

# EMPOWER OVERSIGHT

*Whistleblowers & Research*



June 3, 2024

**VIA ELECTRONIC TRANSMISSION: FOIPA@SEC.GOV**

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 POSSIBLE ETHICAL VIOLATIONS**

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. The organization 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

Through a series of Freedom of Information Act (“FOIA”) requests to the Securities and Exchange Commission (“SEC”), Empower Oversight has established that William Hinman, who worked as the Director of the Division of Corporate Finance at the SEC from May 2017 through December 2020, participated in matters in which he had a conflict of interest. Specifically, he declared in a speech that Ether was not a security after meeting with entities that had an interest in the cryptocurrency. One entity with an interest in Ether was the law firm Simpson Thacher, where Mr. Hinman had been a partner before joining the SEC. While he was working at the SEC, Mr. Hinman continued to receive payments from the firm.<sup>1</sup>

Through a series of FOIA requests, Empower Oversight has also sought records to determine whether former SEC Chair Jay Clayton had conflicts of interest. During his tenure as

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<sup>1</sup> See Empower Oversight, referral to SEC Inspector General (May 9, 2022) at 5-7, <https://empowr.us/wp-content/uploads/2022/05/2022-5-9-JF-to-SECOIG-Ethics-Office-Referral.pdf>.

chairman, Mr. Clayton publicly stated that Bitcoin is not a security<sup>2</sup> and affirmed Mr. Hinman's statement that Ether is not a security.<sup>3</sup> The value of both tokens rose significantly after Mr. Clayton's statements.<sup>4</sup> At the end of Mr. Clayton's tenure as chairman, the SEC filed suit against Ripple Labs, Inc. ("Ripple"), alleging that its XRP cryptocurrency was a security and the company's offering and sales of XRP had been in violation of Federal securities laws.<sup>5</sup> After leaving the SEC, Mr. Clayton reportedly joined cryptocurrency hedge fund One River Asset Management, which focuses exclusively on Bitcoin and Ether (but not XRP).<sup>6</sup> In 2022, Mr. Clayton was named as an adviser for Electric Capital,<sup>7</sup> a crypto-focused venture capital firm that was established in 2018, while Mr. Clayton was serving as SEC Chair.<sup>8</sup> Notably, Electric Capital has invested in Consensus,<sup>9</sup> which is a developer of Ether.<sup>10</sup>

Pursuant to a request Empower Oversight submitted on September 25, 2023, seeking records related to various individuals associated with Ether and/or One River Asset Management, the SEC found no records.<sup>11</sup>

Pursuant to a request Empower Oversight submitted on March 14, 2024, seeking records related to Ether and Mr. Clayton's post-SEC employment, the SEC found no records related to Mr. Clayton.<sup>12</sup>

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<sup>2</sup> CNBC, *SEC Chairman: Cryptocurrencies Like Bitcoin Are Not Securities* (June 6, 2018), <https://www.cnbc.com/video/2018/06/06/sec-chairman-cryptocurrencies-like-bitcoin--not-securities.html> (last visited Mar. 4, 2024, video unavailable).

<sup>3</sup> Nikhilesh De, *SEC Chair Clayton Affirms Agency's Stance Ether Is No Longer a Security*, COIN DESK (Mar. 12, 2019), <https://www.coindesk.com/markets/2019/03/12/sec-chair-clayton-affirms-agencys-stance-ether-is-no-longer-a-security/> (last visited Mar. 4, 2024).

<sup>4</sup> Olga Kharif, Eric Lam, *Cryptocurrency Rally Builds Steam as Bitcoin Surpasses \$7,500*, BLOOMBERG (July 17, 2018), <https://www.bloomberg.com/news/articles/2018-07-17/bitcoin-surges-after-breaking-back-through-7-000-level> (last visited Mar. 4, 2024); Joseph Young, *Bitcoin and Ethereum Show New Momentum After 20% Gain, Is a New Rally in the Works?*, COINTELEGRAPH (Apr. 9, 2019), <https://coindesk.com/news/bitcoin-and-ethereum-show-new-momentum-after-20-gain-is-a-new-rally-in-the-works> (last visited Mar. 4, 2024).

<sup>5</sup> SEC, Press Release, *SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering* (Dec. 22, 2020), <https://www.sec.gov/news/press-release/2020-338> (last visited Mar. 4, 2024).

<sup>6</sup> Emily Graffeo, *Former SEC Chair Jay Clayton Will Advise Digital Asset Hedge Fund One River on Crypto* (Mar. 29, 2021), <https://markets.businessinsider.com/currencies/news/bitcoin-hedge-fund-sec-chair-jay-clayton-one-river-crypto-2021-3-1030256150> (last visited Mar. 4, 2024); PR Newswire, *One River Digital launches institutional Ethereum staking strategy, adding bond-like yields to ether investments* (Nov. 11, 2021), <https://www.prnewswire.com/news-releases/one-river-digital-launches-institutional-ethereum-staking-strategy-adding-bond-like-yields-to-ether-investments-301422587.html> (last visited Mar. 4, 2024).

<sup>7</sup> Hannah Miller, *Crypto VC Electric Capital Names Ex-SEC Chair Clayton as Adviser*, BLOOMBERG LAW (Aug. 24, 2022), <https://news.bloomberglaw.com/crypto/crypto-vc-electric-capital-names-ex-sec-chair-clayton-as-adviser> (last visited Mar. 4, 2024); see also, Electric Capital Team, <https://www.electriccapital.com/team/jay-clayton> (last visited Mar. 4, 2024).

<sup>8</sup> Avichal Garg, Electric Capital Partners Frontier Fund GP, LLC, U.S. SECURITIES & EXCHANGE COMM'N, *FORM D Notice of Exempt Offering of Securities*, OMB Number: 3235-0076 (Mar. 29, 2018), [https://www.sec.gov/Archives/edgar/data/1736017/000173601718000002/xslFormDX01/primary\\_doc.xml](https://www.sec.gov/Archives/edgar/data/1736017/000173601718000002/xslFormDX01/primary_doc.xml).

<sup>9</sup> See Electric Capital Investments, <https://www.electriccapital.com/investments> (last visited Mar. 4, 2024).

<sup>10</sup> Ashley Rindsberg, *Consensus Faces Shareholder Vote Over Controversial Transfer of Company Assets*, COINDESK (June 8, 2023), <https://www.coindesk.com/consensus-magazine/2023/06/08/consensus-faces-shareholder-vote-over-controversial-transfer-of-company-assets/> (last visited Mar. 4, 2024).

<sup>11</sup> <https://empowr.us/wp-content/uploads/2023/09/2023-09-25-TL-to-SEC-Clayton-Additional.pdf>.

<sup>12</sup> [https://empowr.us/wp-content/uploads/2024/03/2024-03-14-TL-to-SEC-FOIA-Post-Employment-Focus-Final\\_Redacted2.pdf](https://empowr.us/wp-content/uploads/2024/03/2024-03-14-TL-to-SEC-FOIA-Post-Employment-Focus-Final_Redacted2.pdf).

Also, in response to earlier requests, the SEC similarly found limited records of Clayton’s communications. By contrast, Empower Oversight has received from the SEC a substantial number of emails related to Mr. Hinman and his SEC work.<sup>13</sup>

Based upon the response to its FOIA requests, Empower Oversight believes that Mr. Clayton largely avoided using his SEC email for his SEC work. Recently, emails have become public showing a high-level National Institutes of Allergy and Infectious Diseases official intentionally avoiding disclosure of his emails under FOIA.<sup>14</sup> Thus, Empower Oversight believes Mr. Clayton’s immediate staff members, such as the SEC chief of staff or an administrative assistant, may have arranged meetings or sent communications for him.

To promote the public interest in understanding whether Mr. Clayton’s relationships with private sector firms, companies, and individuals improperly influenced any of his official actions during their time at the SEC, and to what extent the SEC and its ethics officials mitigated, investigated, and resolved such conflicts, Empower Oversight respectfully requests the records listed below.

### **RECORDS REQUEST**

Pursuant to FOIA, 5 U.S.C. § 552, for the period from May 1, 2017, through December 31, 2020, Empower Oversight requests the following records:

1. All records of communications, including calendar entries, invites, responses, notes, and emails, or email attachments between Jay Clayton’s immediate staff members—including Sean Memon, Bryan Wood, Kristene Blake, Aleah Borghard, Alan Cohen, Matthew Cook, Eric Diamond, Jeffrey Dinwoodie, Sharon Freeman, Sebastian Gomez Abero, Kelly Halferty, Kimberly Hamm, Manisha Kimmel, John Moses, Kristina Littman, Awilda Santiago, Kay Smith, Natalie Strom, Peter Uhlmann, Dalia Blass, and Kevin Zerrusen, and any other employees responsible for providing Clayton advice and employees assisting Clayton with his communications and/or scheduling—with key words: “Sullivan & Cromwell,” “S&C,” “Sullivan,” “Electric Capital,” “Ether,” “Ethereum,” “EEA,” “Ether speech,” “Consensys,” “ConsenSys,” “One River,” “WMB,” “Apollo,” “Lubin,” “Brooklyn Project,” “Union Square Ventures,” “NVCA,” or “Public Citizen.”
2. All records of communications, including calendar entries, invites, responses, notes, and emails, or email attachments between Jay Clayton’s immediate staff members—including Sean Memon, Bryan Wood, Kristene Blake, Aleah Borghard, Alan Cohen, Matthew Cook, Eric Diamond, Jeffrey Dinwoodie, Sharon Freeman, Sebastian Gomez Abero, Kelly Halferty, Kimberly Hamm, Manisha Kimmel, John Moses, Kristina Littman, Awilda Santiago, Kay Smith, Natalie Strom, Peter Uhlmann, Dalia Blass, and Kevin Zerrusen, and any other employees responsible for providing Clayton advice and employees assisting Clayton with his communications and/or scheduling—with the following individuals: Alan Howard, Jasmine Burgess, John D’Agostino, Joshua Barlow, Theodore Antonitis, Alan Eldad Howard, Geoffrey Taylor Grant, Tamara Peters, Vanessa Ann Williams, Aron Landy, David Portnoff, Eric Peters, Chase Muller, Ryan McRandal, Stephen Pranja, Lindsay Politi, Marcel Kasumovich, Ian Gardiner, Chris Lawn, Tutting Chen, Nathan Faber, Hardin Ramani, Joseph Chung, Shaun Martiniak, Doug Wilson, Paul Ebner, Edward Major, Ian Malloch, Will Wallin, Matt Lundy, Sebastian Pedro Bea

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<sup>13</sup> [https://www.documentcloud.org/documents/23896040-sec\\_emailrelease](https://www.documentcloud.org/documents/23896040-sec_emailrelease).

<sup>14</sup> Zach Kessel, *Fauci Lieutenant Intentionally Hid Emails to Avoid Transparency, Coronavirus Subcommittee Memo Shows*, NATIONAL REVIEW, May 22, 2024, <https://www.nationalreview.com/news/fauci-lieutenant-intentionally-hid-emails-to-avoid-transparency-coronavirus-subcommittee-memo-shows/> (last visited May 28, 2024).

(or Sebastian w/3 Bea), Qin Chen, Patrick Kazley, Jason Cummins, Courtney Simmons Elwood (or Courtney w/3 Elwood), Harold Ford Jr., Kevin Hassett, and John Orszag.

3. All records of communications, including calendar entries, invites, responses, notes, and emails, or email attachments between Jay Clayton's immediate staff members—including Sean Memon, Bryan Wood, Kristene Blake, Aleah Borghard, Alan Cohen, Matthew Cook, Eric Diamond, Jeffrey Dinwoodie, Sharon Freeman, Sebastian Gomez Abero, Kelly Halferty, Kimberly Hamm, Manisha Kimmel, John Moses, Kristina Littman, Awilda Santiago, Kay Smith, Natalie Strom, Peter Uhlmann, Dalia Blass, and Kevin Zerrusen, and any other employees responsible for providing Clayton advice and employees assisting Clayton with his communications and/or scheduling—with any email address from the domains “@electriccapital.com,” “@oneriveram.com,” “@entethalliance.org,” and “sullcrom.com.”
4. All records of communications, including calendar entries, invites, responses, notes, and emails, or email attachments between Jay Clayton and the following individuals: Shira Minton, Danae Serano, Sean Memon, Bryan Wood, Kristene Blake, Aleah Borghard, Alan Cohen, Matthew Cook, Eric Diamond, Jeffrey Dinwoodie, Sharon Freeman, Sebastian Gomez Abero, Kelly Halferty, Kimberly Hamm, Manisha Kimmel, John Moses, Kristina Littman, Awilda Santiago, Kay Smith, Natalie Strom, Peter Uhlmann, Dalia Blass, and Kevin Zerrusen.

## **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, Slack 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,” “CONCERNS,” “BEARS UPON,” 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.

“INCLUDING” means comprising part of, but not being limited to, the whole.

### **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 Rachel Soloway by e-mail at [rs@empowr.us](mailto:rs@empowr.us).

### **FEE WAIVER REQUEST**

Empower Oversight agrees to pay up to \$25.00 in applicable fees but notes that it qualifies as a “representative of the news media” 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.

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 Department’s handling of allegations that it or its employees was negligent or engaged in wrongdoing.

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.

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 do not hesitate to contact me with any questions.

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