



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

August 9, 2023

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

Dear Chair Gensler:

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. While FINRA is the entity directly responsible for evaluating and approving special purpose broker dealer applications, the SEC is responsible for supervising FINRA. Furthermore, the SEC promulgated the statement providing for special purpose broker dealers and has ultimate responsibility for its execution.

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.”¹ 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, you have touted the Prometheus approval multiple times in public statements to support your position that digital asset firms can comply with the existing regulatory framework

¹ *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).*

at the SEC.² 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, claiming that there is a path forward for the regulation of the digital asset markets under existing SEC rules and requirements.³

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.⁴ 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.⁵ According to SEC filings, a representative of that entity, Feng Ziao, serves as a Director in Prometheus.⁶ Wanxiang has deep ties to the Chinese Communist Party (CCP).⁷

Pursuant to the Committee's oversight authority of the Securities and Exchange Commission, please provide all documents and communications, between and among SEC

² See *Squawk on the Street* (CNBC television broadcast June 6, 2023), <https://www.cnn.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>.

³ 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; *The Future of Digital Assets: Providing Clarity for the Digital Asset Ecosystem, Hearing Before the H. Comm on Financial Services*, 118th Cong. (2023).

⁴ 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.

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

⁶ 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.

⁷ 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>.

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employees, related or referring to Prometheus's application to become a special purpose broker-dealer, as soon as possible but no later than 5:00pm, August 22, 2023.

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,



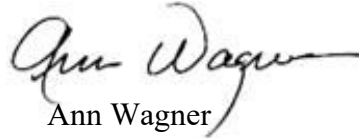
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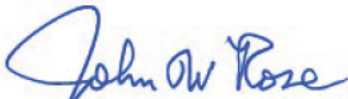
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