

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

HISTORY ASSOCIATES INCORPORATED,

Plaintiff,

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,

Defendant.

No. 1:24-cv-01858

ANSWER

Defendant U.S. Securities and Exchange Commission (“SEC”) hereby responds to each numbered paragraph of Plaintiff History Associates Incorporated’s Complaint as follows:

INTRODUCTION

1. The SEC denies the allegations in this paragraph.
2. The allegations in this paragraph consist of Plaintiff’s opinions about the SEC’s authority and activities, to which no response is required. To the extent a response is required, the SEC denies that its position regarding digital assets “has no basis in the securities laws and has never coherently been explained by the agency.” The SEC also denies the final sentence in this paragraph.
3. The allegations in this paragraph consist of Plaintiff’s characterizations of the SEC’s activities and statements and testimony of SEC Chair Gary Gensler, to which no response is required.
4. The allegations in this paragraph consist of Plaintiff’s opinions about the SEC’s activities and views and of Plaintiff’s characterization of activities of “entrepreneurs,” to which no response is required.

5. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of the Freedom of Information Act ("FOIA"), to which no response is required. The allegations in the second sentence in this paragraph consist of legal conclusions, to which no response is required.

6. The SEC lacks knowledge or information sufficient to admit or deny the allegations in the first sentence in this paragraph. The SEC admits that one of the FOIA requests Plaintiff submitted to the SEC seeks records about an investigation regarding Ether. The SEC denies the remaining allegations in the second sentence in this paragraph. The SEC admits that the SEC Division of Enforcement investigation titled In the Matter of Ethereum 2.0 (C-08950) ("Ethereum 2.0 investigation") is closed and that the investigations from which records Plaintiff seeks in FOIA Request Nos. 23-03128-FOIA and 23-03120-FOIA are closed. The SEC denies the allegations in the third and fourth sentences in this paragraph.

7. The allegations in this paragraph consist of Plaintiff's characterization of the nature of this lawsuit, to which no response is required.

THE PARTIES

8. The SEC lacks knowledge or information sufficient to admit or deny the allegations in this paragraph.

9. The SEC admits the allegations in this paragraph.

RELATED PARTIES

10. The SEC admits Coinbase, Inc. is a publicly traded crypto-asset trading platform in the United States. The SEC lacks knowledge or information sufficient to admit or deny the remaining allegations in this paragraph.

JURISDICTION AND VENUE

11. The allegations in this paragraph consist of legal conclusions, to which no response is required.

12. The allegations in this paragraph consist of legal conclusions, to which no response is required. To the extent a response is required, the SEC admits that its headquarters are in Washington, D.C.

BACKGROUND¹

13. The allegations in this paragraph consist of Plaintiff's characterizations of digital assets and blockchains, to which no response is required.

14. The allegations in this paragraph consist of Plaintiff's characterizations of blockchains and digital assets, to which no response is required.

15. The allegations in this paragraph consist of Plaintiff's characterization of digital assets, to which no response is required.

16. The allegations in the first and second sentences in this paragraph consist of Plaintiff's characterizations of Coinbase and of a blog entry, to which no response is required. The allegations in the third sentence in this paragraph consist of a citation to the Coinbase website, to which no response is required.

17. The allegations in this paragraph consist of Plaintiff's characterization of Coinbase, to which no response is required.

¹ The allegations in the headings of the Background section of the Complaint consist of Plaintiff's characterizations of digital assets, the FOIA, and Plaintiff's activities, as well as Plaintiff's conclusions about the SEC's actions, to which no response is required.

18. The allegations in this paragraph consist of Plaintiff's opinion about the SEC's guidance regarding how the securities laws apply to digital assets, to which no response is required. To the extent a response is required, the SEC denies the allegations in this paragraph.

19. The allegations in the first and second sentences in this paragraph consist of Plaintiff's characterizations of SEC statements and a speech given by former SEC Director of Corporation Finance William Hinman, to which no response is required. The SEC refers to the referenced speech for the best evidence of its contents. The allegations in the third sentence in this paragraph consist of a citation to Mr. Hinman's speech, to which no response is required.

20. The allegations in the first and second sentences in this paragraph consist of Plaintiff's characterization of Chair Gensler's testimony before Congress, to which no response is required. The SEC refers to the referenced testimony for the best evidence of its contents. The allegations in the third sentence in this paragraph consist of a citation to a Virtual Hearing before the Committee on Financial Services of the U.S. House of Representatives, to which no response is required.

21. The allegations in the first and second sentences in this paragraph consist of Plaintiff's conclusion about the SEC's actions and Plaintiff's characterization of a letter from the SEC's Division of Corporation Finance to Coinbase, to which no response is required. The SEC refers to the referenced letter for the best evidence of its contents. The allegations in the third sentence in this paragraph consist of a citation to the letter from the SEC's Division of Corporation Finance to Coinbase, to which no response is required.

22. The allegations in the first and second sentences in this paragraph consist of Plaintiff's characterizations of the SEC's position on digital assets and of a transcript of a 2022 interview with Chair Gensler, to which no response is required. The SEC refers to the referenced

interview transcript for the best evidence of its contents. The allegations in the third sentence in this paragraph consist of a citation to the referenced interview transcript, to which no response is required.

23. The allegations in the first sentence in this paragraph consist of Plaintiff's characterizations of two speeches given by Chair Gensler, to which no response is required. The SEC refers to the referenced speeches for the best evidence of their contents. The allegations in the second sentence in this paragraph consist of citations to Chair Gensler's speeches, to which no response is required.

24. The SEC denies the allegations in this paragraph.

25. The allegations in this paragraph, including the chart, consist of Plaintiff's conclusions about the SEC's position on subjects relating to digital assets, to which no response is required. To the extent a response is required, the SEC denies that it has changed its position, that its position is "novel," that it is unable to articulate its position, and that its statements are "conflicting" or have resulted in a "slew of contradictions." The allegations in footnotes 1 through 8 consist of citations to a speech given by Mr. Hinman, court filings in other litigations, congressional testimony by Chair Gensler, a speech given by Chair Gensler, and a letter from the SEC's Division of Corporation Finance to Coinbase, to which no response is required. The SEC refers to the referenced speeches, court filings, letter, and testimony for the best evidence of their contents.

26. The allegations in this paragraph consist of Plaintiff's opinion about the SEC's approach toward digital assets, including Ether ("ETH"), to which no response is required. To the extent a response is required, the SEC denies that its approach towards digital assets, including ETH, has been "opaque" or "contradictory."

27. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of a speech given by Mr. Hinman, to which no response is required. The SEC refers to the referenced speech for the best evidence of its contents. The allegations in the second sentence in this paragraph consist of a citation to Mr. Hinman's speech, to which no response is required.

28. The allegations in this paragraph consist of Plaintiff's characterization of an interview with the Commodity Futures Trading Commission Chairman, to which no response is required. The SEC refers to the referenced interview for the best evidence of its contents. The allegations in the second sentence in this paragraph consist of a citation to the referenced interview, to which no response is required.

29. The allegations in this paragraph consist of Plaintiff's characterization of activity by Coinbase and the "digital-asset industry," to which no response is required.

30. The allegations in the first and second sentences in this paragraph consist of Plaintiff's characterizations of Chair Gensler's actions and of an article about congressional testimony that Chair Gensler gave, to which no response is required. The SEC refers to the referenced testimony for the best evidence of its contents. The allegations in the third sentence in this paragraph consist of a citation to the referenced article, to which no response is required.

31. The SEC admits that, on April 13, 2023, the Commission approved the issuance of a Formal Order of Investigation in the Ethereum 2.0 investigation and that the SEC issued subpoenas as part of that investigation. The remaining allegations consist of Plaintiff's opinion about the SEC's view of ETH, to which no response is required.

32. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of the activity of "industry participants," to which no response is required. The

allegations in the second sentence in this paragraph consist of a citation to the complaint in *Consensys Software Inc. v. Gary Gensler et al.* (N.D. Tex. 24-cv-369), to which no response is required.

33. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of the SEC's activity, to which no response is required. The SEC admits the allegations in the first clause in the second sentence in this paragraph. The allegations in the second clause in the second sentence in this paragraph consist of Plaintiff's opinion of the SEC's view, to which no response is required. The SEC admits that, on June 18, 2024, the SEC's Division of Enforcement sent a letter to Consensys Software Inc.'s counsel stating that it had concluded the Ethereum 2.0 investigation. The remaining allegations in the third sentence in this paragraph consist of Plaintiff's characterization of the Division of Enforcement's June 18, 2024 letter, to which no response is required. The SEC refers to the referenced letter for the best evidence of its contents. The allegations in the fourth sentence in this paragraph consist of a citation to the SEC's letter, to which no response is required.

34. The SEC denies the allegations in the first sentence in this paragraph. The allegations in the second sentence in this paragraph consist of Plaintiff's characterizations of an article and an interview with Chair Gensler, to which no response is required. The SEC refers to the referenced article and interview transcript for the best evidence of their contents. The allegations in the third sentence in this paragraph consist of citations to the referenced article and interview, to which no response is required.

35. The SEC admits that it has brought enforcement actions related to fraudulent and/or unregistered digital asset offerings and platforms, including against Coinbase, and has sought monetary remedies from defendants in those actions for violations of the federal

securities laws. The remaining allegations in the first sentence in this paragraph consist of Plaintiff's characterization of the SEC's actions, to which no response is required. The allegations in the second sentence in this paragraph consist of Plaintiff's characterization of SEC Commissioner Peirce's statement, to which no response is required. The SEC refers to the referenced statement for the best evidence of its contents. The allegations in the third sentence in this paragraph consist of a citation to Commissioner Peirce's statement, to which no response is required.

36. The SEC denies the allegations in this paragraph.

37. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of the SEC's position toward digital-asset firms, to which no response is required. The allegations in the second sentence in this paragraph consist of Plaintiff's characterization of digital-asset firms' communications with the SEC and of Plaintiff's opinion about digital-asset firms, to which no response is required.

38. The allegations in the first, second, and third sentences in this paragraph consist of Plaintiff's opinions about digital assets and digital-asset firms, to which no response is required. The allegations in the fourth sentence in this paragraph consist of a citation to a court filing in a separate litigation, to which no response is required.

39. The allegations in the first, second, and third sentences in this paragraph consist of Plaintiff's characterizations of the SEC's activities and of the SEC's court filing in a separate litigation, to which no response is required. The allegations in the fourth sentence in this paragraph consist of a citation to a court filing in a separate litigation, to which no response is required. The SEC refers to the referenced court filing for the best evidence of its contents.

40. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of SEC Commissioners' statements, to which no response is required. The allegations in the second sentence in this paragraph consist of citations to two SEC Commissioners' statements, to which no response is required. The SEC refers to the referenced statements for the best evidence of their contents.

41. The allegations in this paragraph consist of Plaintiff's opinions about federal regulation of the "digital-asset industry," to which no response is required.

42. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of activity by the Federal Deposit Insurance Corporation ("FDIC"), to which no response is required. The allegations in the second sentence in this paragraph consist of a citation to an FDIC Office of Inspector General evaluation report, to which no response is required. The SEC refers to the referenced report for the best evidence of its contents.

43. The allegations in the first sentence in this paragraph consist of Plaintiff's characterization of Federal Reserve guidance, to which no response is required. The allegations in the second sentence in this paragraph consist of a citation to a Federal Reserve policy statement, to which no response is required. The SEC refers to the referenced statement for the best evidence of its contents.

44. The SEC admits that it is a securities regulator and that staff in the SEC's Division of Corporation Finance and the Office of the Chief Accountant issued Staff Accounting Bulletin No. 121, effective April 11, 2022 ("SAB 121"). The remaining allegations in the first sentence in this paragraph consist of Plaintiff's opinion of SAB 121, to which no response is required. The SEC admits the allegations in the second sentence in this paragraph.

45. The SEC denies the allegations in this paragraph.

46. The allegations in this paragraph consist of Plaintiff's opinion about the "digital-asset industry," to which no response is required. To the extent a response is necessary, the SEC denies the allegations in this paragraph.

47. The allegations in this paragraph consist of Plaintiff's characterization of the FOIA, to which no response is required.

48. The allegations in this paragraph consist of legal conclusions, to which no response is required.

49. The allegations in this paragraph consist of legal conclusions, to which no response is required.

50. The allegations in this paragraph consist of legal conclusions, to which no response is required.

51. The allegations in this paragraph consist of legal conclusions, to which no response is required.

52. The allegations in this paragraph consist of legal conclusions, to which no response is required.

53. The SEC lacks knowledge or information sufficient to admit or deny the allegations in this paragraph.

54. The SEC admits that Plaintiff submitted a FOIA request to the SEC on July 28, 2023. The remaining allegations in this paragraph consist of Plaintiff's characterization of its FOIA request, to which no response is required. The SEC refers to the referenced FOIA request for a complete and accurate recitation of its contents.

55. The SEC admits that Plaintiff submitted a FOIA request to the SEC on July 28, 2023. The remaining allegations in this paragraph consist of Plaintiff's characterization of its

FOIA request, to which no response is required. The SEC refers to the referenced FOIA request for a complete and accurate recitation of its contents.

56. The SEC admits that the SEC's Office of FOIA Services ("FOIA Office") sent Plaintiff a letter dated October 18, 2023 regarding FOIA Request No. 23-03269-FOIA. The remaining allegations in this paragraph consist of Plaintiff's characterization of the letter, to which no response is required. The SEC refers to the referenced letter for a complete and accurate recitation of its contents.

57. The SEC admits the allegations in this paragraph.

58. The SEC admits that the SEC's Office of the General Counsel ("OGC") sent Plaintiff a letter dated February 6, 2024 concerning Plaintiff's appeal of the FOIA Office's response to FOIA Request No. 23-03269-FOIA. The SEC denies that OGC sent Plaintiff an appeal letter on February 5, 2024. The remaining allegations in this paragraph consist of Plaintiff's characterization of OGC's February 6, 2024 letter, to which no response is required. The SEC refers to the referenced letter for a complete and accurate recitation of its contents.

59. The allegations in this paragraph consist of Plaintiff's characterization of OGC's February 6, 2024 letter, to which no response is required. The SEC refers to the referenced letter for a complete and accurate recitation of its contents.

60. The SEC admits that the Ethereum 2.0 investigation concluded in June 2024 and is closed.

61. The SEC admits that Plaintiff submitted a multi-part FOIA request to the SEC on August 8, 2023. The remaining allegations in this paragraph consist of Plaintiff's characterization of its FOIA request, to which no response is required. The SEC refers to the referenced FOIA request for a complete and accurate recitation of its contents.

62. The SEC admits that Plaintiff submitted a multi-part FOIA request to the SEC on August 8, 2023. The remaining allegations in this paragraph consist of Plaintiff's characterization of its FOIA request, to which no response is required. The SEC refers to the referenced FOIA request for a complete and accurate recitation of its contents.

63. The SEC admits that the FOIA Office sent Plaintiff a letter dated August 11, 2023 regarding FOIA Request No. 23-03128-FOIA and a letter and records release on October 5, 2023 regarding FOIA Request No. 23-03120-FOIA. The remaining allegations in this paragraph consist of Plaintiff's characterizations of the letters and records release, to which no response is required. The SEC refers to the referenced letters and records release for complete and accurate recitations of their contents.

64. The SEC admits that Plaintiff submitted appeals in connection with the FOIA Office's responses to FOIA Request Nos. 23-03128-FOIA and 23-03120-FOIA. The allegations in the second and fourth sentences in this paragraph consist of Plaintiff's characterizations of its appeals letters to the SEC, to which no response is required. The SEC refers to the referenced letters for complete and accurate recitations of their contents. The allegations in the third sentence in this paragraph consist of citations to SEC orders in administrative proceedings, to which no response is required. The SEC refers to the referenced orders for complete and accurate recitations of their contents.

65. The SEC admits that OGC sent Plaintiff a letter dated December 5, 2023 concerning Plaintiff's appeal of the FOIA Office's response to FOIA Request No. 23-03128-FOIA. The remaining allegations in this paragraph consist of Plaintiff's characterization of the letter, to which no response is required. The SEC refers to the referenced letter for a complete and accurate recitation of its contents.

66. The SEC admits that OGC sent Plaintiff a letter dated January 23, 2024 concerning Plaintiff's appeal of the FOIA Office's response to FOIA Request No. 23-03120-FOIA. The remaining allegations in this paragraph consist of Plaintiff's characterization of the letter, to which no response is required. The SEC refers to the referenced letter for a complete and accurate recitation of its contents.

67. The allegations in this paragraph consist of Plaintiff's characterization of OGC's letters to Plaintiff dated December 5, 2023 and January 23, 2024, to which no response is required. The SEC refers to the referenced letters for complete and accurate recitations of their contents.

68. The SEC denies the allegations in this paragraph.

69. The allegations in this paragraph consist of Plaintiff's characterization of this FOIA lawsuit, to which no response is required.

COUNT I

70. The SEC repeats its responses to paragraphs 1 through 69.

71. The SEC admits the allegations in this paragraph.

72. The SEC admits the allegations in this paragraph.

73. The SEC denies the allegations in this paragraph.

74. The allegations in this paragraph consist of legal conclusions, to which no response is required.

75. The allegations in this paragraph consist of legal conclusions, to which no response is required.

76. The SEC admits that it asserted FOIA Exemption 7(A) in connection with FOIA Request Nos. 23-03269-FOIA, 23-03128-FOIA, and 23-03120-FOIA, but denies that FOIA

Exemption 7(A) did not apply to records responsive to those FOIA requests at the time of OGC's appeals decisions. The remaining allegations in this paragraph consist of legal conclusions, to which no response is required.

77. The SEC admits the allegations in the first sentence and in the first clause in the second sentence in this paragraph. The SEC denies the allegations in the second clause in the second sentence in this paragraph. The allegations in the third sentence in this paragraph consist of Plaintiff's characterization of its FOIA requests, to which no response is required.

78. The allegations in this paragraph consist of legal conclusions, to which no response is required. To the extent an answer is required, the SEC denies that its explanation regarding segregation was not sufficient.

79. The allegations in this paragraph consist of legal conclusions, to which no response is required.

80. The SEC denies the allegations in this paragraph.

81. The allegations in this paragraph consist of legal conclusions, to which no response is required.

82. The SEC denies the allegations in this paragraph.

PRAYER FOR RELIEF

The remaining paragraphs of Plaintiff's Complaint constitute a prayer for relief, to which no response is required. To the extent a response is deemed necessary, the SEC denies that Plaintiff is entitled to the relief requested in the unnumbered paragraphs, including subparts (a) through (g), and further denies that Plaintiff is entitled to any relief whatsoever, including costs and attorneys' fees.

GENERAL DENIAL

The SEC specifically denies each and every allegation of the Complaint that is not specifically and expressly admitted herein.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted as the SEC did not improperly withhold any documents under the FOIA.
2. On information and belief, certain exemptions under the FOIA protect from release some of the information sought by Plaintiff through its FOIA requests.
3. Plaintiff is not entitled to costs or fees.

Dated: August 7, 2024

Respectfully submitted,

/s/ Alexandra Verdi
ALEXANDRA VERDI
NY Reg. No. 5480934
Office of the General Counsel
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Telephone: (202) 551-5057
Fax: (202) 772-9263
Email: verdim@sec.gov

*Counsel for Defendant U.S. Securities and
Exchange Commission*