



July 12, 2023

Via Email (oig@sec.gov)

Deborah J. Jeffrey
Inspector General
U.S. Securities and Exchange Commission
Office of Inspector General (OIG)
100 F Street, NE
Washington, DC 20549-2977

Dear Inspector General Jeffrey,

We write today to urge you to open an investigation into potential impropriety by the Securities and Exchange Commission (the "Commission") and its approval of Prometheus Ember Capital ("Prometheum") as a first-of-its-kind Special Purpose Broker-Dealer ("SPBD"), as well as the means by which Prometheum's co-CEO, Aaron Kaplan, secured a seat to testify before the U.S. House Financial Services Committee on June 13, 2023. This letter aims to provide an overview of the facts, which we believe raise potential ethical concerns worthy of investigation by the Commission's Office of Inspector General.

The Blockchain Association is the leading nonprofit organization dedicated to promoting a pro-innovation policy environment for the digital asset economy. We endeavor to achieve regulatory clarity and to educate policymakers, regulators, courts, and the public about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace. We represent over 100 member companies reflecting the wide range of the dynamic blockchain industry, including software developers, infrastructure providers, exchanges, custodians, investors, and others supporting the public blockchain ecosystem.

One of the most complex legal questions entrepreneurs, developers, and investors in the digital asset ecosystem must face is how the U.S. securities laws apply to their respective projects, tokens, software, or assets. Since the Commission published guidance regarding initial coin offerings in 2019, the Commission has published no additional guidance and no rulemaking that clarifies how U.S. securities laws apply to digital assets. Chair Gary Gensler, however, has made his view clear that all digital assets other than bitcoin are securities. Under Chair Gensler's leadership, the Commission's approach toward the digital assets industry has been characterized by overt hostility. The Commission has filed dozens of enforcement actions, many of which contain entirely novel interpretations of the law, and has issued notices of proposed rulemaking that aim to cut off whole segments of the industry, such as decentralized finance, yet do not touch on the central question of when digital assets constitute securities.

Meanwhile, on May 17, 2023, in the midst of this hostility, Prometheus managed to receive a first-of-its-kind license to operate as a SPBD after approval from FINRA. Prometheus's licensure comes at a time when other companies in the digital asset space have sought SPBD licenses based on legitimate business models, yet those license applications have either been denied or



perpetually delayed. Although the licensure itself may not raise ethics concerns, the facts surrounding it are concerning. Prometheus has no working product. It lists no assets, and any plans it may have to list assets in the future remain unclear. In the Commission’s most recent actions against Coinbase and Binance, the Commission laid out its view that the exchange, clearing, and broker-dealer functions should be separated into three different entities. Although Prometheus’s SPBD and related Alternative Trading System do not comport with the Commission’s principles of separation, Prometheus’s licensure approval withstood Commission scrutiny.

In April 2021, two years before obtaining its license, Prometheus submitted a comment letter in response to the Commission’s Request for Comment on the custody of digital asset securities by SPBDs, that asked the Commission to provide guidance and clarification on how the law applies to digital assets.¹ Since then, Prometheus has reversed its stance and now promotes the same false narrative propounded by Chair Gensler that there exists a clear pathway to registration for digital assets and legislation is unnecessary. Echoing this narrative, on June 13, 2023, co-CEO of Prometheus, Aaron Kaplan, testified before Congress stating that “new legislation is not in the best interest in the investing public or blockchain industry.”

We are concerned that the Commission granted Prometheus a “sweetheart” deal in exchange for support of the Commission’s policy goals, or that Prometheus is leveraging personal connections with the Commission to gain an unfair advantage in the market. Most significantly, we are concerned that Chair Gensler is using Prometheus and the SPBD licensure process as a means to thwart congressional efforts toward legislation by continuing to spread the false narrative that the law is already clear with regard to digital asset securities. We are particularly concerned about potential pressure from the Commission on FINRA regarding approval of Prometheus’s SPBD license.

On June 16, 2023, we submitted a request to the Commission under the Freedom of Information Act that seeks documents and communications regarding this matter. The industry is waiting for answers and we urge your office to open an investigation to either uncover any impropriety or confirm that these inferences bear no weight.

If you have any additional questions, please contact me at marisa@theblockchainassociation.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Jake Chervinsky".

Jake Chervinsky
Chief Policy Officer

A handwritten signature in black ink, appearing to read "Marisa T. Coppel".

Marisa T. Coppel
Senior Counsel

¹ Prometheus Inc., Comment Letter on Proposed Rule Regarding Custody of Digital Asset Securities by Special Purpose Broker-Dealers (Apr. 26, 2021), <https://www.sec.gov/comments/s7-25-20/s72520-8734178-237104.pdf>



cc: The Honorable Patrick McHenry
The Honorable Maxine Waters
The Honorable French Hill
The Honorable Stephen Lynch
The Honorable Ritchie Torres
The Honorable Bill Huizenga
The Honorable Al Green
Members of the House Financial Services Subcommittee on Oversight and Investigations