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UNITED STATES
HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL
SERVICES

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM

CHAIRMAN, SUBCOMMITTEE ON
MILITARY AND FOREIGN AFFAIRS

June 10, 2025

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

Dear Chair Atkins,

First, I want to thank you for your efforts to bring much needed and consistent clarity to the digital asset space in the United States. As the House Financial Services Committee continues to work on Market Structure legislation, I write to request specific documents revealing the Securities and Exchange Commission's ("SEC") historical views on the status of the cryptocurrency Ether ("ETH"), the world's second-most-prominent cryptocurrency. These documents, which are specified below, are records that the Biden Administration's SEC has already identified but withheld in response to a Freedom of Information Act ("FOIA") request and lawsuit filed by History Associates, a third-party FOIA expert, on behalf of Coinbase, Inc. ("Coinbase").¹ Disclosure of these documents is essential to ensuring that the digital-asset industry—and the American public—understand the SEC's historical approach to interpreting and enforcing the securities laws.

As is well-documented by now, under prior leadership the SEC refused to articulate a consistent, coherent view on how it believed the securities laws apply to digital assets.² Its zig-zagging approach to ETH is a case in point. In 2018, a top-ranking SEC official publicly announced that ETH is not a security.³ In April 2023 congressional testimony, however, former SEC Chair Gary Gensler cast doubt on ETH's status by repeatedly refusing to answer questions about whether the SEC views ETH as a security.⁴ As would later be revealed, days before that testimony the SEC had approved a formal investigation into whether ETH is a security—an

¹ See Coinbase, Coinbase's FOIA Reading Room, <https://www.coinbase.com/legal/foia>.

² See, e.g., Letter from Rep. Patrick McHenry and 47 other House members to the Hon. Gary Gensler, Chair, Securities and Exchange Commission (Mar. 26, 2024), <https://tinyurl.com/2dp8m5em> ("McHenry Letter"); see also Complaint ¶¶ 18-33, *History Associates Inc. v. SEC*, No. 1:24-cv-1858-ACR (D.D.C. Jun. 27, 2024), ECF 1, <https://tinyurl.com/4fnsvz7y>.

³ Former Director of the SEC Division of Corporation Finance William Hinman, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (Jun. 14, 2018), <https://www.sec.gov/news/speech/speech-hinman-061418>.

⁴ McHenry Letter, *supra* note 2.

investigation titled “In the Matter of ETH 2.0.”⁵ But in May 2024, the SEC suddenly changed course yet again. It approved spot ETH ETFs, which would be appropriate only if ETH is not a security, given that ETH has not been registered with the SEC.⁶ And a few weeks later, the SEC announced in a private letter to an investigative target that it had “concluded” the ETH 2.0 investigation.⁷ These repeated swerves caused destabilizing confusion for millions of American crypto-market participants.

The SEC under Chair Gensler never provided a public explanation for these actions. In an effort to obtain one, Coinbase directed History Associates to file a FOIA request seeking documents relating to the SEC’s views on ETH and to sue the SEC when its request was denied.⁸ In response to that litigation—and court orders compelling disclosure—the SEC has produced certain *Vaughn* indices describing records that the agency attempted to withhold from the public. These *Vaughn* indices are now publicly available on Coinbase’s website, <https://www.coinbase.com/legal/foia>. Among the withheld records referenced in the *Vaughn* indices are the following:

1. A set of emails and all attachments, including a memorandum titled “Analysis of Ethereum 2.0 under Howey.”⁹
2. A set of emails and all attachments, sent to former Chair Gensler contemporaneously with the SEC’s approval of the ETH 2.0 investigation.¹⁰
3. The case closing narrative for the ETH 2.0 investigation and related emails and attachments.¹¹
4. An email with the subject line “ETH—Security or Not.”¹²

⁵ Complaint ¶ 71, *Consensys Software Inc. v. Gensler*, No. 24-cv-00369 (N.D. Tex. Apr. 29, 2024), ECF 18.

⁶ Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products, Securities Exchange Act Release No. 34-100224 (May 23, 2024), <https://tinyurl.com/yd6mcvew>.

⁷ SEC Termination Letter (June 18, 2024), <https://tinyurl.com/2a97z4yt>.

⁸ See Complaint, *History Associates Inc. v. SEC*, No. 1:24-cv-1858-ACR (D.D.C. Jun. 27, 2024), ECF 1, <https://tinyurl.com/4fnsvz7y>.

⁹ Subpart 3 *Vaughn* Index at 35-38, Doc IDs GC-LIT-0470-0490750, GC-LIT-0470-0490752, GC-LIT-0470-0290819, GC-LIT-0470-0290821, GC-LIT-0470-0492721, GC-LIT-0470-0492724, <https://tinyurl.com/mu5bw963>.

¹⁰ Subpart 1 *Vaughn* Index at 3-5 (Entries #3-5), <https://tinyurl.com/2n2e7db9>.

¹¹ Subpart 4 *Vaughn* Index at 16 (Entry #20), <https://tinyurl.com/mu5bw963>; Subpart 3 *Vaughn* Index at 176-179, Doc IDs GC-LIT-0470-0811120, GC-LIT-0470-0811121, GC-LIT-0470-0809076, GC-LIT-0470-0809077, GC-LIT-0470-0812872, GC-LIT-0470-0812873, <https://tinyurl.com/mu5bw963>.

¹² Subpart 3 *Vaughn* Index at 155, Doc ID GC-LIT-0470-0643418, <https://tinyurl.com/mu5bw963>.

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5. An email with the subject line "RE Is Ethereum a security."¹³
6. A set of emails with the subject line "FW Spot ETH – security not security."¹⁴

Disclosing these documents will help Congress, market participants, and the public better understand how and why the SEC's position on ETH shifted under Chair Gensler. It will also bring transparency to the shadow "regulation by enforcement" approach that, for years under the prior Administration, hindered innovation and growth across the crypto industry.

Under its previous leadership, the SEC often fell short of the transparency and accountability demanded by our laws. I appreciate your attention to these critical matters and look forward to your response soon.

Sincerely,



William R. Timmons IV
Member of Congress

¹³ Subpart 3 *Vaughn* Index at 90, Doc ID GC-LIT-0470-0595947, <https://tinyurl.com/mu5bw963>.

¹⁴ Subpart 3 *Vaughn* Index at 134-35, Doc IDs GC-LIT-0470-0515348, GC-LIT-0470-0514381, GC-LIT-0470-0297613, <https://tinyurl.com/mu5bw963>.