

EMPOWER OVERSIGHT

Whistleblowers & Research



May 9, 2022

VIA ELECTRONIC TRANSMISSION: OIG@SEC.GOV

Rebecca Sharek, Acting Inspector General
Office of Inspector General
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

RE: REFERRAL OF EVIDENCE OF VIOLATIONS OF ETHICS DIRECTIVES

Dear Ms. Sharek:

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization, which is dedicated to enhancing independent oversight of government and corporate wrongdoing. It works to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seeks to hold those authorities accountable to act on such reports by, among other means, publishing information concerning the same.

Empower Oversight has obtained evidence that a former high-level Securities and Exchange Commission (“SEC”) official disobeyed clear directives from the SEC’s Ethics Office. The directives were intended to ensure that the official avoided conflicts involving his direct financial interest in his former employer. The evidence—including documents the SEC produced in connection with Empower Oversight’s request under the Freedom of Information Act (“FOIA”)¹—establishes that the SEC’s Ethics Office’s guidance was ignored, and the resulting financial conflicts have predictably undermined the public’s perception that the SEC’s enforcement actions are fair and objective, particularly with regard to cryptocurrencies.

This letter refers the evidence disclosed regarding the conflicts and the apparent failure to properly mitigate them to the SEC’s Office of Inspector General (“SEC-OIG”) for further investigation and evaluation. This information raises serious questions about the ability of the SEC to properly manage and mitigate such conflicts, and the circumstances they describe threatens to undermine public confidence in the integrity of the SEC.

¹ The FOIA is codified at 5 U.S.C. § 552.

However, by virtue of its mission to be an independent watchdog, the SEC-OIG has an opportunity to help the restore some measure of public trust by conducting a thorough and unflinching review of this matter. The SEC-OIG should conduct a comprehensive review of these circumstances in order to:

- (1) Understand the degree to which the conflict involving this former official exacerbated the perception that the SEC's enforcement actions have selectively targeted some cryptocurrencies while giving others a free pass;
- (2) Explain to the public how the SEC's Ethics Office failed to effectively ensure compliance with its clear directives; and
- (3) Evaluate the SEC's policies and procedures to identify ways to more effectively monitor compliance with ethics guidance

Directives without compliance monitoring and sanctions for noncompliance are not meaningful; they are window dressings. A comprehensive SEC-OIG report could increase transparency and enhance public trust by recommending meaningful improvements to the ethics policies and procedures at the SEC.

BACKGROUND

A. Circumstances from Which Empower Oversight's FOIA Request Arose

It has been publicly reported that William Hinman worked as the Director of the Division of Corporate Finance at the SEC from May 2017 through December of 2020.² Previously, Mr. Hinman had been a partner at the law firm Simpson Thacher.³ He reportedly continued to receive millions of dollars from the firm while he was employed at the SEC.⁴ Further, Simpson Thacher reportedly is a member of the Enterprise Ethereum Alliance ("Ethereum"), which describes itself as an "industry organization whose objective is to drive the use of Enterprise Ethereum."⁵

In a June 2018 speech in his capacity as an SEC official, Mr. Hinman declared publicly that the Ethereum cryptocurrency, Ether, is not a security, stating that "based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions."⁶ After his declaration, Ether's value rose significantly.⁷

² SEC, *William Hinman Named Director of Division of Corporation Finance* (May 9, 2017), available at <https://www.sec.gov/news/press-release/2017-97> (last accessed on May 6, 2022).

³ *Id.*

⁴ Newsham, Jack, *A Top SEC Official Was Receiving a \$1.6 million Law-Firm Pension from Simpson Thacher that Was 7 Times His Government Salary. It Shows Why Cracking Down on 'Golden Parachutes' Is So Hard* (January 29, 2021), available at <https://www.businessinsider.com/sec-simpson-partner-pay-biden-golden-parachutes-2021-1> (last accessed on April 3, 2022).

⁵ Enterprise Ethereum Alliance, *About: The EEA is All About Possibilities* (Undated), available at <https://entethalliance.org/about/> (last accessed on May 6, 2022).

⁶ SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 4, 2018), available at <https://www.sec.gov/news/speech/speech-hinman-061418> (last accessed on May 6, 2022).

⁷ Vigna, Paul, *Crypto Market Rallies on SEC's Official's Ether Stance* (June 14, 2018), available at <https://www.wsj.com/articles/crypto-market-rallies-on-secs-officials-ether-stance-1529007646> (last accessed on May 6, 2022).

When Mr. Hinman departed the SEC in December of 2020, he rejoined Simpson Thacher as a partner.⁸ That same month, the SEC filed a lawsuit against one of Ethereum's rivals, Ripple Labs, Inc. ("Ripple"), alleging that its XRP cryptocurrency was a security, such that the company's offering and sales of XRP had been in violation of Federal securities laws.⁹ The value of XRP fell 25% immediately after the announcement of the SEC's lawsuit.¹⁰ Of note, the leader of the SEC's Enforcement Division that brought the suit against Ripple, Marc Berger, left the SEC shortly thereafter, and joined Mr. Hinman as a partner at Simpson Thacher.¹¹

Additionally, there are potential concerns regarding former SEC Chairman Jay Clayton. While at the SEC, Mr. Clayton publicly stated that Bitcoin is not a security,¹² and the value of Bitcoin rose.¹³ Moreover, the SEC's lawsuit against Ripple was filed at the end of Mr. Clayton's tenure there. Mr. Clayton exited at the same time as Mr. Hinman, in December 2020. Fewer than four months later, Mr. Clayton reportedly joined One River Asset Management, a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether—not XRP.¹⁴

B. Empower Oversight's August 12, 2021, FOIA Request

To promote the public's interest in understanding (1) the facts and circumstances surrounding Messrs. Hinman, Berger, and Clayton's past and future private sector employment, (2) whether any such relationships presented potential conflicts or public integrity concerns related to their official actions at the SEC, and (3) whether, how, and to what extent the SEC and its ethics officials properly mitigated any such issues, Empower Oversight submitted a FOIA request to the SEC on August 12, 2021.¹⁵ The FOIA request seeks eight categories of records, as follows:

1. All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar entries, notes, or emails between Mr. Hinman and any email address from the domain "[@stblaw.com](mailto:stblaw.com)";

⁸ Simpson Thacher, *Former SEC Division of Corporation Finance Director Bill Hinman Returns to Simpson Thacher* (January 12, 2021), available at www.stblaw.com/docs/default-source/related-link-pdfs/bill-hinman-rejoins-simpson-thacher_2021.pdf (last accessed on May 6, 2022).

⁹ SEC, *SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering* (December 22, 2020), available at <https://www.sec.gov/news/press-release/2020-338> (last accessed on May 6, 2022).

¹⁰ Finance Magnates, *XRP Plummets 25% After SEC's \$1.3 Billion Lawsuit Against Ripple* (December 23, 2020), available at <https://www.financemagnates.com/cryptocurrency/news/xrp-plummets-25-after-secs-1-3-billion-lawsuit-against-ripple/> (last accessed on May 6, 2022).

¹¹ Simpson Thacher, *Marc P. Berger, Former Acting Director of the SEC's Enforcement Division, to Join Simpson Thacher* (April 15, 2021), available at www.stblaw.com/docs/default-source/related-link-pdfs/marc-berger-to-join-simpson-thacher_2021.pdf (last accessed on May 6, 2022).

¹² CNBC, *SEC Chairman: Cryptocurrencies Like Bitcoin Are Not Securities* (June 6, 2018), available at <https://www.cnbc.com/video/2018/06/06/sec-chairman-cryptocurrencies-like-bitcoin-not-securities.html> (last accessed on May 6, 2022).

¹³ Bloomberg, *Cryptocurrency Rally Builds Steam as Bitcoin Surpasses \$7,500* (July 17, 2018), available at <https://www.bloomberg.com/news/articles/2018-07-17/bitcoin-surges-after-breaking-back-through-7-000-level> (last accessed on May 6, 2022).

¹⁴ Graffeo, Emily, *Former SEC Chair Jay Clayton Will Advise Digital Asset Hedge Fund One River on Crypto* (March 29, 2021), available at <https://markets.businessinsider.com/currencies/news/bitcoin-hedge-fund-sec-chair-jay-clayton-one-river-crypto-2021-3-1030256150> (last accessed on May 6, 2022).

¹⁵ Empower Oversight's August 12, 2022, FOIA request is attached as Exhibit 1.

2. All records relating to communications from May of 2017 through December of 2020 between Mr. Hinman and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Hinman and any email address from the domain “@entethalliance.org”;
3. All records relating to communications, including calendar entries, notes or emails between Mr. Hinman and any personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Hinman’s continued payments from Simpson Thacher while employed at SEC, his potential recusals or conflicts related to his prior or future employment at Simpson Thacher, as well as his discussions and negotiations with Simpson Thacher regarding rejoining the firm;
4. All records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from Simpson Thacher, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “@stblaw.com”;
5. All records relating to communications from May of 2017 through January of 2021 between Mr. Berger and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “@entethalliance.org”;
6. All records relating to communications, including calendar entries, notes, or emails between Mr. Berger and any personnel in the SEC’s Office of the Ethics Counsel, regarding Mr. Berger’s discussions and negotiations with Simpson Thacher, including all communications regarding potential recusals or conflicts related to his potential employment with Simpson Thacher;
7. All records relating to communication from May of 2017 through December of 2020 between Jay Clayton and personnel from One River Asset Management, including calendar entries, notes or emails between Mr. Clayton and any email address from the domain “@oneriveram.com”; and
8. All records of communications, including calendar entries, notes or emails between Mr. Clayton and personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Clayton’s discussions and negotiations with One River Asset Management, including all communications regarding potential recusals or conflicts related to his potential employment with One River Asset Management.

On August 13, 2021, the SEC—via eight separate letters corresponding to each of the eight items of Empower Oversight’s FOIA request (*i.e.*, items “1” through “8” set forth above)—acknowledged receipt of Empower Oversight’s request; assigned unique tracking numbers to each of the eight items of the request (*i.e.*, SEC FOIA Request Numbers: 21-02531-FOIA through 21-02538-FOIA, respectively); and advised that one or more FOIA Research Specialist(s) would be assigned to address the request.¹⁶

Since August 13th, Empower Oversight’s FOIA request has been the subject of FOIA appeals, litigation before the United States District Court for the Eastern District of Virginia,¹⁷

¹⁶ The SEC’s eight August 13, 2021, acknowledgements of Empower Oversight’s FOIA request are attached as Exhibit 2.

¹⁷ See, *e.g.*, Empower Oversight Whistleblowers & Research v. U.S. Securities and Exchange Commission, No. 1:21-cv-1370 (RDA/TCB).

and—most pertinent to this referral—the production of records in response to SEC FOIA Request Numbers 21-02531-FOIA and 21-02533-FOIA.

The SEC’s February 22, 2022, “amended¹⁸ and partial response” to FOIA Request Number 21-02531-FOIA forwarded 1,053 pages of responsive records (hereinafter “Hinman & Simpson Thacher Emails”) that the SEC had redacted allegedly pursuant to FOIA Exemption b(6), 5 U.S.C. § 552(b)(6), which protects information the release of which would constitute a clearly unwarranted invasion of personal privacy.¹⁹ FOIA Request Number 21-02531-FOIA seeks:

All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar entries, notes, or emails between Mr. Hinman and any email address from the domain “@stblaw.com.”

The SEC’s March 25, 2021, “partial response” to FOIA Request Number 21-02533-FOIA forwarded 196 pages of responsive records (hereinafter “Hinman & Ethics Office Emails”) that the SEC had redacted allegedly pursuant to FOIA Exemption b(6) and FOIA Exemption b(5), 5 U.S.C. § 552(b)(5), which protects inter-agency and intra-agency information that would not be available by law to a party other than an agency in litigation with the agency.²⁰ FOIA Request Number 21-02533-FOIA seeks:

All records relating to communications, including calendar entries, notes or emails between Mr. Hinman and any personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Hinman’s continued payments from Simpson Thacher while employed at SEC, his potential recusals or conflicts related to his prior or future employment at Simpson Thacher, as well as his discussions and negotiations with Simpson Thacher regarding rejoining the firm.

THE SEC ETHICS OFFICE’S DIRECTIONS TO MR. HINMAN

Included among the records that the SEC produced in response to FOIA Request Number 21-02533-FOIA are emails that show that the SEC’s Ethics Office²¹ cautioned Mr. Hinman that

¹⁸ On December 10, 2021, the SEC issued a false “no records” response to SEC Request Numbers 21-02531-FOIA.

¹⁹ The SEC’s February 22, 2022, amended partial response to FOIA Request Number 21-02531-FOIA is attached as Exhibit 3. The 1,053 pages of records forwarded by the SEC’s February 22nd correspondence is available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

²⁰ The SEC’s March 25, 2022, partial response to FOIA Request Number 21-02533-FOIA is attached as Exhibit 4. The 196 pages of records forwarded by the SEC’s March 25th correspondence is available at <https://empowr.us/wp-content/uploads/2022/04/2022-03-25-SEC-Responsive-Records-compressed.pdf>.

²¹ According to the SEC, its Ethics Office, which is subject to the guidance and oversight of the U.S. Office of Government Ethics, is responsible for advising and instructing all SEC employees about laws and regulations governing their personal and financial conflicts of interest, securities holdings and transactions, gifts, seeking and negotiating other employment, outside activities, financial disclosure, and post-employment restrictions. See, SEC, *Office of the Ethics Counsel: About the Office* (Modified January 7, 2020), available at <https://www.sec.gov/page/ethicssectionlanding> (last accessed on May 5, 2022); see also, Office of Government Ethics, *What We Do* (Undated), available at https://www.oge.gov/web/oge.nsf/about_what-we-do (last accessed on May 5, 2022).

Criminal laws governing SEC employees’ financial conflicts of interest include 18 U.S.C. §§ 203 and 208. In relevant part, Section 203(a) provides:

Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly . . . demands, seeks, receives, accepts, or agrees to receive or accept any compensation for any representational services, as agent or attorney or otherwise, rendered or to be rendered either personally or by another . . . at a time when such person is an

he had a direct financial interest in Simpson Thacher, and thus, he must recuse himself from any matters that would affect the firm. Lest Mr. Hinman may have misunderstood the position of the Ethics Office, it explicitly told him, per the documents, not to be in any contact with Simpson Thacher personnel for any reason.²²

Specifically, the records include an April 28, 2017, email containing “initial guidance” from the SEC’s Ethics Office. The email provides that Mr. Hinman’s receipt of retirement benefits from Simpson Thacher that are calculated “based on the profits” of the firm would mean that he “could not participate in any SEC particular matters that would directly” benefit the firm because the “future interest is enough to give you a full financial interest in the firm,” as follows:

officer or employee or Federal judge of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court, court-martial, officer, or any civil, military, or naval commission . . . shall be subject to the penalties set forth in section 216 of this title.

Whereas, Section 208(a), in relevant part, provides:

. . . [W]hoever, being an officer or employee of the executive branch of the United States Government . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest . . . [s]hall be subject to the penalties set forth in section 216 of this title.

²² It is not clear from the records that the SEC produced whether Mr. Hinman fully disclosed Simpson Thacher’s role in Ethereum to the SEC’s ethics officials. Hence, it also is not clear whether the ethics officials would have approved his meetings with Ethereum personnel or his official comments about Ether had they been fully apprised of Simpson Thacher’s role in Ethereum. See, e.g., *Deposition of William Harold Hinman, Jr.*, pp. 160, 163 – 174 (July 27, 2021), filed in *SEC v. Ripple Labs, Inc., et al.*, Case No. 20-cv-10832 (AT) (S.D.N.Y.), available at www.crypto-law.us/wp-content/uploads/2021/08/Exhibit-B-to-SEC-Motion-Redacted-Version-of-Hinman-Deposition-08172021.pdf (last accessed on May 4, 2022) (referencing a meeting between Mr. Hinman and a cofounder of/investor in Ethereum; the cofounder of/investor in Ethereum in question is also the owner of ConsenSys); *Response to the SEC’s September 14, 2021, Letter Regarding Documents Over Which the SEC Has Asserted the Deliberative Process Privilege*, filed in *SEC v. Ripple Labs, Inc., et al.*, Case No. 20-cv-10832 (AT) (S.D.N.Y.), available at www.crypto-law.us/wp-content/uploads/2021/09/Letter-Reply-from-Garlinghouse-and-Larsen-on-SEC-Motion-09292021.pdf (last accessed on May 4, 2022) (referencing meetings between Mr. Hinman’s staff at the SEC and ConsenSys); CyptoLaw, *Investors Meet SEC, Ask for Free Pass on Ether and Former SEC Counsel Nancy Wotjas Reveals Hinman Speech Lifted from ETH Document*, respectively available at <https://www.crypto-law.us/timeline/investors-meet-sec-on-safe-harbor-for-ether/> and <https://www.crypto-law.us/timeline/former-sec-counsel-nancy-wotjas-warning-against-sec/> (last accessed on May 4, 2022) (discussing a meeting between SEC officials and Enterprise Ethereum Alliance representatives Ethereum prior to Mr. Hinman’s claim that Ether is not a security, and reporting that a participant in the meetings with the SEC claimed that Mr. Hinman’s characterization of Ether’s status was copied from materials shared by Ethereum advocates at the meeting).

To: (b) (6) (b) (6)
Cc: Serrano, Danae (b) (6)
From: Minton, Shira
Sent: 2017-04-28T18:11:43-04:00
Importance: Normal
Subject: retirement benefits
Received: 2017-04-28T18:11:44-04:00

Bill, we have received some initial guidance from OGE and they posed some follow up questions (see below).

Of particular note, OGE advised that if the proposal from the firm would fix the payments only during your term of government service (i.e., if you would return to receiving retirement benefits that are in part calculated based on the profits of the firm at the conclusion of your government service), you would continue to have a financial interest in the firm's profitability while you are in government. This means you could not participate in any SEC particular matters that would directly and predictably affect the firm under 18 USC 208. In other words the future interest is enough to give you a full financial interest in the firm. Is it possible for them to fix it for not just the tenure of your government service but permanently?

For the 203 problem - they indicated that the fixed payment proposal would cure the problem of 18 USC 203 (sharing in profits related to representational activities before the government). However, you and the firm should both be aware that after you leave government service, you will continue to be prohibited from sharing in any profits the firm receives for representing clients before the government during the term of your government service, even if those payments are made once you are no longer a federal employee.

OGE was not conclusive on (b) (5) and asked that we get additional information about the following:

(b) (5)

On May 12, 2017, the SEC's Ethics Office provided Mr. Hinman with a draft memorandum, which was to be issued under his own name, that detailed the "screening arrangement I have implemented to ensure that I comply with my obligation to recuse myself from certain matters with which I have a financial interest, or a personal or business relationship."²³ The arrangement described in the document stated that Mr. Hinman had instructed an employee, Tamara Brightwell, "to screen all SEC matters directed to my attention that involve outside entities or that require my participation, to determine if they involve any of

²³ Hinman & Ethics Office Emails at p. 112, available at <https://empowr.us/wp-content/uploads/2022/04/2022-03-25-SEC-Responsive-Records-compressed.pdf>.

the entities or organizations listed above,” referring to a list of entities that included Simpson Thacher.²⁴

Later, on January 24, 2018, the SEC’s Ethics Office alleviated any grounds for misunderstanding its position, and advised Mr. Hinman not to have “any meetings with [his] old firm,” even if Simpson Thacher is merely a member of a group with whom he meets, as follows:

To: Hinman, William (b) (6)
Cc: Serrano, Danae (b) (6)
From: Minton, Shira
Sent: 2018-01-24T17:09:42-05:00
Importance: Normal
Subject: RE: AdHoc mtg in London
Received: 2018-01-24T17:09:42-05:00

The firms - but Bill, it occurs to us that you have a full financial conflict with your old firm, not just an impartiality one. hence, you should not be having any meetings with your old firm. even group meetings.

-----Original Message-----

From: Hinman, William
Sent: Wednesday, January 24, 2018 5:00 PM
To: Minton, Shira
Subject: Re: AdHoc mtg in London

Do you need the individuals partners or just the law firms?

Sent from my iPhone

> On Jan 24, 2018, at 4:36 PM, Minton, Shira <(b) (6)> wrote:
>
> if it will be less than a dozen, please provide the names so I can vet for Rob
>

> -----Original Message-----

> **From:** Hinman, William
> **Sent:** Wednesday, January 24, 2018 4:33 PM
> **To:** Minton, Shira
> **Subject:** Re: AdHoc mtg in London
>

> It's law firms only. His old firm and mine are likely to attend.

> Sent from my iPhone
>

>> On Jan 24, 2018, at 4:30 PM, Minton, Shira <(b) (6)> wrote:

>> (b) (5)

>> -----Original Message-----

>> **From:** Hinman, William
>> **Sent:** Wednesday, January 24, 2018 4:22 PM
>> **To:** Minton, Shira
>> **Subject:** Re: AdHoc mtg in London
>>

>> A number of firms other than STB and S&S will be present. Probably about a dozen. (b) (5)

>> Sent from my iPhone
>>

>>> On Jan 24, 2018, at 4:10 PM, Minton, Shira <(b) (6)> wrote:

>>> (b) (5)

²⁴ *Id* at p. 114.

EVIDENCE OF MR. HINMAN’S NONCOMPLIANCE WITH THE SEC’S DIRECTIVES

Contrary to the explicit instructions from the SEC’s Ethics Office, the records that the SEC produced in response to FOIA Request Number 21-02531-FOIA tend to show that Mr. Hinman failed to disclose Simpson Thacher’s—and by extension his—direct financial interest in Ethereum during his speech on Ether. Moreover, Mr. Hinman—who annually received more than \$1.5 million in retirement benefits from Simpson Thacher²⁵—had repeated contact with the law firm’s personnel, including the referral of a business prospect. The records do not, however, reveal efforts by Mr. Hinman to dissuade his former colleagues from contacting him, nor do they demonstrate that the SEC’s Ethics Office monitored his compliance with its directives.²⁶

A. Failure to Disclosure Direct Financial Interest

Mr. Hinman’s June 14, 2018, speech declaring that Ether is not a security failed to disclose to the public his direct financial interest in a member of Ethereum, Simpson Thacher. Additionally, no such disclosure has occurred subsequently in his public comments related to the speech, nor in the archived text of his speech on the SEC’s website.²⁷ Furthermore, nowhere have we found in the emails or documents produced by the SEC to date any evidence that the directives regarding the screening arrangement for all matters before Mr. Hinman to ensure compliance with ethics rules²⁸ were followed in relation to his June 2018 speech.

This failure to disclose his financial interest raises serious questions about whether Mr. Hinman also failed to submit his June 2018 speech—which was reportedly borrowed from materials provided to the SEC by Ethereum advocates²⁹—to the screening process that was explicitly laid out by the SEC’s Ethics Office in May 2017 or whether ethics officials failed to identify and take steps to mitigate the conflict presented by a speech about Ether in light of Mr. Hinman’s direct financial interest in a member of the Ethereum alliance.

B. Business Referral

Regarding the referral of a business prospect to Simpson Thacher, on July 14, 2017, at 11:12 AM, Jonathon Wiggins, who introduced himself as the Senior Recruiting Consultant for IMS ExpertServices, which locates and engages expert consultants on behalf of law firms, sent Mr. Hinman an email that states:

I was referred to you by Patrick Daugherty. . . .

I am seeking an expert in investment banking and the IPO process in China.

²⁵ Hinman & Simpson Thacher Emails at p. 998, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

²⁶ See generally, Hinman & Simpson Thacher Emails, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

²⁷ SEC, *Digital Asset Transactions: When Howey Met Gary (Plastic)* (June 4, 2018), available at <https://www.sec.gov/news/speech/speech-hinman-061418> (last accessed on May 6, 2022).

²⁸ See generally, Hinman & Ethics Office Emails at pp. 112 – 114, available at <https://empowr.us/wp-content/uploads/2022/04/2022-03-25-SEC-Responsive-Records-compressed.pdf>.

²⁹ See, *Former SEC Counsel Nancy Wotjas Reveals Hinman Speech Lifted from ETH Document*, respectively available at <https://www.cryptolaw.us/timeline/former-sec-counsel-nancy-wotjas-warning-against-sec/> (last accessed on May 4, 2022).

I'm hoping you might be able to offer a referral. Patrick said you were involved in the Alibaba IPO.

Thank you in advance for your time and consideration.³⁰

On the same day at 1:23 PM, Mr. Hinman referred Mr. Wiggins solely to his former Simpson Thacher partner, Dan Fertig, as follows:

You may want to ask Dan Fertig, a Simpson Thacher partner in Hong Kong for your referral. Given my current position at the SEC, I am not well placed to provide you the best names.³¹

Additionally, Mr. Hinman sent a courtesy copy of his email to Mr. Fertig.³²

Less than two hours later, at 3:49 AM (July 15, 2017), Mr. Fertig sent an email to Mr. Wiggins, with a courtesy copy to Mr. Hinman, that states:

Jonathan,

I am happy to **discuss or provide** relevant referrals with you. I may need a bit more detail on what you are looking for. I will email you again separately.

Bill, Thank you for thinking of me. Hope you are well.

Best regards,

Dan³³

Thus, in the middle of a workday, on his SEC-supplied email account, Mr. Hinman wasted no time conveying a business prospect, which could “directly and predictably affect the firm,” to Simpson Thacher. He received an unsolicited request for a business referral from someone seeking expert advice in investment banking and the IPO process in China, who advised that he had been referred to Mr. Hinman because of his involvement in the Alibaba IPO. About two hours later, Mr. Hinman referred the business prospect to his former partner at Simpson Thacher, Mr. Fertig. According to Simpson Thacher, Mr. Fertig has substantial investment banking experience, and he was involved with both the Alibaba and Focus Media IPOs.³⁴ Mr. Hinman, thus, likely knew that he was referring the business prospect to someone with the precise experience that the prospect requested, and perhaps he veiled his failure to name alternative/competing candidates—including ones employed by firms other than Simpson Thacher, which paid him more than \$1.5 million annually in retirement benefits—with the statement “[g]iven my current position at the SEC, I am not well placed to provide you the best names.”³⁵

³⁰ Hinman & Simpson Thacher Emails at p. 59 (emphasis original), available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

³¹ *Id.* at p. 59.

³² *Id.*

³³ *Id.* at p. 60 (emphasis added).

³⁴ See, Simpson Thacher, *Our Team: Dan Fertig*, available at <https://www.stblaw.com/our-team/partners/daniel-fertig>.

³⁵ In contrast to his using official resources and thus potentially creating the appearance that his referral was an authorized activity, he did not respectfully decline to offer a referral. Further—without suggesting or implying that doing so would modify the ethical impact of his referral—

Mr. Hinman's use of the SEC's resources to refer the potential business prospect to Simpson Thacher provided the SEC's Ethics Office with an opportunity to monitor his compliance with its directives. Consequently, it could be useful for the SEC-OIG to compile and review all communications that Mr. Hinman may have had with SEC ethics officials in July of 2017, as well as all records that the Ethics Office created, if any, in connection with the monitoring of his activities.

C. Miscellaneous Contacts

Additionally, Mr. Hinman was beset by contacts from his former colleagues at Simpson Thacher. Discounting invitations for various lunches and dinners, his former colleagues at the law firm:

- Encouraged him to modify SEC policy, raising the SEC's \$2,000 investment threshold for shareholders seeking to include a proposal on a public company's proxy statement,³⁶ and
- Invited him (and his principal, SEC's then Chairman Jay Clayton) to exclusive conferences, which would be attended by current and potential clients of his former law firm.

Specifically, after allegedly encountering Mr. Hinman on May 15, 2017, Simpson Thacher Associate Yafit Cohn sent him an email explaining that she and A.J. Kess—a Simpson Thacher partner, whom she referred to as "AJ" in her email—had authored an opinion editorial in 2015 that discussed "why the \$2,000 threshold for submitting shareholder proposals is abysmally low and . . . the potential consequences, over the long term, of not increasing that threshold."³⁷ Ms. Cohn attached her editorial to her email.³⁸ The emails produced by the SEC do not include a response from Mr. Hinman to Ms. Cohn's email.

On the other hand, the documents produced by the SEC show Mr. Hinman responding favorably to invitations to conferences that do not appear to have been open to a large number of people with a diversity of views. Rather, they appear to have been insular affairs—sponsored in part by Simpson Thacher personnel—designed to provide insiders with special access to high-level SEC officials and thereby burnish the law firm's reputation among regulated entities. For example, on May 24, 2017, Kevin Kennedy invited Mr. Hinman and "maybe a few other senior folks" to come "out to the West Coast" to speak at a "conference" sponsored by the Berkeley Center for Law Business and the Economy ("BCLBE").³⁹ About a week later, Mr. Kennedy elaborated on his vision for the "conference":

My vision for this is that this would be an invitation only, round table with senior members of the Staff (hopefully including you) and the leaders of the local mega-

he did not recommend additional qualified candidates associated with firms in which he did not hold a financial interest; disclaim the SEC's knowledge, agreement, or consent to his endorsement; nor divert the communication to his personal email resources.

³⁶ Hinman & Simpson Thacher Emails at pp. 17 – 20, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

³⁷ *Id.* at p. 17.

³⁸ *Id.* at pp. 18 – 20.

³⁹ *Id.* at p. 23.

unicorns (Uber, Airbnb, Palantir, etc.). We'd ask them to share their views on capital raising and what, if any, regulatory concerns are preventing them from going public. The Staff, in turn, could speak about its regulatory priorities and initiatives under the new administration. It could be a way for the two sides to speak to each other directly and hopefully provide a meaningful amount of feedback both sides could use.

I think this could be a really interesting and unique event, that really couldn't be replicated in NY, San Diego or any of the other major securities conferences. We'd be offering direct access to some of the companies that I think will need to be the targets of any capital formation projects you and Jay develop.^{40, 41}

Mr. Hinman replied that Mr. Kennedy's vision sounded "like something we would want to do," and committed to get back to him with "more thoughts soon."⁴² Later, he advised that he had assigned the matter to a subordinate (and then to another subordinate) to coordinate.⁴³

Similarly, on September 5, 2017, Joshua Bonnie⁴⁴ asked Mr. Hinman whether he would be "willing to have dinner with the Ad Hoc group up in NY?"⁴⁵ He added:

I have been asked to extend the invitation. As you may (or may not!) recall we generally meet on the first Monday evening of each month (although this month it was tonight). So, for the rest of the year, we are slated for October 2, November 6 and December 4.⁴⁶

Mr. Hinman replied the next day that "[b]oth Jay [Clayton] and I would like to go to an Ad Hoc dinner," but asked about dates in 2018.⁴⁷ Mr. Bonnie responded that the first several meetings in 2018 would be on January 8, February 5, March 5, and April 2,⁴⁸ and then later in September he inquired whether Mr. Hinman had decided on a potential date in 2018.⁴⁹

On November 6, 2017, Mr. Bonnie reprised his inquiry about Mr. Hinman's preferences among the 2018 dates, and Mr. Hinman replied that he was "[c]hecking with the boss on Ad Hoc

⁴⁰ *Id* at p. 24.

⁴¹ Later, Mr. Kennedy advised that BCLBE had secured a meeting space at "the University Club at Memorial Stadium, which is pretty spectacular," that the CFO's of Airbnb and DropBox had already confirmed their attendance, and that he reckoned that "just about everyone" that BCLBE invites will "send a senior executive" to the event. *See, Id* at p. 41.

⁴² *Id* at p. 26.

⁴³ *Id* at pp. 33, 49.

⁴⁴ Mr. Bonnie is a Simpson Thacher partner, who met Mr. Hinman for lunch several times during his tenure at the SEC. *See*, Simpson Thacher, *Our Team: Joshua Ford Bonnie*, available at <https://www.stblaw.com/our-team/partners/joshua-ford-bonnie>; *see also*, generally, Hinman & Simpson Thacher Emails, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

⁴⁵ *Id* at p. 68.

⁴⁶ *Id*.

⁴⁷ *Id* at p. 70.

⁴⁸ *Id* at p. 73.

⁴⁹ *Id* at p. 114.

dates.”⁵⁰ To which Mr. Bonnie replied, “[Let me know] what the Boss says about the field trip to the Links Club next year.”^{51, 52}

On December 5, 2017, Mr. Hinman indicated that his preference for a 2018 date to meet with the Ad Hoc group would be April 2.⁵³ Mr. Bonnie responded:

I don’t think I am going out on a limb by saying that we will all be honored to have you and Jay on April 2. Let[’]s book it! Thank you for getting back to me. Will let the rest of the gang know.⁵⁴

On March 7, 2018, Mr. Bonnie advised that he had heard that Mr. Hinman was encountering an administrative problem connected with his attendance at the Ad Hoc group meeting, and inquired whether the problem involved attendance of Simpson Thacher personnel at the meeting.⁵⁵ Mr. Hinman confirmed what Mr. Bonnie had heard, explaining that the SEC’s ethics officials “were resisting [his] attending if Simpson Thacher was going to be present.”⁵⁶ He added, “I don’t like the idea of Simpson Thacher having to miss the meeting because of me but we can talk about it.”⁵⁷ And, Mr. Bonnie asked whether the SEC’s ethics officials also had problems with former Chairman Clayton’s attendance if attorneys from Sullivan & Cromwell—where Chairman Clayton had been a partner—were present.⁵⁸

Mr. Bonnie subsequently offered for Simpson Thacher personnel to forgo the meeting to accommodate Messrs. Hinman and Clayton’s attendance,⁵⁹ and Mr. Hinman agreed to his proposal.⁶⁰ And, on the morning of April 2, 2018, Mr. Hinman confirmed to Mr. Bonnie that he would be attending the meeting of the Ad Hoc group that evening.⁶¹

In light of this evidence, it is clear that Mr. Hinman did not faithfully follow the guidance and directives of the SEC’s Ethics Office concerning communications and contacts with his former law firm at a time when he still had a direct financial interest in that firm. Accordingly, it is essential that the SEC-OIG independently study these facts and circumstances in order

⁵⁰ *Id* at p. 129.

⁵¹ *Id* at p. 149.

⁵² The Links Club is an exclusive social club in New York City. See, e.g., Club Leaders Forum, *America’s Top Private Clubs of Excellence, 2016 – 2018*, available at <https://www.harvardclub.com/wp-content/uploads/2016/11/Platinum-Clubs-of-America-2016-2018.pdf>; Playing the Top 100 Golf Course in the World Blog, *The Links – New York City*, available at <http://top100golf.blogspot.com/2006/11/links-club.html>.

⁵³ Hinman & Simpson Thacher Emails at p. 173, available at <https://www.documentcloud.org/documents/21274400-hinman-simpson-thacher-emails-21822>.

⁵⁴ *Id* at p. 180.

⁵⁵ *Id* at p. 230.

⁵⁶ *Id* at p. 240.

⁵⁷ *Id*.

⁵⁸ *Id* at p. 268.

⁵⁹ *Id* at p. 362.

⁶⁰ *Id* at p. 388.

⁶¹ *Id* at p. 441.

recommend improvements to the SEC's policies and procedures that would bolster public confidence in its commitment to policing such conflicts more effectively in the future.

Thank you for your time and consideration to this important matter.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

Exhibit 1

EMPOWER OVERSIGHT

Whistleblowers & Research



August 12, 2021

VIA ELECTRONIC TRANSMISSION: FOIAPA@SEC.GOV

Olivier Girod, Acting Chief FOIA/PA Officer
Office of FOIA Services
100 F Street NE
Washington, DC 20549-2465

RE: FREEDOM OF INFORMATION ACT REQUEST

Dear FOIA Officer:

Introduction

Empower Oversight Whistleblowers & Research (“Empower Oversight”) is a nonpartisan, nonprofit educational organization dedicated to enhancing independent oversight of government and corporate wrongdoing. We work to help insiders safely and legally report waste, fraud, abuse, corruption, and misconduct to the proper authorities, and seek to hold those authorities accountable to act on those reports by, among other means, publishing information to inform the public.

Background

We write today seeking information regarding the appearance of conflicts of interest by former high-level officials at the SEC relating to cryptocurrencies. It is in the public’s interest that the government’s emerging regulatory approach to cryptocurrencies is based on objective legal principles, without the appearance that conflicted SEC officials may be picking cryptocurrency winners and losers based on personal financial interests. The way in which these former SEC officials declared whether particular cryptocurrencies were securities—and thus subject to SEC regulation—raises public integrity concerns.

As publicly reported, Mr. William Hinman worked as the Director of the Division of Corporate Finance at the SEC from May 2017 through December of 2020, having previously been a partner at the law firm Simpson Thacher.¹ Mr. Hinman reportedly continued to receive millions of dollars from Simpson Thacher while employed at the

¹ “William Hinman Named Director of Division of Corporation Finance,” SEC ([May 9, 2017](#)).

SEC.² Notably, Simpson Thacher is a member of the Enterprise Ethereum Alliance, an “industry organization whose objective is to drive the use of Enterprise Ethereum.”³ In a June 2018 speech in his official capacity as an SEC official, Mr. Hinman declared that the Ethereum cryptocurrency, Ether, was not a security, stating that “based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions.”⁴ After his declaration, Ether’s value then rose significantly.⁵ When Mr. Hinman departed the SEC in December of 2020, he rejoined Simpson Thacher as a partner.⁶

That same month, the SEC filed a lawsuit against one of Ethereum’s rivals, Ripple, alleging that its XRP cryptocurrency was a security, such that the company’s offering and sales of XRP had been in violation of federal securities laws.⁷ The value of XRP fell 25% immediately after the announcement of the SEC lawsuit.⁸ Of note, the leader of the SEC’s Enforcement Division that brought the suit, Marc Berger, then left the SEC shortly thereafter, joining Mr. Hinman as a partner at Simpson Thacher.⁹

Additionally, there are potential concerns regarding former SEC Chairman Jay Clayton. As with Mr. Hinman and Ether, while at the SEC, Mr. Clayton publicly stated that Bitcoin was not a security,¹⁰ and the value of Bitcoin rose.¹¹ The SEC’s lawsuit against Ripple was filed at the end of Mr. Clayton’s tenure there. Shortly after he left, he reportedly joined One River Asset Management, a cryptocurrency hedge fund that focuses exclusively on Bitcoin and Ether—not XRP.¹²

The SEC’s handling of cryptocurrency issues is of significant public importance, and these appearances of conflicts of interest raise substantial issues. Transparency from the SEC is the only way to ensure accountability to the public. In light of this, we are filing this FOIA request to seek the facts.

Records Request

1. All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar

² “A top SEC official was receiving a \$1.6 million law-firm pension from Simpson Thacher that was 7 times his government salary,” *Business Insider* ([Jan 29, 2021](#)).

³ Enterprise Ethereum Alliance (<https://entethalliance.org/about/>).

⁴ “Digital Asset Transactions: When Howey Met Gary (Plastic),” William Hinman ([Jun 4, 2018](#)).

⁵ “Crypto Market Rallies on SEC’s Official’s Ether Stance,” *Wall Street Journal* ([Jun 14, 2018](#)).

⁶ “Former SEC Division of Corporation Finance Director Bill Hinman Returns to Simpson Thacher,” Simpson Thacher & Bartlett LLP ([Jan 12, 2021](#)).

⁷ “SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering,” SEC ([Dec 22, 2020](#)).

⁸ “XRP Plummets 25% after SEC’s \$1.3 Billion Lawsuit against Ripple,” *Finance Magnates* ([Dec 23, 2020](#)).

⁹ “Marc P. Berger, Former Acting Director of the SEC’s Enforcement Division, to Join Simpson Thacher,” Simpson Thacher & Bartlett LLP ([Apr 15, 201](#)).

¹⁰ “SEC chairman: Cryptocurrencies like bitcoin are not securities,” *CNBC* ([Jun 6, 2018](#)).

¹¹ “Cryptocurrency Rally Builds Steam as Bitcoin Surpasses \$7,500,” *Bloomberg* ([Jul 17, 2018](#)).

¹² “Former SEC chair Jay Clayton will advise digital asset hedge fund One River on crypto,” *Markets Insider* ([Mar 29, 2021](#)).

entries, notes, or emails between Mr. Hinman and any email address from the domain “@stblaw.com”;

2. All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Hinman and any email address from the domain “@entethalliance.org”;
3. All records relating to communications, including calendar entries, notes or emails between Mr. Hinman and any personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Hinman’s continued payments from Simpson Thacher while employed at SEC, his potential recusals or conflicts related to his prior or future employment at Simpson Thacher, as well as his discussions and negotiations with Simpson Thacher regarding rejoining the firm;
4. All records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from Simpson Thacher, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “@stblaw.com”;
5. All records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Berger and any email address from the domain “@entethalliance.org”;
6. All records relating to communications, including calendar entries, notes, or emails between Mr. Berger and any personnel in the SEC’s Office of the Ethics Counsel, regarding Mr. Berger’s discussions and negotiations with Simpson Thacher, including all communications regarding potential recusals or conflicts related to his potential employment with Simpson Thacher;
7. All records relating to communication from May of 2017 through December of 2020 between Jay Clayton and personnel from One River Asset Management, including calendar entries, notes or emails between Mr. Clayton and any email address from the domain “@oneriveram.com”;
8. All records of communications, including calendar entries, notes or emails between Mr. Clayton and personnel in the SEC’s Office of the Ethics Counsel regarding Mr. Clayton’s discussions and negotiations with One River Asset Management, including all communications regarding potential recusals or conflicts related to his potential employment with One River Asset Management.

Definitions

“COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more persons, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, voice-mail messages, text messages, meeting minutes, discussions, releases, statements, reports, publications, and any recordings or reproductions thereof.

“DOCUMENT(S)” or “RECORD(S)” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically or otherwise. As used herein, the terms “DOCUMENT(S)” or “RECORD(S)” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, or other documentation of telephone or other conversations, interviews, affidavits, slides, statement summaries, opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, data sheets, computer printouts, tapes, discs, microfilm, and all other records kept, regardless of the title, author, or origin.

“PERSON” means individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

“REFERS,” “REFERRING TO,” “REGARDS,” REGARDING,” “RELATES,” “RELATING TO,” or “PERTAINS TO” mean containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.

Instructions

The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

The singular form shall include the plural form and vice versa.

The present tense shall include the past tense and vice versa.

In producing the records described above, you shall segregate them by reference to each of the numbered items of this Freedom of Information Act request.

Fee Waiver Request

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but requests a waiver of any fees that may be associated with processing this request, in keeping with 5 U.S.C. § 552 (a)(4)(A)(iii).

Empower Oversight is a non-profit educational organization as defined under Section 501(c)(3) of the Internal Revenue Code, and has no commercial interest in making this request. Accordingly, pursuant to 5 U.S.C. § 552 (a)(4)(A)(ii)(II), it is subject only to “reasonable standard charges for document duplication.”

Moreover, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the government.

The public has a significant interest in understanding (1) the facts and circumstances surrounding senior SEC officials past and future private sector employment, (2) whether any such relationships presented potential conflicts or public integrity concerns related to their official actions at the SEC, and (3) whether, how, and to what extent the SEC and its ethics officials properly mitigated any such issues.

Empower Oversight is committed to government accountability and public integrity and is committed to public disclosure of documents via its website, and by providing these documents to the media for public dissemination. Hence, information it receives that either confirms or dispels the public integrity concerns described above will be published to empower Americans to accurately assess the proper level of public confidence they should have in the integrity of the SEC—making this request undeniably eligible for a waiver or reduction of fees under 5 U.S.C. § 552 (a)(4)(A)(iii)

Thank you for your prompt attention to this matter.

Cordially,

[/Jason Foster/](#)

Jason Foster
Founder & President

Exhibit 2



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research 2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02531-FOIA (1 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar entries, notes, or emails between Mr. Hinman and any email address from the domain "@stblaw.com."**

Your request has been assigned tracking number 21-02531-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02532-FOIA (2 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Hinman and any email address from the domain "@entethalliance.org".**

Your request has been assigned tracking number 21-02532-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

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Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02533-FOIA (3 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records relating to communications, including calendar entries, notes or emails between Mr. Hinman and any personnel in the SEC's Office of the Ethics Counsel regarding Mr. Hinman's continued payments from Simpson Thacher while employed at SEC, his potential recusals or conflicts related to his prior or future employment at Simpson Thacher, as well as his discussions and negotiations with Simpson Thacher regarding rejoining the firm.**

Your request has been assigned tracking number 21-02533-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

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Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02534-FOIA (4 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from Simpson Thacher, including calendar entries, notes or emails between Mr. Berger and any email address from the domain "@stblaw.com".**

Your request has been assigned tracking number 21-02534-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02535-FOIA (5 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Berger and any email address from the domain "@entethalliance.org"**.

Your request has been assigned tracking number 21-02535-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
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WASHINGTON, DC 20549-2465

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02536-FOIA (6 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records relating to communications, including calendar entries, notes, or emails between Mr. Berger and any personnel in the SEC's Office of the Ethics Counsel, regarding Mr. Berger's discussions and negotiations with Simpson Thacher, including all communications regarding potential recusals or conflicts related to his potential employment with Simpson Thacher;.**

Your request has been assigned tracking number 21-02536-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02537-FOIA (7 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records relating to communication from May of 2017 through December of 2020 between Jay Clayton and personnel from One River Asset Management, including calendar entries, notes or emails between Mr. Clayton and any email address from the domain "@oneriveram.com"**.

Your request has been assigned tracking number 21-02537-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

August 13, 2021

Mr. Jason Foster Founder & President
Empower Oversight
Whistleblowers & Research
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02538-FOIA (8 of 8)**

Dear Mr. Foster:

This letter is an acknowledgment of your FOIA request dated August 12, 2021, and received in this office on August 13, 2021, for records regarding **all records of communications, including calendar entries, notes or emails between Mr. Clayton and personnel in the SEC's Office of the Ethics Counsel regarding Mr. Clayton's discussions and negotiations with One River Asset Management, including all communications regarding potential recusals or conflicts related to his potential employment with One River Asset Management.**

Your request has been assigned tracking number 21-02538-FOIA. Your request will be assigned to a Research Specialist for processing and you will be notified of the findings as soon as possible. If you do not receive a response after thirty business days from when we received your request, you have the right to seek dispute resolution services from an SEC FOIA Public Liaison or the Office of Government Information Services (OGIS). A list of SEC FOIA Public Liaisons can be found on our agency website at <https://www.sec.gov/oso/contact/foia-contact.html>. OGIS can be reached at 1-877-684-6448 or [Archives.gov](https://www.archives.gov) or via email at ogis@nara.gov.

In the interim, if you have any questions about your request, you may contact this office by calling (202) 551-7900, or sending an e-mail to foiapa@sec.gov. Please refer to your tracking number when contacting us.

For additional information, please visit our website at www.sec.gov and follow the FOIA link at the bottom.

Sincerely,

Office of FOIA Services

Exhibit 3



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

AMENDED RESPONSE

February 22, 2022

Mr. Jason Foster
Empower Oversight
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02531-FOIA**

Dear Mr. Foster:

This letter is an amended and partial response to your request, dated August 12, 2021 and received in this office on August 13, 2021, for the records described below. Reference is also made to our letter dated August 16, 2021, in which we responded to your request for a fee waiver.

Request No.	Subject
21-02531-FOIA	All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar entries, notes, or emails between Mr. Hinman and any email address from the domain "@stblaw.com"

By letter dated December 7, 2021, we informed you that we conducted a thorough search of the SEC's various systems of records, but did not locate or identify any records responsive to your request. We also provided you with your appeal rights.

After conducting another search for records we located 1,112 pages of records that may be responsive to your request. The enclosed 1,053 pages of records are being provided to you, with the exception of certain SEC staff and third-party email addresses and telephone numbers as well as certain personal information including, for example, personal photographs and details about family vacations. This information is being withheld under 5 U.S.C. § 552(b)(6). Under Exemption 6, the release of this information would constitute a clearly unwarranted invasion of personal privacy.

Mr. Jason Foster
February 22, 2022
Page 2

21-02531-FOIA

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

The remaining 59 pages of records are subject to possible confidential treatment. Once the substantiation process is complete we will advise you of our findings.

In the interim, if you have any questions, please contact Joel Hansen of my staff at hansenjo@sec.gov or (202) 551-8377. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,

A handwritten signature in black ink, appearing to read "L Katilius". The signature is fluid and cursive, with the first letter "L" being large and prominent.

Lizzette Katilius
FOIA Branch Chief

Enclosures

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

In addition, you may also contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. OGIS can be reached at 1-877-684-6448 or via e-mail at ogis@nara.gov. Information concerning services offered by OGIS can be found at their website at [Archives.gov](https://www.archives.gov). Note that contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal.

Exhibit 4



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATION PLACE
100 F STREET, NE
WASHINGTON, DC 20549-2465

Office of FOIA Services

March 25, 2022

Mr. Jason Foster
Empower Oversight
2615 Columbia Pike, #445
Arlington, VA 22204

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request No. **21-02533-FOIA**

Dear Mr. Foster:

This letter is in partial response to your request, dated August 12, 2021 and received in this office on August 13, 2021, for the eight subjects shown below. Please note each subject was assigned a separate FOIA tracking number. Reference is also made to our letter dated August 16, 2021, in which we responded to your request for a fee waiver.

Request No.	Subject
21-02531-FOIA	All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from Simpson Thacher, including calendar entries, notes, or emails between Mr. Hinman and any email address from the domain "@stblaw.com"
21-02532-FOIA	All records relating to communications from May of 2017 through December of 2020 between William Hinman and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Hinman and any email address from the domain "@entethalliance.org"
21-02533-FOIA	All records relating to communications, including calendar entries, notes or emails between Mr. Hinman and any personnel in the SEC's Office of the Ethics Counsel regarding Mr. Hinman's continued payments from Simpson Thacher while employed at SEC, his potential recusals or conflicts related to his prior or future employment at Simpson Thacher, as well as his discussions and negotiations with Simpson Thacher regarding rejoining the firm
21-02534-FOIA	All records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from Simpson Thacher, including calendar entries, notes or emails between Mr. Berger and any email address from the domain "@stblaw.com"

Request No.	Subject
21-02535-FOIA	All records relating to communications from May of 2017 through January of 2021 between Marc Berger and any personnel from the Enterprise Ethereum Alliance, including calendar entries, notes or emails between Mr. Berger and any email address from the domain "@entethalliance.org"
21-02536-FOIA	All records relating to communications, including calendar entries, notes, or emails between Mr. Berger and any personnel in the SEC's Office of the Ethics Counsel, regarding Mr. Berger's discussions and negotiations with Simpson Thacher, including all communications regarding potential recusals or conflicts related to his potential employment with Simpson Thacher
21-02537-FOIA	All records relating to communication from May of 2017 through December of 2020 between Jay Clayton and personnel from One River Asset Management, including calendar entries, notes or emails between Mr. Clayton and any email address from the domain "@oneriveram.com"
21-02538-FOIA	All records of communications, including calendar entries, notes or emails between Mr. Clayton and personnel in the SEC's Office of the Ethics Counsel regarding Mr. Clayton's discussions and negotiations with One River Asset Management, including all communications regarding potential recusals or conflicts related to his potential employment with One River Asset Management

This letter partially responds to FOIA Request No. 21-02533-FOIA, only.

The search for responsive records has resulted in the retrieval of 329 pages of records that may be responsive to your request. The enclosed 196 pages of records are being provided to you, with the exception of the following information:

- Under 5 U.S.C. § 552(b)(5) certain information consisting of internal staff notes and guidance are being withheld. Withheld portions of these records reflect an integral part of the pre-decisional process and therefore are protected from release by the deliberative process privilege embodied in Exemption 5.
- Under 5 U.S.C. § 552(b)(6) SEC staff emails, direct dial numbers, personal email addresses, phone numbers, information about bank accounts and financial holdings, family members and personal relationships, personal travel and property, and information about Mr. Hinman's employment arrangements prior to joining the SEC, has

been withheld. Under Exemption 6, the release of this information would constitute a clearly unwarranted invasion of personal privacy.

Additionally, ten (10) pages (consisting of attachments to the released emails) are being withheld in their entirety under 5 U.S.C. § 552(b)(6) for the reasons explained above.

I am the deciding official with regard to this adverse determination. You have the right to appeal my decision to the SEC's General Counsel under 5 U.S.C. § 552(a)(6), 17 CFR § 200.80(f)(1). The appeal must be received within ninety (90) calendar days of the date of this adverse decision. Your appeal must be in writing, clearly marked "Freedom of Information Act Appeal," and should identify the requested records. The appeal may include facts and authorities you consider appropriate.

You may file your appeal by completing the online Appeal form located at https://www.sec.gov/forms/request_appeal, or mail your appeal to the Office of FOIA Services of the Securities and Exchange Commission located at Station Place, 100 F Street NE, Mail Stop 2465, Washington, D.C. 20549, or deliver it to Room 1120 at that address.

Finally, the remaining 123 pages of records contain information that is subject to possible confidential treatment and protection under 5 U.S.C. § 552(b)(4). Once the substantiation process is complete we will advise you of our findings.

In the interim, if you have any questions, please contact Joel Hansen of my staff at hansenjo@sec.gov or (202) 551-8377. You may also contact me at foiapa@sec.gov or (202) 551-7900. You may also contact the SEC's FOIA Public Service Center at foiapa@sec.gov or (202) 551-7900. For more information about the FOIA Public Service Center and other options available to you please see the attached addendum.

Sincerely,



Lizzette Katilius
FOIA Branch Chief

Enclosures

ADDENDUM

For further assistance you can contact a SEC FOIA Public Liaison by calling (202) 551-7900 or visiting <https://www.sec.gov/oso/help/foia-contact.html>.

SEC FOIA Public Liaisons are supervisory staff within the Office of FOIA Services. They can assist FOIA requesters with general questions or concerns about the SEC's FOIA process or about the processing of their specific request.

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