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<b>Material Type:</b>	Litigation
<b>Category:</b>	Admin Proceedings
<b>Title:</b>	Nikola Corporation

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES ACT OF 1933**  
**Release No. 11018 / December 21, 2021**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 93838 / December 21, 2021**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-20687**

<p><b>In the Matter of</b></p> <p style="text-align:center"><b>Nikola Corporation,</b></p> <p><b>Respondent.</b></p>
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**ORDER INSTITUTING CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTION 8A OF THE SECURITIES ACT OF 1933 AND SECTION 21C OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS AND A CEASE-AND-DESIST ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Nikola Corporation (“Nikola” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### Summary

1. Nikola, a publicly traded zero emissions transportation system provider, made numerous material misrepresentations to investors about key aspects of its business. From at least March 2020 through September 2020, Nikola deceived investors about its products, technical advancements, and commercial prospects.

2. Nikola primarily misled investors through scores of misrepresentations by its CEO and later Executive Chairman, Trevor R. Milton ("Milton"). Before Nikola had produced a single commercial product or had any revenues from truck or hydrogen fuel sales, Milton embarked on a public relations campaign aimed at inflating and maintaining Nikola's stock price. As described further below, from at least March 2020 through September 2020, Milton's statements in tweets and media appearances, individually and taken together, painted a picture of Nikola that diverged widely from its then-current reality. Milton misled investors about, among other things, Nikola's technological advancements, in-house production capabilities, reservation book, and financial outlook.

3. Nikola further misled investors by misrepresenting or omitting material facts about the refueling time of its prototype vehicles, the state of its headquarters demonstration hydrogen station, the anticipated cost and sources of electricity for its hydrogen production, and the economic risks and benefits associated with its contemplated partnership with General Motors. In addition, Nikola failed to maintain disclosure controls and procedures as required by the Exchange Act rules for issuers with a class of securities registered under the Exchange Act.

4. As a result of the conduct described above, Nikola violated Section 10(b) of the Exchange Act and Rules 10b-5 and 13a-15(a) thereunder and Section 17(a) of the Securities Act.

#### Respondent

5. **Nikola Corporation** is incorporated in Delaware and is headquartered in Phoenix, Arizona. Nikola is a vertically integrated zero emissions transportation system provider that designs and manufactures battery electric vehicles ("BEV"), hydrogen fuel cell electric vehicles ("FCEV"), and hydrogen station infrastructure. Since approximately 2016, Nikola has focused on producing FCEV trucks. Later, Nikola also began to develop BEV trucks. Nikola's common stock is registered pursuant to Section 12(b) of the Exchange Act, and is quoted under the ticker symbol "NKLA" on the Nasdaq Global Select Market.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## Relevant Person

6. **Trevor R. Milton** is a resident of Oakley, Utah. In 2015, he founded Bluegentech LLC, which in July 2017 converted from a limited liability company to a Delaware corporation and changed its name to Nikola Corporation (“Legacy Nikola”). Milton was Chief Executive Officer (“CEO”) and Chairman of the Board of Directors of Legacy Nikola from its inception until June 3, 2020, when Legacy Nikola entered into the Business Combination (as defined below). From June 3, 2020 until September 20, 2020, Milton was Nikola’s Executive Chairman. According to Nikola’s filings with the Commission, Milton resigned as Executive Chairman of Nikola and from Nikola’s Board of Directors on September 20, 2020.

## Background

### *Nikola and its Business*

7. Nikola was created through the merger of Legacy Nikola and VectoIQ Acquisition Corp. (“VectoIQ”), a Delaware corporation headquartered in New York, New York. VectoIQ was formed in January 2018 as a special purpose acquisition corporation, or SPAC, for the purpose of effecting a business combination with one or more businesses. VectoIQ completed an initial public offering in May 2018, at which time its securities began to be quoted on The Nasdaq Capital Market.

8. On March 2, 2020, VectoIQ and Legacy Nikola entered into a Business Combination Agreement (the “Business Combination Agreement”), as well as certain related agreements, pursuant to which Legacy Nikola would merge with a subsidiary of VectoIQ, with Legacy Nikola remaining as the surviving company and as a wholly-owned subsidiary of VectoIQ. On June 3, 2020, Legacy Nikola and VectoIQ consummated the merger contemplated by the Business Combination Agreement (the “Business Combination”), and VectoIQ changed its name to Nikola Corporation.<sup>2</sup> On June 4, 2020, Nikola’s common stock and warrants began trading on the Nasdaq Global Select Market.

9. Nikola advertised a business model that, among other things: (i) offered a bundled lease for its trucks that included the cost of hydrogen fuel; (ii) planned to construct a nationwide network of hydrogen refueling stations around routes of customers who have committed to lease Nikola’s trucks; and (iii) sought to obtain cheap electricity that would enable the company to produce hydrogen at a fraction of current market rates.

10. Nikola’s business plan required billions of dollars of capital to finance the development and manufacturing of trucks and station infrastructure. From 2015 through March 2020, Nikola raised over \$500 million through private offerings directed mostly at institutional investors. In connection with the Business Combination, VectoIQ raised from institutional investors approximately \$525 million in a private investment in public equity (“PIPE”) offering. As a result of the Business Combination, Nikola received a net contribution of approximately

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<sup>2</sup> Unless specified otherwise, references in this Order to Nikola refer to, depending on the context, Legacy Nikola prior to the Business Combination and to Nikola Corporation after the Business Combination. References in this Order to VectoIQ refer to VectoIQ prior to the Business Combination.

\$594.5 million from VectoIQ, an amount that excludes a \$70 million payout to Milton made at the closing of the transaction.

### **Relevant Securities Offerings and Filings**

11. In connection with the Business Combination, on March 13, 2020, VectoIQ filed with the Commission a Registration Statement on Form S-4, which included a Preliminary Proxy Statement, Prospectus, and Information Statement. On May 8, 2020, this Registration Statement was declared effective and VectoIQ filed a Prospectus, a Notice of Meeting, and Proxy Statement.

12. On June 15, 2020, Nikola filed with the Commission a Registration Statement on Form S-1 relating to (i) the issuance of Nikola common stock issuable upon the exercise of warrants originally issued by VectoIQ, and (ii) the offer and sale from time to time of Nikola common stock held primarily by the PIPE investors, VectoIQ's sponsor, and certain of its affiliates. This Registration Statement was declared effective on July 17, 2020. On July 17, 2020, Nikola filed with the Commission a Registration Statement on Form S-1 relating to the offer and sale of Nikola common stock held by the founding shareholders of VectoIQ and by certain pre-Business Combination investors in Nikola (including entities controlled by Milton). This Registration Statement was declared effective on July 27, 2020.

13. Many of Nikola's false and misleading statements in this Order were made at the time securities were being offered and sold pursuant to these registration statements.

### **Milton Aggressively Promoted Nikola**

14. During the time that he was CEO and then Executive Chairman, Milton was Nikola's primary public spokesperson. Milton used his personal Twitter account (@nikolatrevor) and personal Instagram account (@lakepowelltrevor) to publish material information about Nikola. When tweeting or posting material information about Nikola from his personal accounts, Milton did so in his capacity as CEO or Executive Chairman of Nikola.

15. Beginning at least as early as June 2020 and continuing through September 20, 2020, Milton included the following publicly available bio on his Twitter account: "Founder, Executive Chairman of @nikolamotor Nasdaq traded: NKLA. It's our duty to leave the world a better place and inspire people. Instagram: lakepowelltrevor." Milton also posted material information about Nikola from its corporate Twitter account (@nikolamotor). Milton repeatedly urged television viewers and podcast listeners to follow his social media accounts, claiming he used them to communicate "accurate data" about Nikola in a way that would enable followers to receive information "way faster than you get it anywhere else."

16. In the weeks prior to and following the June 3, 2020 Business Combination, Milton significantly increased his media presence, appearing on dozens of nationally televised programs and podcasts and tweeting hundreds of times. He told Nikola executives that his frequent media appearances and increased activity on social media were part of a "media blitz" designed to generate investor interest in Nikola, and that he hoped his presence on these platforms would increase and maintain the company's stock price.

### **Nikola Did Not Have Adequate Disclosure Controls or Procedures Regarding Milton’s Social Media Use and Media Appearances**

17. Nikola’s disclosure controls and procedures for monitoring or reviewing Milton’s interviews and social media activity were deficient from at least June 3, 2020 through September 2020.

18. Milton did not routinely consult with anyone at Nikola before publishing Nikola-related information on his or Nikola’s social media accounts, or before being interviewed about Nikola on television programs and podcasts. Likewise, no one at Nikola routinely reviewed Milton’s social media posts prior to their publication, and executives and employees alike frequently learned of Milton’s interviews after they aired. Further, Nikola did not correct these statements.

19. Nikola did not design, implement, or maintain adequate disclosure controls or procedures to assess whether the information Milton published via social media and television and podcast appearances was required to be disclosed in Nikola’s Exchange Act reports within the time periods specified in the Commission’s rules and forms. Similarly, Nikola did not have processes in place to ensure that information published by Milton was communicated to management to allow timely decisions regarding required disclosure.

### **Nikola’s Material Misrepresentations to Investors through Milton**

20. From approximately March 2020 through September 2020, in his capacity as CEO and later as Executive Chairman of Nikola, Milton made materially false and misleading statements on numerous critical topics related to Nikola’s capabilities, technology, reservations, products, and commercial prospects.

21. *Nikola One Capabilities.* Milton made false and misleading statements about the capabilities of Nikola’s first semi-truck prototype, the Nikola One, which could not run under its own power when Nikola unveiled it in December 2016 or at any time thereafter. For example, in or around early 2018, Milton posted, or directed the posting of, a video clip to Nikola’s Twitter and Facebook accounts depicting the Nikola One truck moving on a road, seemingly at a high rate of speed. The video had no narration or text. The text of the tweet in which the video was embedded stated: “Behold, the Nikola One in motion. Pre-production units to hit fleets in 2019 for testing. The Nikola Hydrogen Electric trucks will take on any semi-truck and outperform them in every category: weight, acceleration, stopping, safety and features – all with 500-1,000 mile range!” The “In Motion” video remained posted on Nikola’s corporate Twitter, Facebook, and YouTube accounts, as well as on its website, and was available for viewing by investors and prospective investors until at least September 2020.

22. The video and the caption on the January 25, 2018 tweet were misleading because the video showed the Nikola One moving down a road with text that told viewers to “behold” the Nikola One “in motion,” while omitting the fact that the truck was rolling down an incline due to gravity rather than under its own power. The “In Motion” video thus left viewers with the false impression that the Nikola One was capable of moving under its own power.

23. Hydrogen. Milton made a series of false and misleading claims about Nikola's then-current hydrogen production capabilities, its costs to produce hydrogen, and the costs at which it obtained electricity to produce hydrogen profitably.

24. In order to support the FCEV trucks that Nikola projected to put on the road, Nikola would need to produce tens of millions of kilograms of hydrogen each year. To do so, Nikola represented to investors that it intended to produce hydrogen via electrolysis, a process that uses electricity to split water into hydrogen and oxygen. However, producing Nikola's projected amount of hydrogen via electrolysis would require a significant amount of electricity. For purposes of its projections, Nikola assumed it could obtain electricity at an average of \$0.035 per kilowatt-hour ("kWh") – a rate significantly cheaper than prevailing industrial rates – based on its expected large consumption and its goal of obtaining lower-cost renewable electricity during non-peak hours or sourcing it "behind the meter" (*i.e.*, from a source other than the grid). Nikola disclosed that if it was not able to obtain electricity at a significant discount to prevailing rates, it would not be profitable. Accordingly, Nikola's ability to produce hydrogen – and do it cost-effectively – was a critical component of the company's overall business model.

25. From approximately November 2019 through September 2020, Milton falsely claimed in posts from his personal Twitter account and in appearances on podcasts and television programs that, among other things: (i) Nikola was then currently producing hydrogen; (ii) Nikola reduced its cost to produce hydrogen from \$16 per kilogram down to either \$3 or \$4 per kilogram; (iii) Nikola had contracts with electricity providers at rates of \$0.03 or \$0.04 per kWh; and (iv) the electricity that Nikola purportedly had sourced was generated using renewable or "clean" methods. All of these statements were false and misleading, because from inception through at least September 2020, Nikola never produced any hydrogen, did not have a station permitted to produce hydrogen, and did not have any contracts signed with any electricity providers.

26. Badger. Milton falsely and repeatedly claimed that Nikola had engineered and already completed a prototype of an electric pickup truck, the Badger, and that this vehicle used primarily Nikola's proprietary components.

27. From at least February 2020 through at least June 2020, Milton misrepresented that Nikola had "designed" or "engineered" the Badger to meet particular specifications, and that the prototype had already been completed. Milton made these statements in a Nikola press release that he drafted, as well as in posts from his personal Twitter account and in appearances on podcasts. The statements about Nikola having "designed" or "engineered" the Badger to meet particular specifications were false and misleading. At the time of these statements, Nikola had not performed any engineering work or any design work other than CGI renderings of a Nikola employee's prior illustrations, and Nikola's third-party suppliers were only completing computer-aided design and beginning tooling.

28. From at least April 2020 through September 2020, Milton also made several false statements in posts from his personal Twitter account and on podcast appearances regarding the proprietary nature of the Badger. Milton asserted, among other things, that Nikola built the Badger "from the ground up," "own[s] all the tech" and "developed all the tech" in the Badger, and that it "put" a "billion dollars" of its semi-truck technology into the Badger. All of these statements were

false, as third-party suppliers built the Badger prototype using “donor” vehicles manufactured by another company and little, if any, of Nikola’s technology was used on the Badger prototype.

29. Truck Reservations. Milton made several false claims about Nikola’s truck reservations and orders. As a pre-revenue company, Nikola consistently emphasized to potential investors that its pre-order book, which it characterized as a “backlog of interest,” was a sign that the company was primed for profitability in the near future based on interest in its flagship FCEV semi-truck product. Although the vast majority of the pre-orders were indications of interest that were cancellable at any time, Milton misrepresented the non-binding nature of these orders. For example, in an appearance on a podcast on July 31, 2020, Milton stated that the pre-orders were “not letter of intents, they’re actually contracts. . . . Yeah, billions and billions of dollars with contracts.” This statement was false and misleading because Nikola had only one customer whose order for 800 FCEV trucks could be characterized as binding. There were not billions and billions of dollars in binding orders.

30. Similarly, Milton misrepresented the nature of the truck orders contemplated by Nikola’s agreement with a publicly-traded waste collection company (“Customer A”) for an order of 2,500 to 5,000 trucks. For example, Milton claimed on his personal Twitter account that this was the “[l]argest class 8 zero emission order in the industry 2,500 guaranteed.” This statement was false and misleading, as under the terms of the agreement, for Customer A to incur any obligation, a series of conditions would have to be met, not all of which were even under Nikola’s control. Moreover, if the parties could not agree on essential terms (including price, service and parts network, warranties, training program, and more), Customer A had the ability to terminate the agreement anytime on 30 days’ notice. Finally, even if Nikola could meet all of those obligations, Customer A still had the right to cancel its orders without liability or penalty as long as the delivery date was at least 120 days out.

31. “Breakthrough” Battery Technology. Milton claimed falsely that Nikola “has achieved” a significant breakthrough in battery technology that would result in enormous performance gains for Nikola’s vehicles. Milton made this claim in a November 19, 2019 press release that he drafted and Nikola published. The press release contained several unqualified claims relating to the “new battery,” including, among others, vehicle range, energy density, number of cycles, and weight. In the days and months following the publication of the press release, Milton made similar statements in tweets from his personal account and in appearances on podcasts. These statements were misleading because they failed to disclose that the claimed battery attributes were applicable to coin-size battery cells that were being developed and tested in a controlled lab environment as part of a university research project. This fact was significant because to scale these coin-size lab-level cells to even a prototype size would require further development with no assurance of comparable performance levels. From there, developing the cells from prototype cells to commercial grade quality was a further, significant undertaking, with no assurance of utility for commercial applications.

32. In-House Component Development. Milton made numerous misstatements about Nikola’s in-house component development and manufacturing capabilities. For example, from approximately February 2020 through at least August 2020, Milton made statements in posts from his personal Twitter account and in appearances on podcasts that created the misleading impression



that Nikola manufactured its own batteries and that Nikola designed the entire battery. These statements were false and misleading because Nikola used a third-party supplier to manufacture batteries for its first production vehicle, and this supplier both designed the modules for the batteries and provided Nikola assistance in the design of the battery pack. Further, Nikola lacked the capability to manufacture these batteries on its own. Similarly, during the same time period, Milton claimed in tweets and on podcast appearances that Nikola designed its own inverter. This statement was false because Nikola used “off the shelf” inverters for all of its semi-truck prototypes and it planned to use “off the shelf” inverters for its first production vehicle. Finally, Milton misled investors when he stated in an Instagram Live video posted from his personal Instagram account that Nikola “does full electric fluid submersion batteries” that “cool and heat . . . much faster, much more efficiently,” and are “able to stop thermal propagation.” This statement was misleading because it omitted to disclose that the submerged batteries to which Milton was referring were only being used in two truck prototypes and had severe functional limitations and associated safety issues. Milton’s statements misled current and prospective investors to believe that these batteries were viable when, in fact, they were not.

33. *Total Cost of Ownership.* Finally, Milton also falsely claimed that the total cost of ownership (“TCO”) of Nikola’s trucks was 20 to 30 percent below that of diesel vehicles. Commercial vehicle buying decisions, particularly for large corporate fleets, are driven, in part, by the TCO, an analysis of the lifetime cost of a truck, from the acquisition through the operating period. By March 2019, Nikola had determined it could not project a TCO that was below that of diesel vehicles, and that its analysis of data could only support a projected TCO on par with diesel. However, on at least several occasions in July 2020, including during podcast appearances and in an Instagram Live video posted from his personal Instagram account, Milton falsely asserted that the TCO of Nikola’s vehicles was “20 to 30 percent” cheaper than of diesel competitors.

34. In making the false and misleading statements described above, Milton at all times spoke in his capacity as CEO or Executive Chairman of Nikola.

### **Nikola’s Additional Material Misrepresentations**

35. In addition to the material misrepresentations that Nikola made through Milton, as described above, Nikola made other material misrepresentations to investors. These misrepresentations concerned hydrogen refueling time, the hydrogen demonstration station, the current and future costs and sources of electricity for the company’s planned hydrogen production, and the economic risks and benefits associated with its contemplated partnership with General Motors.

36. *Refueling Time.* Nikola presented a misleading picture of its hydrogen refueling capabilities. Nikola understood that the ability to refuel FCEV trucks approximately as quickly as diesel trucks (10-15 minutes on average) was an important factor in achieving market adoption of FCEV technology. However, hydrogen’s properties make it challenging to rapidly fill the tanks of a semi-truck. Completing a refueling this quickly – known as a “fast fill” – requires, among other things, cooling and compression as part of the fueling process. Although Nikola had an engineering plan and had run simulations that showed it was theoretically possible to conduct a fast fill in 20 minutes, it had not developed a solution to achieve a fast fill on a semi-truck. Instead, it

took Nikola 45-80 minutes to fill its semi-truck prototypes with hydrogen in 2020. However, after the Business Combination announcement, Nikola failed to disclose to the market the actual fill time of 45-80 minutes to investors. For example, in an April 2020 investor presentation Nikola prepared and provided to investors, Nikola stated, without qualification, that the refueling time for its FCEV was “10-15 minutes.” Nikola’s executives similarly claimed in 2020 that Nikola’s FCEV refueling time compared favorably with diesel trucks.

37. Hydrogen Station. Nikola misled investors in 2020 regarding the status of its demonstration hydrogen station. Although Nikola was not producing hydrogen in 2020, it had installed a station at its headquarters designed to dispense test quantities of hydrogen it purchased from third parties. In its Registration Statement on Form S-1, filed on June 15, 2020, as well as in certain subsequent Registration Statements and Prospectuses filed in 2020, Nikola touted the demonstration station at its headquarters as a “as a model for future hydrogen stations.” This statement was misleading because Nikola failed to disclose that this station was beset by significant operational and repair challenges. Nikola’s analysis showed that the station operated only 21% of the time during 2020.

38. Electricity. Nikola made material omissions about costs and sources for electricity related to the company’s planned hydrogen production – a critical component of its business model. In its Registration Statement on Form S-1, filed on June 15, 2020, as well as in certain subsequent Registration Statements and Prospectuses filed in 2020, Nikola disclosed that: (i) for its hydrogen production, “electricity costs account for approximately 75% to 85% of the total cost”; (ii) securing a reliable source of electricity for each of its fueling stations at a price per kwh below market retail rates was critical to its business model; (iii) it planned to produce hydrogen on-site at each hydrogen station; (iv) parties have been able to secure “Power Purchase Agreements” (or “PPAs”) using solar energy at below market rates; and (v) the costs of energy production using solar and wind have been decreasing over time.

39. Certain of Nikola’s statements regarding the cost and sources of electricity for its on-site hydrogen production were misleading. Although it accurately highlighted its need to obtain a reliable source of electricity for its fueling stations, Nikola omitted to disclose that it would require up to approximately 5% of all electricity consumed in the United States in 2019 to produce sufficient hydrogen per year for the fully-deployed version of its planned hydrogen network. Furthermore, although Nikola included some data about decreasing solar and wind electricity cost trends, it failed to disclose that its planned on-site hydrogen production would require Nikola to incur material additional costs beyond just the cost of electricity production, including, among other things, transmission, distribution, and energy storage costs. Moreover, in conjunction with its representations about needing to obtain below market retail rates, Nikola omitted that in the months prior to its S-1 filing it received significantly higher per kWh price indications from grid and solar energy suppliers than its target price point (which were primarily driven by, among other factors, battery storage costs and grid connection, transmission, or distribution costs).

40. The General Motors Partnership. Nikola misled investors by failing to disclose the potential economic impact of the proposed strategic partnership between Nikola and General Motors, pursuant to which General Motors would produce the Badger. In a press release dated

September 8, 2020 Nikola disclosed the strategic partnership with General Motors to develop the Badger and touted the purported cost-savings to Nikola from the partnership. Specifically, Nikola claimed that it “anticipates saving over \$4 billion in battery and powertrain costs over 10 years and over \$1 billion in engineering and validation costs.” This claim was misleading because, although Nikola touted potential cost savings, Nikola failed to disclose that unless the market could support a “premium” MSRP price for the Badger, Nikola’s internal projections showed that the entire Badger program could potentially generate a net loss of \$3.1 billion over six years and threaten Nikola’s solvency. A Nikola executive prepared these internal projections and provided them to Nikola’s senior executives and its Board, noting that the projected unit economics from both the “premium” and “market based” pricing approaches. Nevertheless, Nikola went on to tout the discrete potential cost savings associated with one aspect of the program without disclosing the program’s overall potential financial impact.

### **Violations**

41. As a result of the conduct described above, Nikola violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit any person from directly or indirectly in connection with the purchase or sale of securities knowingly or recklessly employing devices, schemes and artifices to defraud, making untrue statements of material facts, or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, and engaging in acts, practices, and courses of business that operate as a fraud or deceit.

42. In addition, as a result of the conduct described above, Nikola violated Section 17(a) of the Securities Act, which prohibits, in the offer or sale of any securities, the employment of any device, scheme, or artifice to defraud, and further prohibits any person from directly or indirectly obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

43. In addition, as a result of the conduct described above, Nikola violated Rule 13a-15(a) under the Exchange Act. Rule 13a-15(a) requires issuers required to file annual reports pursuant to Section 13(a) or 15(d) of the Exchange Act to, among other things, maintain disclosure controls and procedures designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission’s rules and forms.

### **Nikola’s Remedial Efforts and Cooperation**

44. In determining to accept the Offer, the Commission considered remedial acts undertaken by Respondent and cooperation afforded the Commission staff.

## Undertakings

45. Nikola (including its officers, directors, and employees, and third-party consultants within Nikola's control) shall continue to cooperate fully with the Commission with respect to this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party and subject to compliance with applicable law. Nikola agrees that such cooperation shall include, but is not limited to:

a. Production of Information: at the Commission's request, upon reasonable notice, and without subpoena, Nikola (including its officers, directors, and employees, and third-party consultants within Nikola's control) shall truthfully and completely disclose all information in its possession requested by the Commission staff in connection with the Commission's investigation, litigation or other related proceedings;

b. Production of Documents: at the Commission's request, upon reasonable notice, and without subpoena, Nikola (including its officers, directors, and employees, and third-party consultants within Nikola's control) shall provide any document, record or other tangible evidence in its possession requested by the Commission staff in connection with the Commission's investigation, litigation or other related proceedings;

c. Production of Cooperative Personnel: at the Commission's request, upon reasonable notice, and without subpoena, Nikola (including its officers, directors, and employees, and third-party consultants within Nikola's control) shall secure the attendance and truthful statements, deposition, or testimony of any Nikola officer, director, or employee or third-party consultant within Nikola's control, excluding any person who is a party to any related litigated judicial or administrative proceeding, at any meeting, interview, testimony, deposition, trial, or other legal proceeding. Nikola shall also use its best efforts to secure the attendance and truthful statements, deposition, or testimony of any former Nikola officer, director, or employee, excluding any person who is a party to any related litigated judicial or administrative proceeding, at any meeting, interview, testimony, deposition, trial, or other legal proceeding.

The foregoing obligations are subject to Nikola's reservation of rights: (i) to claim that documents or information requested is subject to attorney-client privilege, attorney-work-product protection, or bank examiner privilege; and (ii) to seek entry of a confidentiality order as to: sensitive business documents or information; sensitive personnel documents or information; or confidential information pertaining to parties other than Nikola; and

d. Service and Personal Jurisdiction Consents: Nikola further agrees that, with respect to this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, it will: (i) accept service by email, mail or facsimile transmission of notices, requests, or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by the Commission staff ("Commission Service"); (ii) appoint Nikola's attorney as agent to receive Commission Service; (iii) with

respect to Commission Service, waive the territorial limits upon service contained in Rule 45 for the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Nikola's travel, lodging, and subsistence 18 expenses at the then-prevailing U.S. Government per diem rates; and (iv) consent to personal jurisdiction over Nikola in any United States District Court for purposes of enforcing any Commission Service.

#### IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Nikola cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rules 10b-5 and 13a-15(a) thereunder, and Section 17(a) of the Securities Act.

B. Respondent shall pay a civil money penalty in the amount of \$125,000,000 to the Securities and Exchange Commission. Payments shall be applied first to post order interest, which accrues pursuant to pursuant to 31 U.S.C. 3717. Prior to making the final payment set forth herein, Respondent shall contact the staff of the Commission for the amount due. If Respondent fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth below, all outstanding payments under this Order, including post-order interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the Commission without further application to the Commission. Payment shall be made in the following installments:

- Due within 14 days of the entry of this Order: \$25,000,000 (the "Initial Payment")
- Due 184 days after the entry of this Order: \$25,000,000
- Due 364 days after the entry of this Order: \$25,000,000
- Due 544 days after the entry of this Order: \$25,000,000
- Due 724 days after the entry of this Order: \$25,000,000

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or

- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Nikola as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Eric Werner, Associate Director, Division of Enforcement, Securities and Exchange Commission, 801 Cherry Street, Suite 1900, Fort Worth, Texas 76102.

C. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalties referenced in paragraph IV.B. above. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, Respondent shall not argue that Respondent is entitled to, nor shall Respondent benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payments of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that Respondent shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman  
Secretary