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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE)
COMMISSION,)
Plaintiff,) Case No.
vs.) 20 CV 10832 (AT)
RIPPLE LABS, INC.; BRADLEY)
GARLINGHOUSE, and CHRISTIAN A.)
LARSEN,)
Defendants.)
-----)

DEPOSITION OF WILLIAM HAROLD HINMAN, JR.
WASHINGTON, D.C.
JULY 27, 2021

REPORTED BY: Tina Alfaro, RPR, CRR, RMR

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
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1 Videotaped deposition of WILLIAM HAROLD

2 HINMAN, JR., held at the offices of:

3

4 Kellogg Hansen Todd Figel & Frederick

5 1615 M Street, NW

6 Washington, D.C. 20036

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8 Taken pursuant to notice before Tina M.

9 Alfaro, a Notary Public within and for the District

10 of Columbia.

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1 THE VIDEOGRAPHER: This is media No. 1 of
2 the videotaped deposition of William Hinman. This
3 is in the matter of SEC versus Ripple Labs, et al.
4 This is in the United States District Court,
5 Southern District of New York, No. 20-CV-10832-AT.
6 This deposition is being held at 1615 M Street,
7 Northwest, Suite 400, Washington, D.C. on
8 July 27th, 2021. The time on the video monitor is
9 approximately 9:12 a.m.

10 My name is David Campbell. I am the legal
11 videographer from Digital Evidence Group. The
12 court reporter is Tina Alfaro, the hotseat is James
13 Beall. Both are with Digital Evidence Group.

14 Counsel, will you please identify
15 yourselves for the record after which the court
16 reporter will please swear in the witness and we
17 can proceed.

18 MR. FIGEL: Reid Figel with Eliana Pfeffer
19 representing Ripple Labs.

20 MR. FLUMENBAUM: Martin Flumenbaum with
21 Sarah Prostko, Paul Weiss Rifkind Wharton &
22 Garrison, representing Chris Larsen.

1 MR. PISEM: Michael Pise, Debevoise &
2 Plimpton representing Ripple Labs.

3 MR. ALDEROTY: Stu Alderoty, General
4 Counsel, Ripple.

5 MR. SOLOMON: Matthew Solomon, Cleary
6 Gottlieb, representing Brad Garlinghouse, and with
7 me is Nicole Tatz also from Cleary.

8 MR. TENREIRO: Jorge Tenreiro on behalf of
9 Plaintiff, Securities and Exchange Commission.
10 With me are my colleagues Melinda Hardy, Bridget
11 Fitzpatrick, and Ladan Stewart.

12 MS. KELLY: Meaghan Kelly with Paul
13 Gluckow from Simpson Thacher for the witness.

14 (Witness sworn.)

15 WHEREUPON:

16 WILLIAM HAROLD HINMAN, JR.
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19 EXAMINATION

20 BY MR. FIGEL:

21 Q. Good morning, Mr. Hinman.

22 A. Good morning.

1 MR. FIGEL: There is one housekeeping
2 matter I'd like to discuss with Mr. Tenreiro with
3 respect to a document production just to put it on
4 the record early.

5 As I mentioned to you off the record but
6 we're now putting on the record, among the
7 discovery produced in this case were documents from
8 [REDACTED] We received documents in the original
9 production that lacked metadata. We made a
10 supplemental request for documents that included
11 the metadata and we'll be using those documents
12 which were produced late last night in the
13 deposition, but because there seem to be some
14 inconsistencies in terms of date stamps and
15 attachments and things like that, I want to make
16 sure that Mr. Tenreiro has copies of the original
17 production just so we don't have any unnecessary
18 issues down the road about the version of the
19 document we're using.

20 So I'd like to ask the court reporter to
21 mark this document which bears the Bates Nos.
22 [REDACTED] a lot of zeros 1 through 10 as Hinman

1 Exhibit 1, and I'll represent this is a printed
2 copy of one of the original chain of e-mails that
3 we received from [REDACTED]

4 (Hinman Exhibit 1 was marked
5 for identification.)

6 MR. BEALL: I'm going to need the tag
7 number. This was part of the group that was given
8 to me this morning.

9 MR. FIGEL: No, this is supplemental.
10 So...

11 MR. TENREIRO: Mark and others that might
12 be on the phone, we'll send you copies later.

13 MR. FIGEL: Oh, I'm sorry. Actually I did
14 misspeak. Just for the record, the documents we
15 are -- that I'm putting on the record now do not
16 correlate perfectly with the prior documents we
17 were going to use. So we can talk about that off
18 the record, but --

19 MR. TENREIRO: So these are my copies?
20 This is the whole thing?

21 MR. FIGEL: There's one more.

22 MR. TENREIRO: Okay. Okay. Got it.

1 MR. FIGEL: The next document was produced
2 by [REDACTED] with a Bates number [REDACTED] multiple
3 zeros 11. It's a one-page document. I ask that
4 the court reporter mark this as Hinman Exhibit 2.

5 (Hinman Exhibit 2 was marked
6 for identification.)

7 MR. TENREIRO: This is also from last
8 night, Reid?

9 MR. FIGEL: No. These were the earlier
10 produced documents. These were the ones that came
11 without the metadata.

12 MR. TENREIRO: I see. So these are the
13 earlier ones. You don't have these available to
14 circulate to my colleagues?

15 MR. FIGEL: It's okay. We do.

16 And the third document does not bear Bates
17 numbers. It was -- or actually it does. It's hard
18 to read.

19 MR. TENREIRO: 000146.

20 MR. FIGEL: So the third one is -- bears
21 Bates No. 00146 [REDACTED] prefix and ends with
22 [REDACTED] 000180, and this appears to be

1 attachments to the prior documents.

2 MR. TENREIRO: Okay.

3 MR. FIGEL: And I'll ask the court
4 reporter to mark this as Hinman Exhibit 3.

5 (Hinman Exhibit 3 was marked
6 for identification.)

7 MR. TENREIRO: I mean, we can discuss -- I
8 don't see the designation of an attachment in
9 these, but, you know, when we look at it we can
10 talk about it.

11 MR. FIGEL: I can explain it to you. The
12 attachment on the e-mail does not correlate to the
13 title.

14 MR. TENREIRO: And certainly there were no
15 attachments to these. Okay. Thank you.

16 Before we get started with questioning,
17 you know, just a couple of quick stipulations that
18 we've discussed prior. The first is that we're
19 going to designate the transcript as confidential
20 under the judge's protective order. We will note
21 designations of confidentiality and highly
22 confidential after the deposition.

1 The second is that the parties have
2 stipulated, as we have done prior, again, that an
3 objection by me or by Mr. Hinman's counsel
4 preserves the objection both for the SEC and for
5 Mr. Hinman.

6 And the third is that the parties have
7 agreed that by having Mr. Hinman sit for this
8 deposition and testify, excuse me, as to certain
9 questions the SEC is not waiving otherwise
10 applicable privileges or protections with respect
11 to documents it has withheld from production as
12 properly privileged or protected from disclosure,
13 and similarly that should Mr. Hinman disclose
14 information that is otherwise privileged or
15 protected, which I will instruct him not to do
16 today, that disclosure will not be deemed a waiver
17 by the SEC of the subject waiver or otherwise a
18 waiver of any applicable protection.

19 Is that okay with the parties?

20 MR. FLUMENBAUM: Yes, insofar as we're
21 asking the questions. If you ask Mr. Hinman
22 questions, then I believe you open him up to

1 whatever deliberative process issues exist.

2 MR. TENREIRO: Okay. I actually don't
3 think that's true on the second half, but we're
4 okay on the first half. So let's keep it there and
5 when we get to our questions we can discuss that.

6 Reid, do you agree as well?

7 MR. FIGEL: I agree with the caveat
8 expressed by Mr. Flumenbaum, but in general with
9 respect to our questions, yes, that's our
10 agreement.

11 MR. TENREIRO: Thank you.

12 BY MR. FIGEL:

13 Q. Good morning, Director Hinman.

14 A. Good morning.

15 Q. Could you state your full name for the
16 record and spell it.

17 A. William Harold Hinman, Junior. So
18 H-I-N-M-A-N is the last name.

19 Q. And where do you currently reside?

20 A. In D.C.

21 Q. The deposition's confidential. So I'll
22 ask what is your current address?

1 MR. TENREIRO: Let's just skip that. What
2 do you need it for? We can talk about what you
3 need it for, we can give it to him. There's a lot
4 of interest in this case and I'd rather --

5 MR. FIGEL: Fair enough. All right, but
6 we have an understanding that --

7 MR. TENREIRO: Plus it's counsel.

8 THE REPORTER: We have to go one at a
9 time.

10 MR. FIGEL: -- if asked, we will be
11 provided with the addresses if necessary.

12 MR. TENREIRO: Yes.

13 MR. FIGEL: We'll be provided with the
14 addresses of Mr. Hinman's residences.

15 BY MR. FIGEL:

16 Q. Mr. Hinman, have you ever been deposed
17 before?

18 A. Once.

19 Q. And when was that?

20 A. About 25 years ago. So I don't remember
21 the exact date.

22 Q. And, again, without getting into a lot of

1 detail, what was the general topic or subject of
2 the case in which you were deposed?

3 A. It was -- as a company counsel I had given
4 a company advice with respect to transfers of
5 securities under 144, and that became an issue
6 between the company and the holder of the
7 securities.

8 Q. Just a couple preliminary comments. I'm
9 sure you're aware, but we do have a court reporter
10 as well as a videographer. So we need verbal
11 answers to questions. Head nods and --

12 A. Okay.

13 Q. -- less precise answers will not be clear
14 from the transcript and we obviously want to have a
15 clear record. Obviously only one person can speak
16 at a time. So please let me finish my question
17 before you give an answer, and give Mr. Tenreiro
18 sufficient time or your counsel sufficient time to
19 make an objection if they would like to do that,
20 particularly given we're going to be dealing with
21 some privilege issues. Part of what we'll be doing
22 today is creating a record.

1 A. Thank you.

2 Q. Other than instructions on privilege, if
3 Mr. Tenreiro objects, that's not a basis for you
4 not to answer the question. So he will note his
5 objection, but you're still required to give an
6 answer to my question. Do you understand that?

7 A. I do.

8 Q. And then the less serious point, but if
9 you need a break, just let us know. I think we'll
10 probably take a break about every hour, hour and a
11 half, but if you need one for any reason, just ask.
12 The only thing I would ask is you don't ask for a
13 break before you've answered a question that I've
14 put to you.

15 A. Sure. Thank you.

16 MR. TENREIRO: Just to let him know,
17 though, that if he has a question on privilege we
18 might have to take a break.

19 MR. FIGEL: Of course. Fair enough.

20 Q. And you're represented by personal counsel
21 today; is that correct?

22 A. That's right.

1 Q. And could you identify your counsel,
2 please.

3 A. Simpson Thacher.

4 Q. Are you also represented today by counsel
5 for the SEC?

6 A. I don't believe so.

7 MR. TENREIRO: Again, on the record as
8 we've explained before, we represent him in his
9 capacity as a former SEC official. That's how we
10 represent him.

11 MR. FIGEL: Fair enough.

12 BY MR. FIGEL:

13 Q. And are you aware of the fact that the SEC
14 moved to quash your deposition today?

15 A. I'm aware of that.

16 Q. And you did not have your personal counsel
17 move to quash the deposition, correct?

18 A. That's right.

19 Q. Did you have time to prepare for your
20 deposition today?

21 A. Yes.

22 Q. Approximately how many hours did you spend

1 preparing for the deposition?

2 A. I believe five or six hours.

3 Q. And when -- when were those five or six
4 hours?

5 A. Over the last couple of weeks, two
6 different occasions.

7 Q. And were those preparation sessions done
8 in person or over Zoom or some other video
9 communication?

10 A. We had a phone call and an in-person
11 session.

12 Q. And who was present for -- let's
13 start with do you remember approximately when the
14 first prep session was?

15 A. About ten days ago approximately. And who
16 was present?

17 Q. Well, that was the one by phone, correct?

18 A. No. That was in person.

19 Q. Okay. And where was the in-person
20 meeting?

21 A. At the SEC.

22 Q. And who was present for that meeting?

1 A. Basically the folks here except for the
2 last one, Lindy. I've forgotten Lindy's last name.

3 MS. HARVEY: Harvey.

4 Q. But Ms. Fitzpatrick was present and
5 Mr. Gluckman and everyone?

6 A. I'm trying to remember. Paul was not
7 there as well.

8 MR. FIGEL: I'm sorry. Your last name?

9 MS. KELLY: Meaghan Kelly.

10 Q. Ms. Kelly was there?

11 A. Yes.

12 Q. Okay. And how long did that session last?

13 A. About four, four and a half hours I would
14 think.

15 Q. Were you shown any documents in that
16 meeting?

17 A. Yes.

18 Q. Did any of those documents refresh your
19 recollection about events that you did not have a
20 recollection to before the meeting?

21 A. I didn't remember the specific document,
22 but I generally remembered the topics covered and

1 the substance of the documents.

2 Q. When was the next time you prepared -- you
3 met with counsel to prepare for your deposition?

4 A. Our phone call I think was yesterday or
5 the day before yesterday.

6 Q. Okay. And where were you when that phone
7 call was made?

8 A. At my home.

9 Q. Was anyone present with you at your home?

10 A. No.

11 Q. And who was on the line?

12 A. Jorge, Meaghan. I'm not sure if Paul was
13 on the line, and I'm not sure exactly who else from
14 the SEC.

15 Q. To your knowledge, was anyone on -- either
16 listening in on the meeting at the SEC or on the
17 phone call other than counsel from Simpson Thacher
18 and counsel for the SEC?

19 A. No.

20 Q. And were you shown any documents or were
21 you provided with documents in connection with the
22 phone session you had yesterday or the day before?

1 A. I think there was an e-mail with the links
2 to speeches.

3 Q. Other than links to speeches, any other
4 documents?

5 A. Not that I recall.

6 Q. All right. Any circumstances or
7 situations that we should be aware of that would
8 prevent you from giving full and complete testimony
9 today?

10 A. No, not that I'm aware of.

11 MR. FIGEL: So we are now up to Hinman 4.
12 I'd like the court reporter to mark as an exhibit,
13 Hinman 4, a stipulation that was entered into by
14 the parties to this case, by Mr. Tenreiro, by
15 myself, and Mr. Solomon and Mr. Flumenbaum. It's
16 to save you a little time with respect to
17 authenticating both your published remarks of your
18 speech on June 14th as well as a link to the
19 YouTube recording of your speech and also to a
20 letter that Chairman Clayton sent to Representative
21 Ted Budd on March 7th 2019.

22 MR. TENREIRO: I'm sorry. Who's giving

1 the witness his copy?

2 MR. FIGEL: I'm not going to -- I'm just
3 putting this on the record. I just want to have it
4 in.

5 MR. TENREIRO: Absolutely. I just want to
6 make sure I don't pass his copy down.

7 MR. FLUMENBAUM: Is that Exhibit 4?

8 MR. FIGEL: That's Exhibit 4, yes.

9 (Hinman Exhibit 4 was marked
10 for identification.)

11 BY MR. FIGEL:

12 Q. Other than the people you identified at
13 your prep session and individuals directly
14 associated with Ripple or their representatives,
15 have you had communications with any other person
16 as to whether XRP or transactions in XRP were
17 securities under the federal securities laws?

18 MR. TENREIRO: And you said other than
19 people you identified in your prep session, but I'm
20 going to include and I'm going to instruct him not
21 to answer other SEC staff members or commissioners
22 or SEC people to the extent there were discussions

1 that were deliberative.

2 With that instruction, please answer.

3 A. Other than these deliberative discussions,
4 that's right.

5 Q. So no, let's call them, third parties,
6 non-SEC employees, and nonrepresentatives of Ripple
7 in connection with meetings that you might have
8 had?

9 MR. TENREIRO: I'm sorry, Reid. Just for
10 third parties non-SEC employees. Also no other
11 governmental, you know, I'm excluding that as well.
12 We're asserting privilege to the extent he had
13 those. I'm not saying he did, but if he did, I'm
14 excluding those.

15 MR. FIGEL: Okay. Let's rephrase the
16 question and make a record.

17 Did you have communications with any
18 representatives of any government agency, foreign
19 or domestic, about whether XRP or transactions in
20 XRP were securities under the federal securities
21 laws? Answer yes or no.

22 A. Yes.

1 Q. With whom?

2 A. I believe the topic came up in connection
3 with some FSOC meetings, financial stability
4 oversight committee that I participated in.

5 Q. And approximately when were those
6 meetings?

7 A. The FSOC subcommittee on digital assets
8 was probably formed in 2018, and this topic -- I
9 don't have a specific recollection of this topic,
10 but I think this topic came up in the context of
11 those meetings that year.

12 Q. And was there -- again, without getting
13 into the substance of the communications, was there
14 a policy or a determination that was being
15 discussed at the meeting that you just testified
16 to?

17 A. In general the FSOC group was trying to
18 analyze the regulatory framework for digital
19 assets. So, you know, different activities in the
20 area, different coins that had been issued were
21 frequently discussed. So that's the context in
22 which that probably came up.

1 MR. FIGEL: And Mr. Tenreiro, I assume
2 from your previous instruction that any questions I
3 would ask Mr. -- Director Hinman about who said
4 what to whom with respect to XRP or Ripple you
5 would give the same instruction?

6 MR. TENREIRO: You are correct.

7 Q. And just so the record is clear, have you
8 had communications with third parties -- and by
9 third parties we use Mr. Tenreiro's formulation,
10 people other than SEC employees, other than
11 employees of other domestic or foreign governments,
12 or representatives of Ripple -- since you left the
13 commission as to whether XRP or transactions in XRP
14 is a security under the federal securities laws?

15 A. No.

16 Q. How are you currently employed?

17 A. I'm a senior advisor for Simpson Thacher
18 as well as a group called AndVest as well as
19 Andreessen Horowitz, basically consulting
20 arrangements.

21 Q. So you're a senior advisor to Simpson
22 Thacher?

1 A. Yes.

2 Q. And with respect to AndVest you said you
3 were a senior advisor?

4 A. Yes. AndVest, A-N-D-V-E-S-T.

5 Q. And is that a compensated position?

6 A. Just securities.

7 Q. You receive securities as compensation
8 exchange --

9 A. It's a --

10 Q. Let me finish my question.

11 A. Sure. Sorry.

12 Q. You receive securities in exchange for
13 whatever advisory services you provide to AndVest;
14 is that correct?

15 A. That's right. I'm expected to provide ten
16 hours roughly a week of advisory services, and I
17 have shares in AndVest and some of their
18 subsidiaries that vest over time.

19 Q. Okay. And what was the third company or
20 entity to which you provide?

21 A. Andreessen Horowitz.

22 THE REPORTER: One more time.

1 THE WITNESS: Andreessen Horowitz. So

2 Andreessen, A-N-D-R-E-E-S-S-E-N, Horowitz.

3 Q. And is that also -- do you receive
4 compensation for --

5 A. Yes.

6 Q. -- services provided to Andreessen
7 Horowitz?

8 A. Yes.

9 Q. And what is your relationship with
10 Andreessen Horowitz in terms of time commitment or
11 obligations with respect to --

12 A. Roughly the same in terms of advisory
13 role, hours per week.

14 Q. When did you first have communications
15 with Andreessen Horowitz about becoming an advisor
16 to Andreessen Horowitz?

17 A. Probably in April of this year, maybe --
18 maybe May.

19 Q. April of 2021?

20 A. Yes. Fairly recent.

21 Q. And what about --

22 A. Maybe even June. Actually late May, early

1 June.

2 Q. But no discussions prior to May or June of
3 2021?

4 A. Correct.

5 Q. And what about with AndVest?

6 A. That was probably in February.

7 Q. Of 2021?

8 A. Maybe March. Yes.

9 Q. Do you maintain a residence in New York
10 City?

11 A. No.

12 (Hinman Exhibit 5 was marked
13 for identification.)

14 BY MR. FIGEL:

15 Q. I'd like to show you what I will -- so I'd
16 like to show you a document that I will ask the
17 court reporter to mark as Exhibit 5. You can just
18 hand it over to him.

19 A. Okay.

20 Q. This was intended to save you a little
21 time. I'm not sure it did. I'll represent to you
22 this is a document we downloaded from the Simpson

1 Thacher Website. Have you seen this before?

2 A. Yes.

3 Q. Did you approve this before it was posted
4 on the Simpson Thacher Website?

5 MR. TENREIRO: Object to form. Go ahead.

6 A. I believe this or a draft similar to this.

7 Q. Does this accurately state your
8 educational background?

9 A. Yes.

10 Q. And does it accurately describe your areas
11 of professional expertise as a -- as a lawyer?

12 A. I think so, yes.

13 Q. And does it also accurately describe your
14 employment history before you joined the SEC.

15 I'll tell you what. I'll withdraw the
16 question.

17 A. Yeah. I'm not sure it covers everything,
18 but what's there looks right.

19 Q. Shortly after you graduated from law
20 school you joined Sherman & Sterling, correct?

21 A. That's right.

22 Q. And what was your area -- and you became a

1 partner in 1988?

2 A. That's right.

3 Q. And what were your areas of practice?

4 A. Bank finance, corporate securities.

5 Q. Were you ever a litigator?

6 A. No.

7 Q. You left Sherman & Sterling in

8 approximately 2000, correct?

9 A. That's right.

10 Q. And you joined Simpson Thacher as a

11 partner?

12 A. That's right.

13 Q. And then you resigned from Simpson Thacher

14 in approximately May of 2017 and assumed the duties

15 of the director of the division of corporate

16 finance, correct?

17 MR. TENREIRO: Objection.

18 MS. KELLY: Objection to form.

19 A. I think I may have left Simpson earlier

20 than that. I had retired as a full general partner

21 at the end of 2016, and then I thought my -- I had

22 a contractual relationship for one particular

1 matter after that and I think that -- I thought
2 that ended in March, but it may have been later.

3 Q. And, again, at a very high level, what was
4 your area of practice while you were partner at
5 Simpson Thacher between approximately 2000 and when
6 you retired in 2016?

7 A. Securities offerings.

8 Q. Again, did you do any litigation?

9 A. I would assist the litigators in matters
10 that were in my area.

11 Q. Did you consider yourself a litigator?

12 A. No.

13 Q. Did you consider yourself to have
14 expertise in litigation?

15 A. No.

16 Q. At any time prior to the time that you
17 became the director of the division of corporate
18 finance did you represent any client engaged or
19 involved in digital asset transactions?

20 MR. TENREIRO: Object to form.

21 A. I don't think we had retained a specific
22 client. There was an associate at the firm, a

1 former associate who had started working with a
2 digital asset company, and they wanted to --

3 MR. TENREIRO: Wait a second. Just don't
4 disclose, you know, any communications that might
5 reveal --

6 THE WITNESS: Yeah.

7 MR. TENREIRO: Thank you.

8 A. They had questions of how they could
9 comply with the securities laws. So they
10 consulted.

11 Q. Can you identify the client?

12 A. I don't remember the name of the client,
13 frankly, and it wasn't -- I don't think they ever
14 became a formal client. It was more helping a
15 former associate think through some issues.

16 Q. And, again, following Mr. Tenreiro's
17 admonition, I'm not asking for communications with
18 either the associate or with the client. I'm just
19 asking the general area of the representation.

20 A. Yeah.

21 Q. Did you advise that client with respect to
22 whether transactions in digital assets -- and I

1 mean that broadly -- tokens, ICO's, coins were
2 subject to registration under the federal
3 securities laws?

4 A. Yes, we did.

5 Q. And did you reach a conclusion on that?

6 A. Yes.

7 Q. And, again, at a high level, what was
8 your -- what was your conclusion?

9 A. That they would need to comply with the
10 securities laws and register the offering or have a
11 good exemption.

12 Q. And what stage of development was this
13 company?

14 MR. TENREIRO: Object to form. Also if
15 you can answer that without disclosing
16 communications, factual communications you learned
17 from your client, go ahead.

18 A. I'm not sure exactly what stage they were
19 at. So...

20 Q. Do you recall whether the advice you
21 provided to this client was in connection with an
22 initial coin offering?

1 A. I do recall.

2 Q. And was it?

3 A. Yes.

4 Q. And so whatever advice you provided was to
5 a company that had not yet sold any coins or
6 tokens, correct?

7 A. I'm not sure. They may have already
8 raised some funds. I don't know if they did it
9 through coins or some other method.

10 Q. And at the time you were providing advice
11 had they developed a network or a product?

12 MR. TENREIRO: Object to form.

13 A. I believe they had something developed. I
14 don't really remember the business plan that well
15 at this point, but they were midstream.

16 Q. Okay. All right. Other than this client,
17 the unidentified client, were there -- did you
18 represent any other client that was engaged or
19 involved in digital asset transactions?

20 A. Not that I recall.

21 Q. Prior to the time you joined the SEC in
22 2017, how would you characterize your level of

1 expertise with respect to the application of the
2 federal securities laws to transactions in digital
3 assets?

4 A. I was someone in the firm that people came
5 to with questions of that sort. So, you know, sort
6 of in the middle. It was new for everyone, but I
7 had taken an interest in it and had studied it a
8 little bit. So probably above average, but no one
9 knew a whole lot.

10 Q. And why is that no one knew a whole lot?

11 A. Because the instruments were just being
12 shaped and formed and it was early days of this
13 activity.

14 Q. And there had not been a lot of litigation
15 as to when a transaction in a digital asset would
16 constitute a security, correct?

17 MR. TENREIRO: Object to form.

18 A. I don't believe so.

19 Q. Prior to joining the SEC in 2017 -- and
20 you can just say yes or no for now to avoid the
21 privilege issues -- had you personally represented
22 Andreessen Horowitz or any entity affiliated with

1 what is now Andreessen Horowitz?

2 A. I don't think they were ever a client.

3 They might have been involved with matters I was
4 involved in, but I don't think they were a client.

5 Q. And how about 

6 A. No.

7 Q. And how about the Ethereum Foundation?

8 A. No.

9 Q. And I mean this in a very broad sense When
10 I talk about the Ethereum foundation and I'm
11 reading from language on their Website. So if
12 you'll bear with me.

13 "The Ethereum Foundation is not a company
14 or even a traditional nonprofit. Their role is not
15 to control or lead Ethereum, nor are they the only
16 organization that funds critical development of
17 Ethereum-related technologies. The Ethereum
18 FoundationSo with that very amorphous, broad
19 definition of the Ethereum Foundation do you
20 believe you represented any company, individual, or
21 entity that was involved in the Ethereum Foundation
22 as I just described it?

1 MR. TENREIRO: I'm sorry. Objection to
2 form. Go ahead.

3 A. No.

4 Q. And same questions with respect not to you
5 but to Simpson Thacher generally. To your
6 knowledge, prior to May 2017 had Simpson Thacher
7 represented Andreessen Horowitz or any of their
8 affiliates?

9 MR. TENREIRO: Object to form again. Go
10 ahead.

11 A. I don't know of Andreessen being a client
12 of the firm.

13 Q. And how about 

14 A. Same answer.

15 Q. And same about the Ethereum Foundation in
16 the broadest definition of their conception of what
17 they are?

18 MR. TENREIRO: Object to form.

19 A. Same answer.

20 THE REPORTER: Guys, you've got to slow
21 down a little, please.

22 Q. To your knowledge, any time after May 2017

1 did Simpson Thacher represent Andreessen Horowitz
2 or any of its affiliates?

3 A. So just to be certain, the time frame
4 you're talking about is after May '17 until now?

5 Q. Yes. After you joined the SEC, to your
6 knowledge, did Simpson Thacher represent Andreessen
7 Horowitz?

8 A. No --

9 MS. KELLY: Objection to form.

10 A. -- not that I know of.

11 Q. And is that true to the current -- to the
12 current day?

13 A. Yes.

14 Q. And what about [REDACTED] with respect to
15 Simpson Thacher after May 2017.

16 MS. KELLY: Objection to form.

17 MR. FIGEL: I'll back up. Withdrawn.

18 To your knowledge, after May 2017 did
19 Simpson Thacher represent [REDACTED]

20 A. Not to my knowledge.

21 Q. And to your knowledge, after May 2017 did
22 Simpson Thacher represent the Ethereum Foundation

1 or any entities or individuals generally affiliated
2 with the Ethereum Foundation?

3 MS. KELLY: Objection to form, ambiguous.

4 A. That's pretty broad. I don't know all the
5 entities that are affiliated with them, but I'm not
6 aware of a connection between the firm and the
7 Foundation.

8 Q. And I think I asked this, but just so the
9 record's clear, prior to the time that you had --
10 that you joined the SEC in 2017 had you represented
11 any other cryptocurrency company?

12 MR. TENREIRO: Do you mean other than what
13 we talked about?

14 MR. FIGEL: Yes.

15 MR. TENREIRO: Okay.

16 BY THE WITNESS:

17 A. Not that I recall.

18 Q. Are you familiar with something known as
19 the Enterprise Ethereum Alliance?

20 A. Since I left the SEC I became aware of it.

21 Q. And what is your current understanding of
22 what the Enterprise Ethereum Alliance is?

1 A. I'm not exactly sure, but I think it's a
2 trade group of some sort that large enterprises
3 that want to understand Ethereum, you know, engage
4 with it to sort of be informed and, you know,
5 facilitate their work in that area.

6 Q. And to your knowledge, is Simpson Thacher
7 currently a participant in the Enterprise Ethereum
8 Alliance?

9 MR. TENREIRO: Object to form.

10 A. I understand that the firm is a member.

11 Q. Do you know when Simpson Thacher first
12 became a member of the Ethereum -- the Enterprise
13 Ethereum Alliance?

14 A. I'm not sure.

15 THE REPORTER: Can I get a spelling on
16 Ethereum.

17 MR. FIGEL: E-T-H-E-R-E-U-M.

18 THE REPORTER: Thank you.

19 Q. I'd like to now direct your attention to
20 the period after you announced your retirement from
21 Simpson Thacher until you joined the SEC as a
22 director of the division of corporate finance?

1 A. Okay.

2 Did you know Jay Clayton before you joined
3 the SEC?

4 A. Yes.

5 Q. And Mr. Clayton was a partner at
6 Sullivan & Cromwell, correct?

7 A. That's right.

8 Q. And how did you know him?

9 A. I think we probably had run across each
10 other over the years. Jay practices in the same
11 area as I do. I don't remember a specific matter
12 other than Alibaba, the IPO for Alibaba. He
13 represented the underwriters and I represented the
14 issuers.

15 Q. Do you recall when you first met
16 Mr. Clayton?

17 A. Personally I met him the night before
18 Alibaba started trading because he was at the
19 printer and we met at the printer.

20 Q. Other than the Alibaba IPO, do you recall
21 any other transactions you worked on with
22 Mr. Clayton?

1 A. I think after the Alibaba IPO while I was
2 still in practice he called me up about a matter
3 that involved a firm client and his client just to
4 clarify an issue.

5 Q. And, again, without getting into the
6 substance of those communications, do you recall
7 which client that was?

8 MS. KELLY: Objection, not relevant. You
9 can answer.

10 A. I don't have a firm recollection. I have
11 a good guess, but I don't -- I wouldn't be certain
12 which client it was. It was a private equity
13 client.

14 Q. Not a cryptocurrency client or a digital
15 asset client?

16 A. No. It wasn't a digital issue.

17 Q. Mr. Clayton appointed you to be the
18 director of the division of corporate finance,
19 correct?

20 A. That's right.

21 Q. How did that appointment come about?

22 A. I had called Jay to congratulate him about

1 his being selected as chairman. We had a
2 conversation, he asked me what I was doing, I said
3 I was retiring, and he said you're too young to
4 retire, why don't you become the direct- -- I'm
5 collapsing a couple conversations, but the gist of
6 it was you're too young to retire, why don't you be
7 the director of corporation finance.

8 Q. And you resigned from the SEC in
9 approximately December of 2020; is that correct?

10 A. That's right.

11 Q. And why did you resign?

12 A. I had always intended to basically do
13 about four years. I had delayed my retirement, you
14 know, I'm now 66. At the time I went into the SEC
15 I was 62, which is the age that I was thinking of
16 retiring. So I delayed it for quite a while. So I
17 thought four more years would be about as much as
18 I'd want to do.

19 Q. I believe you testified generally about
20 this, but I'm going to ask a slightly more specific
21 question. When you joined the SEC in May of 2017
22 did you consider yourself an expert in the

1 application of the federal securities laws to
2 digital asset transactions?

3 MR. TENREIRO: Object to form.

4 A. I don't think I was an expert. I'm not
5 sure whether experts existed at that point.

6 Q. Okay. And why do you state that you
7 didn't think experts existed at that time?

8 A. Because you asked about the application of
9 the securities laws to digital assets. I think
10 digital assets were just emerging as a way to raise
11 funds or to potentially create an enterprise, and I
12 don't think people had completely thought through
13 all the ways the SEC -- the securities laws may
14 apply to that activity.

15 Q. Prior to joining the SEC in May of 2017
16 had you participated in panels or webinars that
17 discussed the application of the federal securities
18 laws to digital asset transactions?

19 A. No.

20 Q. Have you written any client alerts about
21 the application of the federal securities laws to
22 digital asset transactions?

1 A. No.

2 Q. Had you created any work product that
3 analyzed or discussed the application of the
4 federal securities laws to digital asset
5 transactions?

6 MS. KELLY: Objection. Don't answer if it
7 reveals any privileged information.

8 A. No.

9 MR. FLUMENBAUM: I'm sorry. Was that no?

10 THE WITNESS: That's a no.

11 Q. When you joined the SEC in May of 2017 had
12 you heard of Ether?

13 A. Probably.

14 Q. Do you recall in general what your level
15 of understanding about Ether was when you joined
16 the SEC in 2017?

17 A. Probably basic.

18 Q. By "basic" what do you mean?

19 A. I knew it was a digital asset, had heard
20 that it was used to -- as fuel so people using that
21 coin could in effect have access to computer
22 resources to process smart contracts or other

1 functions on that network.

2 Q. Had you gone through the -- let's call it
3 the mental exercise of considering how the federal
4 securities laws might apply to transactions in
5 Ether?

6 MR. TENREIRO: Just to be clear, we're
7 still talking about before the SEC?

8 MR. FIGEL: Yes. Yes.

9 A. I don't think it was specifically Ether.
10 It was more generally to digital assets. I had
11 familiarized myself with the Howey case at that
12 point I believe.

13 Q. But you hadn't gone through the mental
14 exercise of thinking -- withdrawn.

15 Other than what you testified to, did you
16 have an understanding of the basic facts about
17 Ether that would be relevant to the application of
18 the Howey test before you joined the SEC?

19 A. No.

20 Q. Had you heard of Bitcoin?

21 A. Yes.

22 Q. How would you characterize your

1 understanding of Bitcoin as of May 2017 just prior
2 to the time you joined the SEC?

3 A. Basic.

4 Q. And by "basic" what do you mean?

5 A. Basically understood it was a digital
6 asset that transferred through cryptographic
7 addresses on a blockchain.

8 Q. And, again, had you gone through the
9 mental exercise -- withdrawn.

10 Had you gone through the -- taken any
11 efforts to understand the facts that related to
12 Bitcoin that would inform the analysis of whether
13 the federal securities laws applied to transactions
14 in Bitcoin?

15 A. No.

16 Q. Prior to the time you joined the SEC had
17 you heard of XRP?

18 A. I don't think so.

19 MR. FIGEL: This will -- this will be
20 opaque, but we have someone who is monitoring the
21 screen and we had a request to put the documents
22 I'm going to be showing you up on the screen, but

1 because I didn't know what order we were going to
2 be offering the documents there's an internal
3 document.

4 So Mr. Hotseater, I'm showing Mr. Hinman a
5 document that is in the outline as Exhibit CC. I'm
6 sorry. AA.

7 (Hinman Exhibit 6 was marked
8 for identification.)

9 BY MR. FIGEL:

10 Q. Do you have Exhibit 6 in front of you?

11 A. The only thing I have is my bio.

12 Q. So I show you what's been marked as
13 Exhibit 6. I'll represent to you that I believe
14 this is the Supreme Court's decision in SEC versus
15 Howey. I just want to follow up on your earlier
16 testimony that you said that prior to joining the
17 SEC you had familiarized yourself with Howey as it
18 may relate to digital assets, correct?

19 A. I believe so.

20 Q. Okay. Approximately when was that?

21 A. Probably mid 2016, late 2016 I believe.

22 Q. And did you do that in anticipation of

1 becoming the director of the division of corporate
2 finance?

3 A. No.

4 Q. Again, without revealing any privileged
5 communications, what prompted you to read Howey
6 with a view to considering how it might apply to
7 transactions in digital assets?

8 A. Again, the firm had a former associate who
9 had questions in this area.

10 Q. So it was in connection with the
11 representation you testified to earlier?

12 A. Yes. As I say, I don't recall if the
13 firm -- if the firm ever took that person on as a
14 client or that person's company on as a client, but
15 we were trying to understand this area ourselves
16 and in connection with discussing things with her
17 we familiarized ourselves -- "we" being myself and
18 a few associates that were working with me,
19 familiarized ourselves with the law in the area.

20 Q. All right. Prior to joining the SEC had
21 you applied the Supreme Court's decision in Howey
22 to any facts that you had at that time about

1 Bitcoin?

2 A. No.

3 Q. Did you have a view as to whether -- prior
4 to joining the SEC as to whether Bitcoin was a
5 security?

6 MR. TENREIRO: Object to form.

7 A. I don't think so.

8 Q. Did you have a view prior to the time you
9 joined the SEC as to whether transactions in
10 Bitcoin were investment contracts?

11 A. I don't think so.

12 Q. Prior to joining the SEC had you gone
13 through the effort of applying the Supreme Court's
14 decision in Howey to Ether?

15 A. No.

16 Q. Had you formed a view as to whether Ether
17 was a security?

18 MR. TENREIRO: Object to form.

19 MS. KELLY: Object to form. The time
20 period isn't clear.

21 THE REPORTER: Meaghan, I cannot hear you.
22 Sorry.

1 MR. FIGEL: This whole line of questioning
2 I'm focusing based on communications I've had with
3 Mr. Tenreiro on your thought process before you
4 joined the SEC, but I understand the objection.

5 MR. TENREIRO: My objection, Reid, is, you
6 know, you're asking him about the application to
7 Ether and, you know, I think we have -- I don't
8 think I understand what that means. That's my
9 objection.

10 MR. FIGEL: Prior to joining the SEC had
11 you gone through the effort to determine whether
12 under the Supreme Court's decision in Howey Ether
13 was a security?

14 MR. TENREIRO: Object to form.

15 A. I don't believe so.

16 Q. And had you gone through the effort to --
17 had you come to a view as to whether Ether was a
18 security?

19 MR. TENREIRO: Object to form again.

20 A. No.

21 Q. Had you come to a view as to whether
22 transactions in Ether were investment contracts

1 under the federal securities laws?

2 A. No.

3 Q. And I believe you testified earlier but
4 just so the record's clear, you had not gone
5 through the exercise of applying Howey to XRP?

6 A. No.

7 Q. And you hadn't formed a view as to whether
8 XRP was a security prior to the time you joined the
9 SEC?

10 MR. TENREIRO: Object to form.

11 A. No. I wasn't aware of XRP at that point.

12 Q. Now I'd like to -- this will get trickier
13 for Mr. Tenreiro and me, but now I'm focusing on
14 the point at which you assumed your duties as the
15 director of the division of corporate finance. So
16 you're now an SEC employee for these questions,
17 correct? Do you follow me?

18 A. I got you.

19 MR. TENREIRO: Is this day one or do you
20 mean the whole period?

21 MR. FIGEL: From whenever he got his badge
22 forward.

1 MR. TENREIRO: Okay.

2 Q. But I'm now going to focus on, you know,
3 your first few weeks before. After you joined the
4 SEC in 2017, who did you consider the members of
5 the staff of the division of corporate finance that
6 you believed were most experienced in the
7 application of the federal securities laws to
8 digital asset transactions?

9 A. When I first got there?

10 Q. Uh-huh.

11 A. When I first got there I didn't really
12 know the staff. So I wouldn't have a view when I
13 first got there.

14 Q. Well, as you -- as you assumed your duties
15 and became more familiar with the fact, did you
16 come to have a view as to who -- as to which staff
17 member of the division of corporate finance was
18 most experienced on the application of the federal
19 securities laws to digital asset transactions?

20 A. Yes.

21 Q. And who was that?

22 A. I'm not sure any one person was more