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August 27, 2021

BY ECF

The Honorable Analisa Torres
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

The Honorable J. Paul Oetken
United States District Court
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007-1312

The Honorable John P. Cronan
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Assad v. Pershing Square Tontine Holdings, Ltd., et al.*, No. 21-cv-6907 (AT) (BCM); *Assad v. E.Merge Technology Acquisition Corp., et al.*, No. 21-cv-7072 (JPO) (KNF); *Assad v. GO Acquisition Corp., et al.*, No. 21-cv-7076 (JPC) (JLC)

Dear Judges Torres, Oetken, and Cronan:

We represent the Pershing Square Defendants[1] in *Assad v. Pershing Square Tontine Holdings, Ltd., et al.*, No. 21-cv-6907 ("*Pershing Square*"), which has been assigned to Judge Torres. Pursuant to Local Civil Rule 1.6, we write to alert the Court that this action is one of three filed over the course of a few days (between August 17 and 20) by the same Plaintiff, George Assad, who is represented by the same counsel.

[1] Pershing Square Tontine Holdings, Ltd.; Pershing Square TH Sponsor, LLC; Pershing Square, L.P.; Pershing Square International, Ltd.; and Pershing Square Holdings, Ltd.

Plaintiff's central assertion in each of the three derivative complaints is that the nominal defendants—special purpose acquisition vehicles (or "SPACs") in which he is a shareholder—are "investment companies" under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 *et seq.* *See Pershing Square*, Dkt. No. 1 ¶ 2 ("*Pershing Square* Compl."); *Assad v. E.Merge Tech. Acquisition Corp., et al.*, No. 21-cv-7072 (JPO) (KNF), Dkt. No. 1 ¶ 2 ("*E.Merge* Compl."); *Assad v. GO Acquisition Corp., et al.*, No. 21-cv-7076 (JPC) (JLC), Dkt. No. 1 ¶ 2 ("*GO Acquisition* Compl.").

Plaintiff's claim is based on the novel theory that SPACs, which are long-recognized, SEC-registered public vehicles for effecting business combinations with private companies, are investment companies by virtue of the temporary investment of their assets in securities issued by the United States government and in shares of money market mutual funds during the period when the SPACs are seeking business combinations, which is their purpose. *See Pershing Square* Compl. ¶ 8; *E.Merge* Compl. ¶ 9; *GO Acquisition* Compl. ¶ 7. Plaintiff contends that SPACs' temporarily holding cash-equivalent securities means that they are "primarily" in the business of investing and reinvesting in securities, thus converting all SPACs into "investment companies" under the Investment Company Act of 1940 and converting all SPAC sponsors into "investment advisers" under the Investment Advisers Act of 1940, 15 U.S.C. §§ 80b-1 *et seq*.

In each action Plaintiff seeks the same relief. First, he demands a declaration that each SPAC is an "investment company" and that the sponsors of the SPACs are "investment advisers," under the Investment Company Act and Investment Advisers Act, respectively. Second, in each action, Plaintiff seeks an order rescinding certain agreements that are allegedly invalid under the allegedly applicable Investment Company and Investment Advisers Acts; enjoining defendants from exercising related rights; returning to the company any allegedly ill-gotten benefits; and awarding damages to each nominal defendant based upon allegedly excessive consideration paid or potentially to be paid to the defendants. *Pershing Square* Compl. Prayer for Relief ¶¶ (A)-(K); *E.Merge* Compl. Prayer for Relief ¶¶ (A)-(G); *GO Acquisition* Compl. Prayer for Relief ¶¶ (A)-(G).

We believe these claims are without merit and contradict decades of SEC-approved practices, and we intend to defend against them vigorously. We also anticipate that it may be appropriate to expedite resolution of these matters because SPACs, by the terms of their incorporation, must effectuate an "initial business combination" within a set period of time, or else unwind. *See, e.g.*, *Pershing Square* Compl. ¶ 39. In each of these three recently filed cases, the SPAC targeted by Plaintiff has a relatively short period of time remaining—in the *Pershing Square* case a mere eleven months. *See id.* ¶¶ 35-39 (indicating SPAC has two years from the July 22, 2020 closing of the IPO to complete an initial business combination). The pendency of these cases casts a cloud over the defendants and potentially impedes their ability to seek and effect business combinations, which is the reason the SPACs were created.

We bring these similarities and circumstances to the Court's attention in light of the interests of judicial economy and efficiency and the need to avoid inconsistent results, in cases that may have significant market impact. In these circumstances, some degree of coordination or consolidation may be appropriate, and we are prepared to make any submission or proposal in that regard that may be helpful to the Court. What's more, we understand from recent reporting that

the same lawyers representing Mr. Assad in the three currently filed cases may intend to file "50 more lawsuits" raising the same allegations against other SPACs.[2]

Respectfully submitted,

/s/ Roberta A. Kaplan
Roberta A. Kaplan

cc: Nicholas A. Gravante, Jr., Cadwalader, Wickersham & Taft LLP
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Attorneys for the Director Defendants

All Counsel of Record (by ECF)

[2] CNBC, *Lawyers suing Bill Ackman's SPAC plan up to 50 more lawsuits against blank-check firms, sources say* (Aug. 26, 2021), https://www.cnbc.com/2021/08/26/lawyers-suing-bill-ackmans-spac-plan-up-to-50-more-lawsuits-against-blank-check-firms-sources-say.html.