

Report of Investigation

Financial Conflict of Interest Allegations
Against Former Corporation Finance Director
William H. Hinman

CASE NO: 22-DCF-0028-I

DECEMBER 9, 2024





REPORT OF INVESTIGATION

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SUBJECT	Hinman, William H.
POSITION TITLE	Director (Former)
SK-LEVEL/GRADE	Senior Officer
OFFICE	Division of Corporation Finance
REGION	Headquarters

EXECUTIVE SUMMARY

We received a complaint from Empower Oversight alleging that former Director of the Division of Corporation Finance (CF) William Hinman did not comply with Office of the Ethics Counsel (OEC) “directives” with respect to his ongoing financial relationship and contacts with his former law firm, Simpson Thacher & Bartlett LLP (“STB”). Specifically, Empower Oversight alleged: 1) Hinman failed to disclose a direct financial interest in STB, which was a member of the Enterprise Ethereum Alliance (“Ethereum Alliance”), in his June 14, 2018 speech at Yahoo Finance’s All Markets Summit: Crypto (“Yahoo speech”), in which he stated that the digital asset Ether was not a security; 2) Hinman referred a “business prospect” to STB; and 3) Hinman had “miscellaneous contacts” with STB while employed with the SEC.

We found that at the time of his onboarding at the SEC, Hinman disclosed his financial interest in STB to OEC and took the steps prescribed by SEC ethics officials to mitigate or cure the potential conflicts of interest. We also found that while Hinman replied to a recruiter’s inquiry by directing him to an STB partner, doing so did not violate the ethics regulations or guidance he received from OEC to recuse himself from matters involving STB. Furthermore, Hinman’s miscellaneous contacts with STB did not violate ethics rules or guidance.

With respect to the Yahoo speech, we determined that Hinman followed applicable ethics rules in preparing and delivering the speech (b)(6); (b)(7)(C). Finally, we uncovered no evidence that Hinman’s statements regarding Ether in the Yahoo speech had a direct and predictable effect on Hinman’s financial interests at the time or were made for his personal financial gain.

Background

Hinman joined the SEC as Director of CF in May 2017 after retiring from his partnership with STB. According to Hinman, he took the position at the suggestion of then-Chairman Jay Clayton, who appointed him as Division Director.¹ As Director of CF, Hinman led rulemaking initiatives designed to strengthen public markets, enhance investor protections, and broaden small business access to capital markets. He also provided guidance to market participants on various emerging issues, including digital assets.²

On June 14, 2018, Hinman gave a speech as Director of CF titled *Digital Asset Transactions: When Howey Met Gary (Plastics)* at the Yahoo Finance All Markets Summit: Crypto in San Francisco, California. The stated purpose of the Yahoo speech was to address the topic of “whether a digital asset offered as a security [could], over time, become something other than a security.” In his speech, Hinman stated that, “based on [his] understanding of the present state of Ether . . . current offers and sales of Ether are not securities transactions.” Ether is a native cryptocurrency of Ethereum, which is “a decentralized global software platform powered by blockchain technology.”³ **(EXHIBIT 1)**

On August 12, 2021, Empower Oversight, which describes itself as “a nonpartisan, nonprofit educational organization, dedicated to enhancing independent oversight of government and corporate wrongdoing,”⁴ submitted a Freedom of Information Act request to the SEC seeking eight categories of records to understand, among other things, whether the past and future private sector employment of Hinman and other former SEC officials created potential conflicts or public integrity concerns related to their official actions at the SEC. In particular, Empower Oversight highlighted a link between Ethereum and STB, Hinman’s former law firm. Near the time of the Yahoo speech, STB joined the Ethereum Alliance,⁵ “a member-led industry organization whose objective is to drive the use of Enterprise Ethereum . . . blockchain technology as an open standard to empower ALL enterprises” (emphasis in original).⁶ On May 9, 2022, Empower Oversight submitted the complaint to this office alleging the conduct that is the subject of this report. **(EXHIBIT 2)**

Because Hinman had left the SEC for the private sector before we received this complaint, we investigated this matter principally for possible criminal violations and to examine potential programmatic implications for SEC ethics oversight.

¹ Exhibit # 1: Hinman Dep. 44:17 – 45:7.

² Hinman Dep. 71:6-12. See also <https://www.stblaw.com/our-team/search/william-h-hinman>.

³ <https://www.investopedia.com/terms/e/ethereum.asp#toc-what-is-ethereum>

⁴ <https://empowr.us/mission/>

⁵ According to Hinman, STB became a member of the Ethereum Alliance to become more informed about Ethereum technology. See Exhibit # 4: Hinman Resp. Qs. 13, 14, and 14(a) –(c).

⁶ <https://entethalliance.org/about-enterprise-ethereum-alliance/>

Investigative Results

FINDING 1: At the time of his onboarding at the SEC, Hinman disclosed his financial interest in STB to OEC and took the recommended steps to mitigate or cure potential conflicts of interest. There is no evidence Hinman failed to follow OEC's instructions.

Implicated Standards

18 U.S.C. § 203: Prohibits a federal employee from receiving compensation for their own or for another's representational services when the representational services meet certain conditions, including when the service is rendered while that employee is a federal employee, and it involves a particular matter before the U.S. Government or any court. The prohibition at 18 U.S.C. § 203 prevents the federal employee from receiving any portion of their partnership share that is from the representational services described above rendered personally or by another member of the law firm, if such services were rendered during the time the partner was a federal employee. Furthermore, when compensation for representational services is prohibited under 18 U.S.C. § 203, an employee may not receive any portion of a partnership share for those representations made during the employee's federal service, even if the payment is made after the employee leaves federal service.⁷

18 U.S.C. § 208: Prohibits a federal employee from participating personally and substantially in a particular matter in which, to his knowledge, he has a financial interest. A federal employee who retains a financial interest in a law firm is prohibited from participating personally and substantially in any particular matter that to the employee's knowledge has a direct and predictable effect on the financial interests of the firm.⁸

Supporting Evidence

During his SEC onboarding process, Hinman disclosed that he received a retirement annuity from STB, paid on a monthly basis, the amount of which varied based on the profits of the firm. This type of agreement violates government ethics rules that prohibit government employees from receiving compensation from outside sources for representational services. OEC sought advice from the U.S. Office of Government Ethics (OGE) about mitigating this conflict. OGE advised that Hinman could continue to receive his STB retirement annuity while employed with the SEC if the annuity were fixed instead of variable. Thereafter, Hinman arranged to receive a fixed annuity for a period of three years, through the end of 2020. After that, Hinman's STB pension would revert to a profit-sharing arrangement. OEC informed Hinman that fixing the retirement annuity through 2020 would cure the financial conflict under 18 U.S.C. § 203 for that time period.⁹

⁷ See OGE Guidance on Conflicts of Interest Considerations: Law Firm or Consulting Employment (2024).

⁸ *Id.*

⁹ Exhibit #15.

However, because the annuity would revert to a profit-sharing arrangement after three years, the possibility that Hinman would benefit financially from STB's future profitability posed a risk that a financial conflict under 18 U.S.C. § 208 could arise. **(EXHIBIT 3)** OEC therefore advised Hinman to recuse himself from matters involving STB and assigned CF staff to ensure that Hinman's workflow did not include recused matters. The screening arrangement was updated annually and communicated among appropriate OEC and CF staff. There is no evidence that Hinman failed to follow the recusal instruction. **(EXHIBITS 4, 5, 6, 7, and 15)**

FINDING 2: Hinman replied to a recruiter's inquiry by directing him to an STB partner; doing so did not violate OEC guidance to recuse himself from matters involving STB.

Implicated Standards

18 U.S.C. § 208.

5 C.F.R. § 2635.702: An employee may not use their public office for their own private gain; for the endorsement of any product, service, or enterprise (except as otherwise permitted by this part or other applicable law or regulation); or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations.

Supporting Evidence

While it was alleged that Hinman referred a "business prospect" to his former law firm, our review of Hinman's email files found that a recruiter sent an email to Hinman's SEC email account on July 14, 2017, seeking an expert in investment banking and the China IPO process. Hinman responded, "[y]ou may want to ask Dan Fertig, a Simpson Thacher partner in Hong Kong for the referral. Given my current position at the SEC, I am not well placed to provide you the best names." Hinman's response to the recruiter did not violate OEC guidance or the ethics rules because there is no indication that Hinman was endorsing STB or its partner, or referring business to them, or that Hinman stood to benefit financially from suggesting that the recruiter speak to an STB partner for names of potential experts. We found no subsequent emails from Hinman pertaining to the recruiter's inquiry, and we did not find emails in which Hinman referred business prospects to STB. **(EXHIBITS 4 and 12)**

FINDING 3: Hinman’s “miscellaneous contacts” with STB personnel did not violate OEC guidance.

Implicated Standard

18 U.S.C. § 208.

Supporting Evidence

We reviewed Hinman’s SEC email files and found communications with former STB colleagues. We found that on May 15, 2017, on or about the day that Hinman’s OEC screening arrangement went into effect, someone from STB sent Hinman an email about the “abysmally low” \$2,000 threshold for shareholder proposals. We found no evidence that Hinman responded to the email. We also found that STB personnel invited Hinman to attend conferences; however, to comply with OEC guidance, Hinman accepted only one such invitation after the host arranged for STB staff not to attend. **(EXHIBITS 4, 12, and 15)**

Ethics guidance did not preclude Hinman from communicating with STB personnel. Rather, OEC advised that Hinman recuse himself from matters involving STB clients and not attend conferences where STB staff were panelists or attendees. Hinman told us that he coordinated with counsel in CF and sought OEC guidance involving STB matters.¹⁰ We found no evidence that Hinman failed to follow the guidance he received from OEC. **(EXHIBIT 15)**

FINDING 4: Hinman followed the SEC’s ethics rules in preparing and delivering the Yahoo speech (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Implicated Standards

17 C.F.R. § 200.735-4:¹¹ Provides guidance to SEC employees regarding outside employment and activities, including speaking and writing. The rule states that “the Commission encourages employees to engage in teaching, lecturing and writing activities.” The rule also prohibits SEC employees from: using confidential or nonpublic information; making comments on pending litigation in which the Commission is participating as a party or amicus curiae; or making comments on rulemaking proceedings pending before the Commission which would adversely affect the operations of the Commission. In furtherance of monitoring compliance with these requirements, the rule requires employees to submit prepared speeches “relating to the Commission, or the statutes or rules it administers,” to the General Counsel for review. The General Counsel is to determine whether the requirements of this rule are met, not to adopt or concur in

¹⁰ Exhibit # 4: Hinman Resp. Q. 6(b).

¹¹ See also 5 C.F.R. § 4401.103(d); 5 C.F.R. Part 2635, Subpart H.

the views expressed. The rule also provides disclaimer language that employees must use when giving a speech related to the SEC.

SEC Guidance on Speaking and Writing: Guidance found on the SEC Exchange requires employees to complete a coversheet, Form 2432, and submit it along with the proposed publication to OEC at least 30 days ahead of proposed publication. The coversheet calls for the identity and title of the speaker/writer, the subject matter of the proposed publication/speech, and requests confirmation that the material does not contain nonpublic information or comment on pending litigation or rulemaking proceedings and includes the standard disclaimer language. Upon receipt of the publication/speech and this information, OGC will then review and clear the publication.

Supporting Evidence

We found that Hinman complied with the ethics requirements regarding the speech clearance process by circulating the speech through OGC for review. We spoke with (b)(6); (b)(7)(C) to review draft speeches, particularly those drafted by and for Division directors and other high-level SEC officials.¹² (b)(6); (b)(7)(C) explained that the supplemental ethics regulations require speeches proposed by SEC employees to go through pre-publication review to ensure that the proposed speech does not contain nonpublic information.¹³ (b)(6); (b)(7)(C) explained further that SEC employees are prohibited from making predictions or commenting on active SEC matters.¹⁴ (b)(6); (b)(7)(C) the draft Yahoo speech contained a programmatically important issue: specifically, cryptocurrencies. (b)(6); (b)(7)(C) went through the draft with a “fine tooth comb.”¹⁵ (b)(6); (b)(7)(C) edits to the speech, however, concentrated on ensuring Hinman gave accurate and impartial descriptions of cryptocurrencies.¹⁶ (b)(6); (b)(7)(C) also forwarded the speech and (b)(6) comments to (b)(6) supervisor at the time, (b)(6); (b)(7)(C) for (b)(6) review.¹⁷

(b)(6); (b)(7)(C)
 (b)(6); (b)(7)(C)
 (b)(6); (b)(7)(C) to (EXHIBIT 8)

¹² Exhibit # 13 (b)(6); (b)(7)(C) Tr. 6-9:16.
¹³ (b)(6); (b)(7)(C) Tr. 7:6 – 8:16.
¹⁴ (b)(7)(C) Tr. 16:3-4.
¹⁵ Tr. 19:25 – 21:12.
¹⁶ Tr. 16:1-4.
¹⁷ Tr. 18:13-18.

¹⁸ (b)(6); (b)(7)(C) Exhibit #5: (b)(6); (b)(7)(C)
 Tr. 18:18 – 19:20.

FINDING 5: We found no evidence that Hinman’s statements regarding Ether in the Yahoo speech had a direct and predictable effect on his financial interests at the time or that he made the statements for personal gain.

Implicated Standard

18 U.S.C. § 208.

Supporting Evidence

The complainant alleged that because STB was a member of the Ethereum Alliance at the time of Hinman’s Yahoo speech, and Hinman had ties to STB through his retirement annuity and “repeated contacts” with STB personnel, then Hinman had a direct financial interest in Ethereum when he made statements in the Yahoo speech regarding Ether’s status as a security. Even if true, the facts alleged do not amount to a conflict of interest on Hinman’s part.

There Is No Evidence That Hinman Had a Financial Conflict of Interest Related to the Speech

As previously discussed, Hinman cured the dual representation financial interest conflict (18 U.S.C. § 203) when he agreed to receive a fixed rather than variable annuity from STB for the length of his SEC tenure and managed the potential financial conflict under 18 U.S.C. § 208 through his recusal from participating in matters involving STB. He told us: “I never took part in any matters involving Simpson Thacher or any matters that I believed would directly and predictably affect any of my financial interests.”¹⁹ We found no evidence contradicting this statement. Moreover, Hinman completed OGE Public Financial Disclosure Forms 278 (“Forms 278”) annually as required, in which he disclosed his STB retirement annuity but no other financial interest in STB. **(EXHIBIT 7)** Therefore, the evidence does not support a finding Hinman had any ties to STB that would violate criminal conflicts statutes.

We also found no evidence to indicate that Hinman had a financial interest in any digital assets, including Ether, while employed with the SEC. Specifically, Hinman testified in his 2021 deposition that as far as he was aware, he did not own – either directly or indirectly – any type of financial interest in any security issued by a cryptocurrency company or digital asset before, during, and after his tenure as Division Director.²⁰ We reviewed his Forms 278 and his Personal Trading Compliance System (PTCS) Annual Certification of Holdings covering his tenure at the SEC, which revealed no holdings in digital assets, including Ether. **(EXHIBIT 7)**

We also concluded that Hinman’s statements about Ether in the Yahoo speech did not rise to the level of “personal and substantial” participation in a “particular matter” that was pending before the Commission at the time of the speech. The attenuated connection between the Yahoo speech, the status of the Ether token as a security, the Ethereum Alliance, and STB’s participation in the Ethereum Alliance, an industry network, taken together, do not amount to a “direct and predictable” financial benefit to STB or Hinman.

¹⁹ Exhibit # 4: Hinman Resp. Q. 6(d)(ii).

²⁰ Exhibit # 1: Hinman Dep. 113:3 – 115:12; 325:3-16.

The Yahoo Speech Was Collaboratively Drafted and Hinman Was Not Representing His Own Personal Interests When He Gave the Speech

Hinman alone did not determine the content of the speech, nor was he its principal author. (b)(6); (b)(7)(C) during Hinman's tenure, told us that Hinman asked (b)(6); (b)(7)(C) to draft the Yahoo speech in collaboration with (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) along with others who worked (b)(6); (b)(7)(C) on (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) said that Hinman chose the subject because "the issue of how to treat digital assets" was "a hot topic" that (b)(6); (b)(7)(C) discussed with Hinman "a number of times in that time period. And I don't remember if it was him or me, or with someone else, but the idea came about to give a speech to give some kind of contour of the legal – of our legal thinking in this area."²² (b)(6); (b)(7)(C) to be the primary producer and distributor of the speech among SEC reviewers but characterized the speechwriting as "a collaborative process" with "multiple hands" involved.²³ We also spoke with (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) about the drafting process, who confirmed that multiple divisions and offices within the SEC provided input during the drafting of the speech.²⁴ Hinman told us that the then-Chairman and members of his staff reviewed and commented on the speech.²⁵ He further elaborated that the Chairman and other Division heads discussed the content of the speech at some length.²⁶

The decision to mention Ether in the speech was likewise collaborative. Hinman explained that "this decision was made collectively by the group of SEC officials that reviewed the speech."²⁷ He elaborated:

The thinking was that the markets were trying to understand how to apply the Howey case and our, then recent, 21A order, to digital assets. The SEC had previously made statements that [Bitcoin] was viewed as a commodity, (b)(5) (b)(5) (b)(5) we could generate a higher level of compliance among issuers of digital assets.²⁸

Moreover, Hinman stated that he was unaware of STB's recent membership in the Ethereum Alliance when he gave the Yahoo speech.²⁹

We also found that Hinman was on official SEC business when he gave the Yahoo speech.³⁰ SEC travel records confirmed that the agency paid for Hinman to travel to San Francisco, California on June 13, 2018, where he gave the speech on June 14th, and returned to

²¹ Exhibit # 9: (b)(6); (b)(7)(C) Tr. 9:6-18.

²² (b)(6); (b)(7)(C) Tr. 8:1-7.

²³ (b)(6); (b)(7)(C) Tr. 16:7-16; 13:8-9; 11:22.

²⁴ Exhibit # 10: (b)(6); (b)(7)(C) Tr. 9:6 – 10:22 ; Exhibit # 11: (b)(6); (b)(7)(C) Tr. 9:14 – 10:3.

²⁵ Exhibit # 4: Hinman Resp. Q. 7(b).

²⁶ Hinman Resp. Q. 10.

²⁷ Hinman Resp. Q. 10.

²⁸ Hinman Resp. Q. 10.

²⁹ Hinman Resp. Qs. 13 and 14(a).

³⁰ Hinman Resp. Q. 8.

D.C. on June 17, 2018. Hinman was in duty status for each of the workdays during this time. **(EXHIBIT 8)**

There is no evidence that Hinman would have been invited to speak but for his position at the SEC. His use of a disclaimer to the effect that the speech does not necessarily reflect the views of the Commission does not change this; it is the standard disclaimer used by SEC personnel in all speaking engagements.³¹ While Hinman could not remember who invited him to speak at the Summit, he thought that the invitation may have come through one of his SEC counsels and not directly to him.³² Moreover, Hinman testified that he did not consider himself an expert in digital asset transactions when he joined the SEC in 2017,³³ and he was listed on the agenda with only his title as Director of the Division of Corporation Finance at the SEC and no other biographical or professional information.³⁴ **(EXHIBITS 1 and 14)**

Meeting with Ethereum Officials Was Within the Ordinary Course of Business

We did find that Hinman and other SEC officials met with representatives from Ethereum before the speech was given. (b)(6); (b)(7)(C) recalled two meetings with non-SEC individuals (b)(6); (b)(7)(C) believed were involved with the Ethereum platform about a month or so before the Yahoo speech, the purpose of which was to receive background information on how the token worked, and obtain information that would make Hinman comfortable with the subject matter he was to present at the Yahoo Summit.³⁵ Hinman confirmed that he met with Joe Lubin and Vitalik Buterin, two of the originators of Ethereum, in connection with his due diligence leading up to the Yahoo speech.³⁶ Hinman told us that SEC officials did not tell the Ethereum originators that they were working on a speech.³⁷ There is no indication that this meeting was inappropriate or outside of the ordinary course of SEC business.

Coordination

We did not present this matter to the United States Attorney's Office for consideration of prosecution as we developed no evidence of a criminal violation.

³¹ The evidence indicates that Hinman was acting in his official capacity when he gave the Yahoo speech, an issue that was in dispute in *SEC v. Ripple Labs, Inc. et al.*, 1:20-cv-10832-AT-SN (S.D.N.Y. Dec. 22, 2020).

³² Exhibit # 1: Hinman Dep. 228:22 – 229:5.

³³ Hinman Dep. 45:19 – 46:14.

³⁴ https://finance.yahoo.com/news/yahoo-finance-presents-markets-summit-crypto-114756464.html?guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAADeQgBJOlpH7Wfgfidbh6MA9qMRE8RHY4eGrkCciCPJTKMtQstx6O64CudE7iNNgui5CJoO6_2syU5ACpy7hmOp5k1BtNB7zjfSQBdg2tC-P2PE1akrvzkWko2FBINyaLIKR8nk5Q6HTNks0SKIo0iCDyVz1Rz-GhbdFFC4thZ84&guccounter=2

³⁵ Exhibit # 10: (b)(6); (b)(7)(C) Tr. 18:25 – 20:7.

³⁶ Exhibit # 4: Hinman Resp. Qs. 11 and 12.

³⁷ Hinman Resp. Q. 11(a).

Exhibits

1. Deposition of William H. Hinman, Jr., dated July 27, 2021.
2. Empower Oversight complaint, dated May 9, 2022.
3. Memorandum of Activity, Review of Hinman's STB pension agreement, dated May 9, 2017.
4. Memorandum of Activity, Investigative Questionnaire to Hinman, dated April 19, 2024.
5. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated November 15, 2022.
6. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated May 22, 2023.
7. Memorandum of Activity, Review of Hinman's OGE Forms 278 and PTCS forms, dated June 13, 2022.
8. Memorandum of Activity, Review of SEC Forms 2432, E2 Travel and WebTA, dated August 23, 2022.
9. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated June 1, 2023.
10. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated February 16, 2023.
11. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated February 15, 2023.
12. Memorandum of Activity, Review of Hinman's email files, dated September 14, 2023.
13. Memorandum of Activity, Interview of (b)(6); (b)(7)(C) dated February 2, 2023.
14. Memorandum of Activity, Review of Hinman's email files, dated September 9, 2023.
15. Memorandum of Activity, Review of Hinman's email files, dated September 19, 2023.