

Exhibit D

EMPOWER OVERSIGHT

Whistleblowers & Research



January 19, 2022

Via Electronic Transmission: FOIAPA@SEC.GOV

Office of FOIA Services
Securities and Exchange Commission
100 F Street, N.E.,
Mail Stop 2465
Washington, DC 20549

RE: Freedom of Information Act Appeal

SEC FOIA Request Numbers: 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA

Dear General Counsel Coates:

Introduction

With respect to the Securities and Exchange Commission’s (“SEC”) Freedom of Information Act (“FOIA”)¹ Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA, Empower Oversight Whistleblowers & Research (“Empower Oversight”)² appeals the initial determinations of the SEC FOIA Research Specialists that the SEC “conducted a thorough search of the SEC’s various systems of records” and that “no responsive records exist.” Because the SEC FOIA Research Specialists did not elaborate on the nature and scope of their searches, Empower Oversight cannot discern whether they were reasonably calculated to uncover all relevant documents, and hence whether the SEC has demonstrated that it does not possess responsive records.

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

² 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.

Accordingly, Empower Oversight respectfully requests that the SEC review the nature and scope of the SEC FOIA Research Specialists' searches, apprise Empower Oversight of the same, and correct any deficiencies that are identified.

Background

On August 12, 2021, Empower Oversight submitted to the SEC a FOIA request seeking eight categories of records relating to potential conflicts of interest of former high-level SEC officials and requesting a fee waiver.³ Specifically, Empower Oversight's FOIA request seeks:

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";
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

³ Empower Oversight's August 12, 2021, FOIA request is attached as Exhibit 1.

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.⁴

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.⁵

On August 16, 2021, the SEC advised—via a single letter—that it had classified Empower Oversight as an “other use” requester, and had denied its request for a waiver of any fees that may be applicable to the SEC’s processing of its FOIA request. The letter from the SEC’s FOIA Branch Chief included no analysis of either Empower Oversight’s classification or its fee waiver denial. Accordingly, Empower Oversight appealed the FOIA Branch Chief’s classification decision and fee waiver denial. The SEC granted the appeal on September 23, 2021.

On November 23, 2021, the SEC issued a “no records” response to SEC Request Number 21-02538-FOIA, stating:

Based on the information you provided in your letter, 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.

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another

⁴ See, Exhibit 1.

⁵ The SEC’s eight August 13, 2021, acknowledgements of Empower Oversight’s FOIA request are collectively attached as Exhibit 2.

search. Otherwise, we conclude that no responsive records exist and we consider this request to be closed.⁶

On November 29, 2021, the SEC issued a “no records” response to SEC Request Number 21-02536-FOIA.⁷ The operative text of the SEC’s November 29th letter is identical to the text of the November 23rd “no records” response, which is quoted immediately above.⁸

On December 10, 2021, the SEC issued a “no records” response to SEC Request Numbers 21-02531-FOIA and 21-02532-FOIA.⁹ With the exception of revising the singular “request” to a plural “requests” at the end of the first paragraph, the operative text of the SEC’s December 10th letter is identical to the text of its November 23rd “no records” response, which is quoted above.¹⁰

On December 21, 2021, the SEC issued a “no records” response to SEC Request Number 21-02537-FOIA.¹¹ The operative text of the SEC’s December 21st letter is identical to the text of the November 23rd “no records” response, which is quoted above.¹²

On January 5, 2022, the SEC issued a “no records” response to SEC Request Number 21-02535-FOIA.¹³ The operative text of the SEC’s January 5th letter is identical to the text of the November 23rd “no records” response, which is quoted above.¹⁴

Empower Oversight has had no other communications with the SEC concerning SEC Request Numbers 21-02531-FOIA through 21-02538-FOIA.

⁶ The SEC’s November 23, 2021, “no records” response is attached as Exhibit 3.

⁷ The SEC’s November 29, 2021, “no records” response is attached as Exhibit 4.

⁸ *Compare*, Exhibit 3 and Exhibit 4.

⁹ The SEC’s December 10, 2021, “no records” response is attached as Exhibit 5.

¹⁰ *Compare*, Exhibit 3 and Exhibit 5.

¹¹ The SEC’s December 21, 2021, “no records” response is attached as Exhibit 6.

¹² *Compare*, Exhibit 3 and Exhibit 6.

¹³ The SEC’s January 5, 2022, “no records” response is attached as Exhibit 7.

¹⁴ *Compare*, Exhibit 3 and Exhibit 7.

**Based upon the Circumstances, Empower Oversight Is Unable to Determine
Whether the SEC Performed Searches that Were Reasonably
Calculated to Uncover All Relevant Documents, and
Is Forced to Appeal the SEC's December 10th and 21st and January 5th
"No Records" Responses**

The adequacy of a FOIA search is generally determined by the suitability of the methods used to carry out the search.¹⁵ The legal standard governing the search for records responsive to FOIA requests requires an agency to conduct a search that is "reasonably calculated to uncover all relevant documents."¹⁶ Such calculation involves both an understanding of the nature and scope of the FOIA request and knowledge of where information may be stored within an agency.¹⁷ In the former regard, courts have found searches to be sufficient when they are based on a reasonable interpretation of the scope of the subject matter of the request.¹⁸

Regarding the issue of knowledge of the contents of an agency's records storage platforms, an agency must show that it conducted a good faith, reasonable search of all platforms likely to possess the requested records.¹⁹ Hence, the reasonableness of an agency's search can often depend on whether the agency properly determined where responsive records were likely to be found—and searched those locations,²⁰ or whether the agency improperly limited its search to certain platforms.²¹

¹⁵ See, Jennings v. DOJ, 230 F. App'x 1, 1 (D.C. Cir. 2007) (quoting Iturralde v. Comptroller of Currency, 315 F.3d 311, 315 (D.C. Cir. 2003)).

¹⁶ Weisberg v. DOJ, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

¹⁷ Additionally, Federal agencies shoulder the burden of demonstrating that their searches are reasonable, and they typically do this by describing their efforts in affidavits that they file in support of motions for summary judgment. See, e.g., Ethyl Corp. v. U.S. Environmental Protection Agency, 25 F.3d 1241 (4th Cir. 1994); Cochran v. Dep't of Homeland Security, 2019 WL 1433014 (D. Md. March 28, 2019). However, an agency may not rely upon vague or conclusory affidavits to show that it has conducted a reasonable search. See, Cochran, 2019 WL 1433014, p. *5 – *6 (criticizing a conclusory FBI affidavit that closely resembles the operative text of the SEC's December 10th, December 21st, and January 5th responses to Empower Oversight's August 12th FOIA request). Rather, a satisfactory "affidavit must be reasonably detailed, 'setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched' so as to give the requesting party an opportunity to challenge the adequacy of the search." Ethyl Corp., 25 F.3d 1246 – 1247 (quoting Oglesby v. U.S. Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)).

¹⁸ Larson v. Dep't of State, 565 F.3d 857, 869 (D.C. Cir. 2009) (affirming the adequacy of a search based on the agency's reasonable determination regarding records being requested).

¹⁹ See, Marino v. DOJ, 993 F. Supp. 2d 1, 9 (D.D.C. 2013) (internal citation omitted).

²⁰ See, Karantalis v. DOJ, 635 F.3d 497, 500-501 (11th Cir. 2011) (affirming the district court's determination that the agency searched for records in the system most likely to store responsive records and described how it retrieved records from the system); Lechlitter v. Rumsfeld, 182 F. App'x 113, 115-16 (3d Cir. 2006) (concluding that the agency fulfilled its duty to conduct a reasonable search when it searched two offices that it determined would be the only ones likely to possess responsive documents) (citing Oglesby v. Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)).

²¹ See, Morley v. CIA, 508 F.3d 1108, 1119-20 (D.C. Cir. 2007) (holding that because the agency retained copies of the records transferred to NARA and concedes that some transferred records are likely to be responsive, it was obligated to search those records in response to the FOIA request); Jefferson v. DOJ, 168 F. App'x 448, 450 (D.C. Cir. 2005) (reversing the district court's finding of a reasonable search when the agency offered no plausible justification for searching only its investigative database and the agency essentially acknowledged that responsive files might exist in a separate database); Oglesby v. Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990) (holding that the agency may not limit its search to one record system if others are likely to contain responsive records).

The SEC's December 10th response to SEC Request Numbers 21-02531-FOIA and 21-02532-FOIA, its December 21st response to SEC Request Number 21-02537-FOIA, and its January 5th response to SEC Request Number 21-02535-FOIA include no information concerning how the SEC FOIA Research Specialists interpreted the Empower Oversight's FOIA request or how they designed their searches to implement their interpretations of such request. Without this information, Empower Oversight is unable to assess whether the SEC FOIA Research Specialists conducted searches that were reasonably calculated to uncover all documents responsive to the first, second, fifth, and seventh items of its FOIA request. Accordingly, Empower Oversight is forced to appeal the SEC FOIA Research Specialists' initial determinations in the December 10th and 21st and January 5th "no records" responses and respectfully request that the SEC review the initial determinations, ascertain how its FOIA Research Specialists interpreted Empower Oversight's request, confirm that they implemented their interpretations in a manner reasonably calculated to result in the discovery of all responsive records, correct any defects it discovers, and apprise Empower Oversight of its findings.

The first, second, fifth, and seventh items of Empower Oversight's August 12th FOIA request, *i.e.*, SEC Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA, seek:

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";
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";
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"; and
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".²²

²² See, Exhibit 1.

In response to SEC Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA, the SEC FOIA Research Specialists recited the text of the requests verbatim, and advised:

Based on the information you provided in your letter, 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(s).

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another search. Otherwise, we conclude that no responsive records exist and we consider this request to be closed.²³

In other words, without altering or paraphrasing the first, second, fifth, or seventh items of Empower Oversight's FOIA request, the SEC FOIA Research Specialists advised Empower Oversight that:

1. The SEC had "conducted a thorough search" of "various" unidentified SEC "systems of records"; but
2. It had not "locate[d] or identif[ied] any records responsive to" Empower Oversight's requests.²⁴

Then, the SEC FOIA Specialists invited Empower Oversight—if it still believes that the SEC possesses responsive records—to "provide [the SEC] with additional information, which could prompt another search."²⁵

However, the SEC FOIA Research Specialists failed to apprise Empower Oversight in any meaningful sense how they had interpreted its requests (*i.e.*, what they searched for) and where they searched.²⁶ In former regard, when identifying SEC Request Numbers 21-02531-FOIA, 21-02532-FOIA, 21-02535-FOIA, and 21-02537-FOIA, the SEC FOIA Research Specialists quoted the first, second, fifth, and seventh items from Empower Oversight's August 12th FOIA request verbatim.²⁷ They did not alter, paraphrase, or otherwise deviate from Empower Oversight's text at all, which would provide us an inkling of how they interpreted the requests. Moreover, they

²³ See, Exhibit 5 and Exhibit 6.

²⁴ See, Exhibit 5.

²⁵ See, Exhibit 5.

²⁶ See, Exhibit 5.

²⁷ Compare, Exhibit 1 and Exhibits 5, 6, and 7.

did not contact Empower Oversight with any questions they may have had concerning the FOIA request. The implication of these circumstances is that the SEC FOIA Research Specialists believed that they understood the request and that they had all of the information that they needed to design searches that satisfies the applicable FOIA standard of a search that is reasonably calculated to uncover all responsive records.

This implication, however, seems implausible. The first, second, fifth, and seventh items of Empower Oversight's FOIA request include a subtle distinction that we believe should have elicited questions by the SEC FOIA Research Specialists. Namely, the first and second items seek both communications between William Hinman, who is no longer employed by the SEC, and "any personnel" from Simpson Thatcher and the Enterprise Ethereum Alliance, as well as emails between Mr. Hinman and "any email address from the" domains @stblaw.com and @entethalliance.org.²⁸ The fifth item seeks communications between Marc Berger, who is no longer employed by the SEC, and "any personnel" the Enterprise Ethereum Alliance, as well as emails between Mr. Berger and "any email address from the" domain @entethalliance.org.²⁹ And, the seventh item seeks communications between Jay Clayton, who is no longer employed by the SEC, and "any personnel" from One River Asset Management, as well as emails between Mr. Clayton and "any email address from the" domain @oneriveram.com.³⁰ Although the SEC FOIA Research Specialists should have been able to use ediscovery tools to locate emails between Mr. Hinman and "any email address" at the @stblaw.com and @entethalliance.org domains (and between Mr. Berger and "and email address" at the @entethalliance.org domain, and between Mr. Clayton and "any email address" at the @oneriveram.com domain), such a search would not necessarily have resulted in the capture of *all* communications between Mr. Hinman and "any personnel" of Simpson Thatcher and Enterprise Ethereum Alliance (or Mr. Berger and "any personnel" of Enterprise Ethereum Alliance, or Mr. Clayton and "any personnel" of One River Asset Management) because such personnel could have used domains other than @stblaw.com, @entethalliance.org, or @oneriveram.com to communicate. For example, they could have used personal email addresses. Thus, one would expect that as a beginning point, the SEC FOIA Research Specialists would have had to know names of Simpson Thatcher, Enterprise Ethereum Alliance, and One River Asset Management personnel to accomplish the "any personnel" portions of their searches. Empower Oversight cannot say that they did not know such names or have a resource that supplied them with the names; all we can say is that they did not approach us to discuss names specifically or to discover the correct interpretation of the FOIA request generally. Nor did they advise how they interpreted the

²⁸ See, Exhibit 1.

²⁹ See, Exhibit 1.

³⁰ See, Exhibit 1.

request, and we thus cannot assess whether the SEC “conducted a thorough search” as the SEC FOIA Research Specialists certified.

With regard to the “various” unidentified SEC “systems of records” that the SEC FOIA Research Specialists searched, Empower Oversight has several concerns. First, as the SEC is aware “systems of records” often has a Privacy Act of 1974³¹ connotation, *i.e.*, “[a] system of records is any grouping of information about an individual under the control of a Federal agency from which it retrieves information by the name, social security number, or some other personal identifier.”³² And, if that connotation was intended by the SEC FOIA Research Specialists (or either of them), then the use of the phrase begs the question whether platforms that are not designed to retrieve information about individuals by their identifiers, were searched. If so, which platforms, and, if not, why not?

Second, the FOIA Research Specialists claim only to have searched “the SEC’s various systems of records.”³³ However, it is inevitable that staff will make occasional use official resources for their personal needs—indeed, many Federal employers expressly allow “reasonable” or “incidental” personal use of their information technology resources.³⁴ But, when authorizing such personal use of official resources, they remind their staff of the legal reality that these information technology resources, such as Internet access and cellphones, remain the property of the Federal government and the employees have no reasonable expectation of privacy when using them.³⁵ Thus, Empower Oversight is left to guess whether the SEC FOIA Research Specialists searched for platforms (*e.g.*, Internet-based email platforms) that may not technically be official “SEC” “system of records” but may have been accessed via the SEC’s resources. For example, if Mr. Hinman had used SEC-owned resources (*e.g.*, the computer or cellphone that the SEC issued to him) to access his personal email account via the Internet or to email personnel of Simpson Thatcher and/or Enterprise Ethereum Alliance, or Mr. Clayton had used his SEC-issued cellphone to text personnel of One River Asset Management, would such personal emails or texts have been located by the SEC FOIA Research Specialists’ searches?

³¹ The Privacy Act of 1974 is codified at 5 U.S.C. § 552a.

³² SEC, *System of Records Notices* (Last Modified March 5, 2021), available at <https://www.sec.gov/oit/system-records-notice>.

³³ See, Exhibit 5 (emphasis added).

³⁴ See, *e.g.*, IRS, 10.8.27: *Personal Use of Government Furnished Technology Equipment and Resources* (Last Reviewed or Updated April 22, 2020), available at https://www.irs.gov/irm/part10/irm_10-008-027#idm139724776667104; HHS, *Rules of Behavior for the Use of HHS Information and IT Resource Policy* (Last Reviewed June 7, 2019), available at <https://www.hhs.gov/web/governance/digital-strategy/it-policy-archive/hhs-rules-of-behavior-for-the-use-of-hhs-information-and-it-resources-policy.html#6.1>.

³⁵ See, *e.g.*, IRS, 10.8.27: *Personal Use of Government Furnished Technology Equipment and Resources* (Last Reviewed or Updated April 22, 2020), available at https://www.irs.gov/irm/part10/irm_10-008-027#idm139724776667104; HHS, *Rules of Behavior for the Use of HHS Information and IT Resource Policy* (Last Reviewed June 7, 2019), available at <https://www.hhs.gov/web/governance/digital-strategy/it-policy-archive/hhs-rules-of-behavior-for-the-use-of-hhs-information-and-it-resources-policy.html#6.1>.

Accordingly, the circumstances of this matter compel Empower Oversight to respectfully request that the SEC review the SEC FOIA Research Specialists' December 10, 2021, December 21, 2021, and January 5, 2022, initial determinations,³⁶ ascertain how they interpreted the first, second, fifth, and seventh items of Empower Oversight's August 12, 2021, FOIA request,³⁷ confirm that they implemented their interpretations in a manner reasonably calculated to result in the discovery of all responsive records, correct any defects that are discovered, and apprise Empower Oversight of the SEC's findings.

Additionally, in light of the civil case pending between Empower Oversight and the SEC (see, *Empower Oversight v. U.S. SEC*, Civil Action No. 1:21-cv-1370 (E.D.Va.)), the parties ought to have a mutual desire to avoid protracted, costly litigation. Accordingly, Empower Oversight also requests in response to this administrative appeal—and before the SEC is required to file its answer in the FOIA litigation—that the SEC submit to Empower Oversight affidavits of the kind envisioned in *Ethyl Corp. v. U.S. Environmental Protection Agency*.³⁸

The SEC's affidavits should describe its efforts in enough detail to permit Empower Oversight to determine whether the searches were reasonable, to the extent that SEC continues claim that its "no records" responses remain accurate after having reviewed and considered this administrative appeal.

Thank you for your time and consideration. Please don't hesitate to contact me with any questions.

Cordially,

/Jason Foster/

Jason Foster
Founder & President

³⁶ See generally, Exhibit 5, Exhibit 6, and Exhibit 7.

³⁷ See generally, Exhibit 1.

³⁸ See, Footnote 17, *supra*.

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 2a



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

Exhibit 2b



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.

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 2c



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. **21-02533-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.

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 2d



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

Exhibit 2e



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

Exhibit 2f



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. **21-02536-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

Exhibit 2g



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

Exhibit 2h



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

November 23, 2021

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. **21-02538-FOIA**

Dear Mr. Foster:

This letter is in 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	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"
21-02532-FOIA	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"
21-02533-FOIA	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
21-02534-FOIA	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"

Mr. Jason Foster
November 23, 2021
Page 2

21-02538-FOIA

Request No.	Subject
21-02535-FOIA	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"
21-02536-FOIA	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
21-02537-FOIA	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"
21-02538-FOIA	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

This letter responds to FOIA request number 21-02538-FOIA only.

Based on the information you provided in your letter, 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.

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another search. Otherwise, we conclude that no responsive records exist and we consider this request to be closed.

You have the right to appeal the adequacy of our search or finding of no responsive records 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.

Mr. Jason Foster
November 23, 2021
Page 3

21-02538-FOIA

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.

If you have any questions, please contact me at mandicf@sec.gov. 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 'F. Mandic'.

For Frank Mandic
FOIA Research Specialist

Enclosure

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

November 29, 2021

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. **21-02536-FOIA**

Dear Mr. Foster:

This letter is in 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	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"
21-02532-FOIA	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"
21-02533-FOIA	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
21-02534-FOIA	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"

Mr. Jason Foster
 November 29, 2021
 Page 2

21-02536-FOIA

Request No.	Subject
21-02535-FOIA	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"
21-02536-FOIA	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
21-02537-FOIA	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"
21-02538-FOIA	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

This letter responds to FOIA request number 21-02536-FOIA only.

Based on the information you provided in your letter, 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.

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another search. Otherwise, we conclude that no responsive records exist and we consider this request to be closed.

You have the right to appeal the adequacy of our search or finding of no responsive records 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.

Mr. Jason Foster
November 29, 2021
Page 3

21-02536-FOIA

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.

If you have any questions, please contact me at mandicf@sec.gov. 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 that reads "Frank Mandic". The signature is written in a cursive, slightly slanted style.

Frank Mandic
FOIA Research Specialist

Enclosure

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 5



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

Office of FOIA Services

December 10, 2021

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

Re: Freedom of Information Act (FOIA), 5 U.S.C. § 552
Request Nos. **21-02531-FOIA and 21-02532-FOIA**

Dear Mr. Foster:

This letter is in 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"

Mr. Jason Foster
 December 10, 2021
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21-02531-FOIA and
 21-02532-FOIA

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 responds to FOIA Request Nos. 21-02531-FOIA and 21-02532-FOIA only.

Based on the information you provided in your letter, we conducted a thorough search of the SEC's various systems of records, but did not locate or identify any records responsive to your requests.

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another search. Otherwise, we conclude that no responsive records exist and we consider these requests to be closed.

You have the right to appeal the adequacy of our search or finding of no responsive records 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.

Mr. Jason Foster
December 10, 2021
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21-02531-FOIA and
21-02532-FOIA

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.

If you have any questions, please contact me 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 "Joel Hansen", written over a horizontal line.

Joel Hansen
FOIA Research Specialist

Enclosure

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 6



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

Office of FOIA Services

December 21, 2021

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. **21-02537-FOIA**

Dear Mr. Foster:

This letter is in response to your request, dated August 12, 2021 and received in this office on August 13, 2021, for the eight subjects shown 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"
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"

Mr. Jason Foster
 December 21, 2021
 Page 2

21-02537-FOIA

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 responds to FOIA request number 21-02537-FOIA only.

Based on the information you provided in your letter, 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.

If you still have reason to believe that the SEC maintains the type of records you seek, please provide us with additional information, which could prompt another search. Otherwise, we conclude that no responsive records exist and we consider this request to be closed.

You have the right to appeal the adequacy of our search or finding of no responsive records 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

Mr. Jason Foster
December 21, 2021
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21-02537-FOIA

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.

If you have any questions, please contact me at mandicf@sec.gov. 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,



Frank Mandic
FOIA Research Specialist

Enclosure

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>.

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Exhibit 7



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

Office of FOIA Services

CORRECTED RESPONSE¹

January 5, 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. **21-02535-FOIA**

Dear Mr. Foster:

This letter is in 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	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"
21-02532-FOIA	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"
21-02533-FOIA	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
21-02534-FOIA	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"

¹ To reflect the correct date this response was sent to you the date on the letter has been revised from January 4, 2022 to January 5, 2022. Everything else remains unchanged.

Mr. Jason Foster
January 5, 2021
Page 2

21-02535-FOIA

Request No.	Subject
21-02535-FOIA	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"
21-02536-FOIA	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
21-02537-FOIA	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"
21-02538-FOIA	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

This letter responds to FOIA request number 21-02535-FOIA only.

Based on the information you provided in your letter, we conducted a thorough search of the SEC's various systems of records, but did not locate or identify any information responsive to your request.

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Mr. Jason Foster
January 5, 2022
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21-02535-FOIA

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Sincerely,

A handwritten signature in black ink that reads "Frank Mandic". The signature is written in a cursive, slightly slanted style.

Frank Mandic
FOIA Research Specialist

Enclosure

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>.

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