

EMPOWER OVERSIGHT

Whistleblowers & Research



September 25, 2023

VIA SEC FOIPA PORTAL

Raymond McInerney, FOIA Officer
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2465
Washington, DC 20549-2465

**RE: REQUEST FOR RECORDS RELATED TO FORMER SEC CHAIRMAN
JAY CLAYTON AND ONE RIVER DIGITAL ASSET MANAGEMENT**

Dear Mr. McInerney:

INTRODUCTION

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.

BACKGROUND

From May 4, 2017 through December 23, 2020, Jay Clayton served as the Chairman of the Securities and Exchange Commission (“SEC”). During his tenure as chairman, Mr. Clayton publicly stated that Bitcoin is not a security¹, and affirmed statements by a senior SEC appointee that Ether is not a security.² The value of both tokens rose significantly after Mr. Clayton’s statements.³ At the end of Mr. Clayton’s tenure as chairman, the SEC filed suit against Ripple

¹ 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 visited Sept. 21, 2023, video unavailable).

² Nikhilesh De, *SEC Chair Clayton Affirms Agency’s Stance Ether Is No Longer a Security*, COIN DESK (Mar. 12, 2019) available at <https://www.coindesk.com/markets/2019/03/12/sec-chair-clayton-affirms-agencys-stance-ether-is-no-longer-a-security/> (last visited Sept. 21, 2023).

³ 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 visited Sept. 14, 2023); Joseph Young, *Bitcoin and Ethereum Show New Momentum After 20% Gain, Is a*

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.⁴ After leaving the SEC, Mr. Clayton reportedly joined cryptocurrency hedge fund, One River Asset Management, that focuses exclusively on Bitcoin and Ether, but not Ripple’s cryptocurrency.⁵

On December 15, 2022, Empower Oversight filed a Freedom of Information Act (“FOIA”) request with the SEC seeking, among other things, records regarding Mr. Clayton’s communications with people associated with One River Asset Management. Since the submission of that request, Empower Oversight has identified additional individuals with whom Mr. Clayton may have improperly communicated about these issues. They are Jasmine Burgess, John D’Agostino, Joshua Barlow, Theodore Antonitis, Alan Eldad Howard, Geoffrey Taylor Grant, Tamara Peters, Vanessa Ann Williams, Aron Landy, and David Portnoff.

RECORDS REQUEST

In order to determine if there were any conflicts of interest by Mr. Clayton during his tenure as SEC chairman, Empower Oversight respectfully requests, pursuant to the FOIA, 5 U.S.C. § 552, all records relating to communications from May of 2017 through December of 2020 between Jay Clayton and Jasmine Burgess, John D’Agostino, Joshua Barlow, Theodore Antonitis, Alan Eldad Howard, Geoffrey Taylor Grant, Tamara Peters, Vanessa Ann Williams, Aron Landy, or David Portnoff.

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.

New Rally in the Works?, COINTELEGRAPH (Apr. 9, 2019) available at <https://cointelegraph.com/news/bitcoin-and-ethereum-show-new-momentum-after-20-gain-is-a-new-rally-in-the-works> (last visited Sept. 21, 2023).

⁴ 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 visited Sept. 14, 2023).

⁵ 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 visited Sept. 14, 2023).

“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,” “CONCERNS,” “CONCERNING,” “BEARS UPON,” “REFLECTING,” 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 FOIA request.

If you have any questions about this request, please contact Mike Zummer by e-mail at mzummer@empowr.us.

FEE WAIVER REQUEST

Empower Oversight agrees to pay up to \$25.00 in applicable fees, but notes that the SEC has classified it as a “representative of the news media”⁶ and 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, which helps 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 no commercial interest in making this request.

Further, the information that Empower Oversight seeks is in the public interest because it is likely to contribute significantly to the public’s understanding of the SEC’s and SEC OIG’s handling of possible ethics violations by SEC officials, as well as the SEC’s emerging regulation of cryptocurrencies and whether any private financial interests have improperly influenced its decision-making.

Empower Oversight is committed to government accountability, public integrity, and transparency. In the latter regard, the information that that Empower Oversight receives that tends to explain the subject matter of this FOIA request will be disclosed publicly via its website, and copies will be shared with other news media for public dissemination.

⁶ On September 23, 2021, in connection with a FOIA appeal arising from Empower Oversight’s August 12, 2021, FOIA request, the Securities Exchange Commission conceded that Empower Oversight qualifies as a news media requester for purposes of fees assessed pursuant to the FOIA. “Empower Oversight Wins Appeal of Erroneous SEC Fee Decision: Must be treated as a ‘media requestor’ in seeking ethics records of senior officials,” Empower Oversight Press Release (Sep 24, 2021), <https://empowr.us/empower-oversight-wins-appeal-of-erroneous-sec-fee-decision-must-be-treated-as-a-media-requestor-in-seeking-ethics-records-of-senior-officials/>.

For ease of administration and to conserve resources, we ask that documents be produced in a readily accessible electronic format. Thank you for your time and consideration. Please don't hesitate to contact me with any questions.

Cordially,

[/Tristan Leavitt/](#)
Tristan Leavitt
President