sec-crackdown/>.

announcement, retail investors started “rushing back” into SPACs, driving a “frenzy” similar to the initial SPAC fervor in 2020.³⁰

I have frequently spoken about the need to hold public officials accountable for lawbreaking and ethics violations. This includes the former President, who is not above the law. The reports that DWAC may have violated securities laws and harmed investors during its acquisition of Trump Media and Technology Group are deeply troubling and provide an opportunity for the SEC to follow through on its commitment to investigate wrongdoing and fraud in the SPAC space. In order to better understand how the SEC will respond to the clear evidence of wrongdoing in this transaction we ask that you respond to the following questions by Monday, November 29, 2021.

1. The October 29, 2021 *New York Times* article reported that DWAC failed to disclose talks with the Trump Media and Technology Group from May to October 2021 on their SEC Form S-1s.³¹ Is the SEC Division of Corporation Finance actively investigating these claims?
2. In April 2021, SEC Acting Director of Corporation Finance John Coates said that “any material misstatement in or omission from an effective Securities Act registration statement as part of a de-SPAC business combination is subject to Securities Act Section 11... a de-SPAC transaction gives no one a free pass for material misstatements or omissions.”³² Does DWAC’s failure to disclose talks with their target company qualify as a material omission?
3. What are the obligations of the Trump Media and Technology Group, the target of the DWAC acquisition, under securities law? Did Trump Media and Technology Group have a responsibility to disclose any of the early 2021 meetings with DWAC?
4. As discussed in the above letter, several of the financiers involved in the DWAC SPAC process have previously faced SEC charges. Are there guardrails to prevent repeat offenders in the SPAC industry from repeatedly abusing the law?
5. Does the SEC have appropriate funding and regulatory authority to address the specific threats from the DWAC and Trump Media and Technology merger, and to address the new threats to markets and investors from the rapid growth of SPACs? If not, please provide recommendations for Congress to address these gaps.

³⁰ Bloomberg, “Trump-Tied SPAC Fuels Day Trader Return To Blank-Check Stocks,” Bailey Lipschultz, October 28, 2021, <https://www.bloomberg.com/news/articles/2021-10-28/trump-tied-spac-fuels-retail-trader-return-to-blank-check-stocks>.

³¹ New York Times, “Trump’s \$300 Million SPAC Deal May Have Skirted Securities Laws,” Matthew Goldstein, Lauren Hirsch, and David Enrich, October 29, 2021, <https://www.nytimes.com/2021/10/29/business/trump-spac-digital-world.html>.

³² 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>.

Thank you for your attention to this important matter, and I look forward to your response.

Sincerely,



Elizabeth Warren
United States Senator