



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

May 22, 2024

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

Dear Chair Gensler:

On March 26, 2024, Members of the House Committee on Financial Services and the House Committee on Agriculture sent you a letter requesting, among other things, clarification on how Prometheus, Inc. (Prometheus) will comply with its requirements as a Special Purpose Broker Dealer (SPBD) if it offers institutional custodial services for Ethereum's token, Ether (ETH).<sup>1</sup> The Securities and Exchange Commission's (SEC) April 9, 2024 response failed to sufficiently describe how Prometheus will comply with its SPBD obligations with respect to ETH.<sup>2</sup> This despite the fact the SEC has a long, well-established history with Prometheus. For example:

- In December 2020, the SEC introduced the SPBD Framework that allows broker-dealers to custody and facilitate transactions in digital asset securities.<sup>3</sup>
- In April 2021, Prometheus submitted a comment letter to the SEC's SPBD Framework.<sup>4</sup> The letter expressed how difficult it will be for SPBDs to operate if restricted to only offering digital asset securities. Importantly, Prometheus also asked for greater regulatory guidance on the definition of digital asset securities.<sup>5</sup>
- In July 2021, both Prometheus Ember Capital and Prometheus Ember ATS registrations as broker-dealers were effective.<sup>6</sup>

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<sup>1</sup> Letter from U.S. H. Comm. on Financial Services and U.S. H. Comm. on Agriculture, to Gary Gensler, Chair, Securities and Exchange Comm'n (Mar. 26, 2024), [https://agriculture.house.gov/uploadedfiles/2024-03-26\\_fsc\\_hac\\_prometheus\\_letter.pdf](https://agriculture.house.gov/uploadedfiles/2024-03-26_fsc_hac_prometheus_letter.pdf).

<sup>2</sup> Letter from Gary Gensler, Chair, Securities and Exchange Comm'n, to Patrick McHenry, Chairman, U.S. H. Comm. on Financial Services and G.T. Thompson, Chairman, U.S. H. Comm. on Agriculture (Apr. 9, 2024).

<sup>3</sup> U.S. Securities and Exchange Comm'n, *Custody of Digital Asset Securities by Special Purpose Broker-Dealers* (17 C.F.R. Part 240, SEC Rel. No. 34-90788, File No. S7-25-20) (Dec. 23, 2020), <https://www.sec.gov/files/rules/policy/2020/34-90788.pdf>.

<sup>4</sup> Comment Letter from Prometheus to U.S. Securities and Exchange Comm'n on 17 C.F.R. Part 240, SEC Rel. No. 34-90788, File No. S7-25-20 (Apr. 26, 2021), <https://www.sec.gov/comments/s7-25-20/s72520-8734178-237104.pdf>.

<sup>5</sup> *Id.* at 4. <https://www.sec.gov/comments/s7-25-20/s72520-8734178-237104.pdf>.

<sup>6</sup> Financial Industry Regulatory Authority BrokerCheck, *Prometheus Ember Capital* (Jul. 12, 2021), <https://brokercheck.finra.org/firm/summary/312784> and *Prometheus Ember ATS* (Jul. 12, 2021), <https://brokercheck.finra.org/firm/summary/311636>.

- As of September 2021, Prometheus Ember ATS registration as an ATS was effective.<sup>7</sup>
- In November 2021, after amending Form 1-A: Regulation A Offering Statement several times from 2017 to 2021, Prometheus ultimately withdrew its offering statement.<sup>8</sup>
- In December 2021, and again in January 2023, Prometheus filed a Form D: Notice of Exempt Offering of Securities under Rule 506(b).<sup>9</sup>
- In October 2022, Prometheus Ember ATS launched. At the time, Prometheus ATS stated that it would provide trading for digital assets including Flow, Filecoin, The Graph, Compound, and Celo.
- In May 2023, Prometheus Ember Capital received FINRA approval to become a SPBD.<sup>10</sup>
- In January 2024, Prometheus Ember Capital expanded its business to include clearing and settlement of digital asset security trades for Prometheus Ember ATS. This expansion, along with Prometheus's statements, signaled intention to offer trading and custody of digital asset securities to institutional and retail clients in 2024.<sup>11</sup>
- Specifically, Prometheus announced that it will offer custody services to its institutional clients for ETH as its first digital asset.<sup>12</sup>

Prometheus's announcement that it will offer custody services for ETH, raise a number of questions regarding what are, and what are not, permitted activities for SPBDs. These questions largely stem from the regulatory uncertainty surrounding ETH, as outlined in our March 26, 2024 letter. Without answers, which the SEC has refused to provide, our concerns about the precedent being set by the SEC, Financial Industry Regulatory Authority (FINRA), and Prometheus are growing.

The likelihood that, throughout the course of Prometheus's SPBD application process and eventual approval, the SEC and FINRA likely discussed permitted activities for a SPBD is strong. As such, the Committee on Financial Services is seeking additional information including

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<sup>7</sup> U.S. Securities and Exchange Comm'n, *Alternative Trading Systems with Form ATS on File with the SEC*, (Sept. 30, 2021); *Prometheus's Subsidiary, "PEATS", Receives FINRA Approval as a Member to Operate an Alternative Trading System ("ATS") for Digital Asset Securities*, PR Newswire (Aug. 11, 2021), <https://www.prnewswire.com/news-releases/prometheums-subsidiary-peats-receives-finra-approval-as-a-member-to-operate-an-alternative-trading-system-ats-for-digital-asset-securities-301352701.html>;

<https://x.com/PrometheusInc/status/1425452805196763137>.

<sup>8</sup> Prometheus Inc.'s Withdrawal Of Form 1-A, (Nov. 18, 2021),

[https://www.sec.gov/Archives/edgar/data/1718271/000101905621000600/prometheum\\_1aw.htm](https://www.sec.gov/Archives/edgar/data/1718271/000101905621000600/prometheum_1aw.htm).

<sup>9</sup> U.S. Securities and Exchange Comm'n, Reg D, Notice of Exempt Offering of Securities,

[https://www.sec.gov/Archives/edgar/data/1718271/000171827121000001/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1718271/000171827121000001/xslFormDX01/primary_doc.xml).

<sup>10</sup> Thomas Ahmadifar and Perkins Coie, *FINRA Approves the First Special Purpose Broker Dealer to Custody Digital Asset Securities*, Perkins Coie (June 1, 2023), <https://www.assetmanagementadvocate.com/2023/06/finra-approves-the-first-special-purpose-broker-dealer-to-custody-digital-asset-securities/>.

<sup>11</sup> *Prometheus Receives First of Its Kind Approval From FINRA to Clear and Settle Digital Asset Securities*, Business Wire (Jan. 10, 2024), <https://finance.yahoo.com/news/prometheus-receives-first-kind-approval-154100315.html>.

<sup>12</sup> Jesse Hamilton, *Prometheus, the Only U.S.-Registered Crypto Platform, Picks Ether as Its First Product*, CoinDesk (Mar. 12, 2024), <https://www.coindesk.com/policy/2024/02/07/prometheus-the-only-us-registered-crypto-platform-picks-ether-as-its-first-product/>.

The Honorable Gary Gensler

May 22, 2024

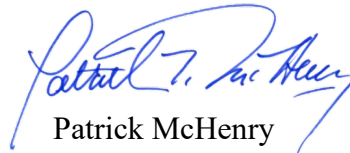
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communications to provide additional clarity regarding the SPBD framework. To that end, please provide the following records and communications:

1. All non-public records and communications, between the employees of the SEC and the employees of FINRA, related to the SPBD application process and Prometheus, from 2018 to present;
2. All non-public records and communications, between the employees of the SEC and the employees of FINRA, related to allowable SPBD activities, from 2018 to present;
3. All non-public records and communications, between the employees of the SEC and the employees of FINRA, related to digital asset securities eligible to be custodied pursuant to the SPBD framework, from 2018 to present;
4. All non-public records and communications, between the employees of the SEC and the employees of FINRA, related to regulatory classification of ETH, from 2014 to present;

Please provide this material as soon as possible, but no later than 5:00 p.m. on Wednesday, June 5, 2024. The Committee on Financial Services has jurisdiction to oversee the activities of the Securities and Exchange Commission pursuant to Rule X of the Rules of the House of Representatives. If you have any questions, please contact Kyle Smithwick of the Committee on Financial Services Majority staff at [kyle.smithwick@mail.house.gov](mailto:kyle.smithwick@mail.house.gov). Thank you for your attention to this important matter.

Sincerely,



Patrick McHenry  
Chairman



Bill Huizenga  
Chairman  
Subcommittee on Oversight and  
Investigations



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

cc: Mr. Robert W. Cook, President and Chief Executive Officer, Financial Industry  
Regulatory Authority