



United States House of Representatives  
One Hundred Eighteenth Congress  
Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

August 9, 2023

Mr. Robert W. Cook  
President and Chief Executive Officer  
Financial Industry Regulatory Authority  
1735 K Street, NW  
Washington, D.C., 20006

Dear Mr. Cook:

In December 2020, the Securities and Exchange Commission (SEC) introduced a new class of special purpose broker-dealers (SPBD). This new regime was intended to allow for the custody of digital asset securities. Unlike other broker-dealers, SPBDs—if approved by the Financial Industry Regulatory Authority (FINRA)—can transact in as well as custody digital asset securities. For the first two years that the regime was effective, FINRA did not approve any SPBDs. Then, effective May 17, 2023, FINRA approved Prometheus Ember Capital LLC, a subsidiary of Prometheus, Inc. (Prometheus) as the first and only entity operating under the SPBD framework. Several other firms have sought approval under the SPBD framework but have not been granted approval by FINRA.

The timing and circumstances surrounding the approval of Prometheus as the first SPBD raise serious questions. The approval comes as the Committee is considering addressing gaps in the regulation of digital assets. The Committee held a joint hearing just seven days prior to the approval between the House Financial Services Committee and the House Agriculture Committee entitled, “The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Markets.”<sup>1</sup> In that hearing, members discussed their plan to propose legislation on digital asset market structure. The legislation was ultimately released on June 2, 2023. The timing of the approval raises concerns that it was aimed at demonstrating that legislation is not needed because there is a workable regulatory framework for the custody of digital asset securities.

In fact, Chair Gensler has touted the Prometheus approval multiple times in public statements to support his position that digital asset firms can comply with the existing regulatory framework at the SEC.<sup>2</sup> The founder and co-CEO of Prometheus, Aaron Kaplan, echoed this argument in his own comments in public interviews and in testimony before this Committee,

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<sup>1</sup> *The Future of Digital Assets: Measuring the Regulatory Gaps in the Digital Asset Markets, Hearing before the H. Comm on Financial Services, Subcomm on Digital Assets, Financial Institutions, and Monetary Policy, and the H. Comm on Agriculture, Subcomm on Commodity Markets, Digital Assets, and Rural Development, 118th Cong. (2023).*

<sup>2</sup> *See Squawk on the Street* (CNBC television broadcast June 6, 2023), <https://www.cnbc.com/video/2023/06/06/sec-chair-gensler-whole-crypto-business-model-built-on-non-compliance-with-u-s-securities-laws.html>; *see also* Gary Gensler, Chair, U.S. Securities and Exchange Comm’n, Remarks before the Piper Sandler Global Exchange & Fintech Conference (June 8, 2023), <https://www.sec.gov/news/speech/gensler-remarks-piper-sandler-060823>.

claiming that there is a path forward for the regulation of the digital asset markets under existing SEC rules and requirements.<sup>3</sup>

While Prometheus claims it is the silver bullet for regulated digital asset offerings, it has not yet served a single customer. It has also refused to make public the digital asset securities that Prometheus ATS would support on its platform. Since Prometheus is limited to digital asset securities, and the SEC has refused to provide any binding guidance on what digital assets are securities, it is unclear what assets would even be eligible. Furthermore, Prometheus is not currently able to perform clearing or settlement services, which would be required to operate as an alternative trading system. It is unclear why FINRA would have chosen to approve a firm with no operating history and no track record of serving customers over all the applications that it has received.

Even more troubling, the circumstances surrounding Prometheus raise serious national security and data privacy concerns. In 2018, Prometheus and Shanghai Wanxiang Blockchain Inc. (Wanxiang) entered into an agreement to jointly develop blockchain trading software.<sup>4</sup> While the agreement was later terminated, and Prometheus claims all software was independently developed, the involvement of a Chinese entity in technology development in the early stages of Prometheus raises serious concerns. Furthermore, Kaplan testified before this Committee that 20% of his company is owned by this Chinese entity.<sup>5</sup> According to SEC filings, a representative of that entity, Feng Ziao, serves as a Director in Prometheus.<sup>6</sup> Wanxiang has deep ties to the Chinese Communist Party (CCP).<sup>7</sup>

To better understand the process for approving Prometheus as a SPBD, as well as the steps FINRA took—if any—to assess risks associated with Prometheus’s close ties to the CCP, please provide a briefing to Committee staff as soon as possible but no later than August 22, 2023. Please also provide written responses to the following questions before appearing at the requested briefing:

1. What steps did FINRA take to assess the risk posed by Prometheus’s ties to the Chinese Communist Party?

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<sup>3</sup> Jesse Hamilton, *Come in and Register? These Firms Say They Found an SEC-Friendly Crypto Path*, CoinDesk (May 23, 2023), [https://www.coindesk.com/policy/2023/05/23/come-in-and-register-these-firms-say-they-found-an-sec-friendly-crypto-path/?utm\\_content=editorial&utm\\_term=organic&utm\\_medium=social&utm\\_campaign=coindesk\\_main&utm\\_source=twitter](https://www.coindesk.com/policy/2023/05/23/come-in-and-register-these-firms-say-they-found-an-sec-friendly-crypto-path/?utm_content=editorial&utm_term=organic&utm_medium=social&utm_campaign=coindesk_main&utm_source=twitter); *The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem, Hearing Before the H. Comm on Financial Services*, 118th Cong. (2023).

<sup>4</sup> U.S. Securities and Exchange Comm’n, Strategic Partnership and Joint Development Agreement of Prometheus, Inc. and Shanghai Wanxiang Blockchain Inc., Exhibit 6.3, [https://www.sec.gov/Archives/edgar/data/1718271/000101905619000222/ex6\\_3.htm](https://www.sec.gov/Archives/edgar/data/1718271/000101905619000222/ex6_3.htm).

<sup>5</sup> *The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem, Hearing Before the H. Comm on Financial Services*, 118th Cong. (2023).

<sup>6</sup> U.S. Securities and Exchange Comm’n, Reg D, Notice of Exempt Offering of Securities, [https://www.sec.gov/Archives/edgar/data/1718271/000171827123000001/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1718271/000171827123000001/xslFormDX01/primary_doc.xml).

<sup>7</sup> U.S. Senator Tommy Tuberville, ‘Crypto Communism’ Has a New Meaning, WSJ (June 7, 2023), <https://www.wsj.com/articles/crypto-communism-has-a-new-meaning-prometheus-custody-data-commodities-china-d655bb88>.

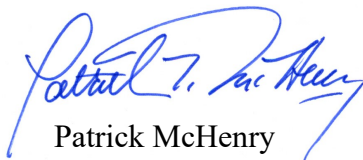
2. How many other special purpose broker-dealer applications remain outstanding as of the date of this letter?
  - a. Please name the entities seeking approval to become a special purpose broker-dealer and remain outstanding as of the date of this letter.
3. How many special purpose broker-dealer applications have been denied?
  - a. Please name the entities that sought approval to become a special purpose broker-dealer and were denied.

Please also provide the following as soon as possible but no later than 5:00pm, August 22, 2023:

1. All documents and communications, between the SEC and FINRA, related or referring to Prometheus's application to become a special purpose broker-dealer; and
2. All documents and communications, between and among FINRA employees, related or referring to Prometheus's application to become a special purpose broker-dealer.

If you have any questions, please contact Kyle Smithwick of the Majority staff of the House Committee on Financial Services at (202) 225-7502. Thank you for your attention to this important matter.

Sincerely,



Patrick McHenry  
Chairman



Bill Huizenga  
Chairman  
Subcommittee on Oversight and  
Investigations



Blaine Luetkemeyer  
Chairman  
Subcommittee on National Security,  
Illicit Finance, and International  
Financial Institutions



Ann Wagner  
Chairman  
Subcommittee on Capital Markets

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Andy Barr  
Chairman  
Subcommittee on Financial Institutions  
and Monetary Policy



French Hill  
Chairman  
Subcommittee on Digital Assets, Financial  
Technology, and Inclusion



Warren Davidson  
Chairman  
Subcommittee on Housing and Insurance



Pete Sessions  
Member of Congress




Roger Williams  
Member of Congress



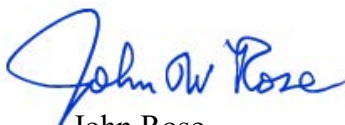
Tom Emmer  
Member of Congress



Barry Loudermilk  
Member of Congress



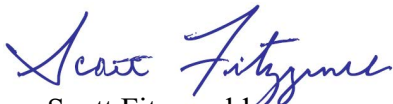
Alexander X. Mooney  
Member of Congress



John Rose  
Member of Congress



Ralph Norman  
Member of Congress



Scott Fitzgerald  
Member of Congress



Andrew R. Garbarino  
Member of Congress



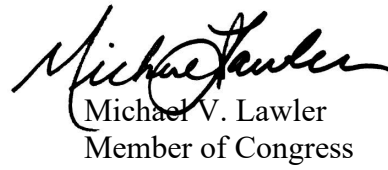
Young Kim  
Member of Congress



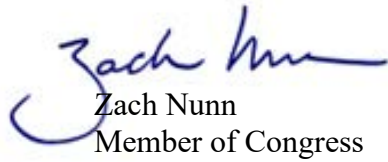
Byron Donalds  
Member of Congress



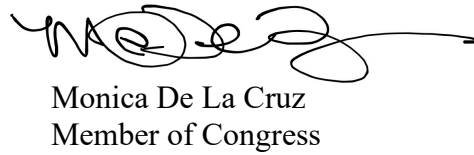
Mike Flood  
Member of Congress



Michael V. Lawler  
Member of Congress



Zach Nunn  
Member of Congress



Monica De La Cruz  
Member of Congress



Andy Ogles  
Member of Congress