

1 expert than any other of a group, but there was a
2 group of folks who were following the area.

3 Q. Can you give me the names of those folks
4 as best you recall?

5 A. The chief counsel of the division, David
6 Frederickson; Amy Starr, who was someone who was
7 following innovative securities offerings
8 generally; my counsel, Michael Seaman, S-E-A-M-A-N;
9 perhaps Lisa Kohl at that point; Tamara Brightwell
10 at the time was probably my counsel as well.

11 Q. And if you had to pick one or two people
12 among the people you just identified as the most
13 knowledgeable, who would those people be?

14 A. Probably David Frederickson and Amy Starr.

15 Q. Directing your attention to
16 Mr. Frederickson, did Mr. Frederickson consider the
17 application of the federal securities laws to
18 Bitcoin or transaction in Bitcoins, to your
19 knowledge?

20 MR. TENREIRO: I'm sorry. Did he
21 consider -- I don't understand the question. So I
22 don't know if I can --

1 MR. FIGEL: I'll rephrase it.

2 You testified that you got an evolving
3 understanding about the expertise of some of the
4 members of your staff. I'm now directing your
5 attention to Mr. Frederickson. Did you come to
6 learn that Mr. Frederickson had considered the
7 application of the federal securities laws to
8 Bitcoin or transactions in Bitcoin?

9 MR. TENREIRO: I think answer yes or no.

10 A. I think he had considered it.

11 Q. Same question with respect to Ether.

12 MR. TENREIRO: Again, yes or no.

13 A. I'm not sure, but I think he may have.

14 Q. How about XRP?

15 MR. TENREIRO: Yes or no, please.

16 A. Don't know.

17 Q. Again, if you can answer yes or no,
18 Mr. Tenreiro will permit it. To your knowledge,
19 were members of the staff of the division of
20 corporation finance engaged in developing any work
21 product on the issue of whether Bitcoin or
22 transactions in Bitcoins were securities under the

1 federal securities laws?

2 MR. TENREIRO: Answer yes or no is the
3 instruction.

4 A. I believe so.

5 Q. And can you identify the work product? In
6 other words, I'm not asking what it was. I'm just
7 asking was there a memo, was there a file, was
8 there someplace that the work product that you were
9 aware of was kept or memorialized in some way?

10 A. Again, what's the time frame we're talking
11 about because, you know --

12 Q. Let's say the first six months after you
13 became the director.

14 A. I had the impression, I don't recall
15 exactly, that a number of digital asset topics had
16 been considered by the folks we're talking about.
17 I'm not sure exactly what work product they
18 prepared. I had the impression, again, that there
19 may have been some, but I don't have a specific
20 recollection of a particular memo.

21 Q. And your testimony, just so the record's
22 clear, relates to the application of the federal

1 securities laws to Bitcoin or transactions in
2 Bitcoin, correct?

3 A. Yes. I think that was an issue that had
4 been thought about.

5 Q. Now, directing your attention to Ether or
6 transactions in Ether, were you aware of any work
7 product that the staff of the division of corporate
8 finance had created that addressed the issue of
9 whether Ether or transactions in Ether were
10 investment contracts under the federal securities
11 laws?

12 MR. TENREIRO: And that's a yes-or-no
13 question, please.

14 A. No.

15 Q. And does your no answer indicate that you
16 do not believe there was any such work product?

17 A. You asked me if I knew of any work
18 product, and the answer was no.

19 Q. So as you sit here today, you're not aware
20 of any work product that had been created by your
21 staff on the issue of whether Ether or transactions
22 in Ether were securities or investment contracts

1 under the federal securities laws?

2 A. And, again, we're talking about the first
3 six months of my tenure?

4 Q. Uh-huh.

5 A. No.

6 Q. Again, it may have happened, but as you
7 sit here today, you're not aware of it?

8 A. Exactly.

9 MR. FIGEL: Okay. I'm sorry. We've had a
10 motion to take a break. Is that all right?

11 MR. TENREIRO: Whatever you want.

12 THE VIDEOGRAPHER: Off the record at

13 10:04.

14 (A short break was had.)

15 THE VIDEOGRAPHER: Back on the record at

16 10:18.

17 BY MR. FIGEL:

18 Q. Mr. Hinman, before we took a break you --
19 I'm directing your attention back to the one client
20 you had a general recollection of when you were at
21 Simpson Thacher. You said you didn't remember the
22 client. Do you remember the coin that was involved

1 in the advice you gave?

2 MS. KELLY: Objection.

3 MR. GLUCKOW: I'm afraid that that might
4 reveal the client, and I don't know why you would
5 need to know that for purposes of the deposition.
6 Obviously it's a situation where Mr. Hinman's
7 already indicated he's not even sure that the firm
8 ever took this on as a client. So...

9 MR. FIGEL: Let me ask a foundation.
10 Obviously you're going to follow your lawyer's
11 advice I assume. Do you recall the name of the
12 coin that was at issue with respect to the client
13 or the prospective client --

14 MS. KELLY: Answer yes or no.

15 MR. FIGEL: -- that you testified about?

16 A. No.

17 Q. Do you remember the name of the associate
18 that you worked with that provided advice?

19 MR. GLUCKOW: Again, if he tells the name
20 of the associate, it would be easy enough to figure
21 out who the client was, and for confidentiality
22 reasons I think that that's not appropriate and I'm

1 not sure why it would be necessary from your
2 perspective.

3 MR. TENREIRO: Do you want to know if it's
4 related to Ethereum; is that what you're getting
5 at?

6 MR. FIGEL: Well, what we are trying to
7 identify, which I think is a fair question, I don't
8 believe the names of parties to a representation is
9 privileged unless there's unusual circumstances,
10 and what I'm trying to make a record on is to the
11 type of issues that he would have provided guidance
12 on prior to the time he joined the SEC.

13 MR. TENREIRO: He already gave you that.
14 He told you, you know, what they talked about.

15 MR. FIGEL: Right, but I would know more
16 if I knew either the name of the client or the
17 coin. If you're directing him not to provide that,
18 I understand. I don't know that's an appropriate
19 privilege objection, but, you know, that's what
20 courts are for.

21 MR. GLUCKOW: Again, because it was a
22 nonpublic -- because it was nonpublic advice, I'm

1 not comfortable with Mr. Hinman testifying to it.

2 So Mr. Hinman, unless you feel
3 differently, I would caution you not to reveal the
4 name of the associate which I think would reveal
5 the name of the client as well.

6 A. Just to be clear, it's a former associate
7 who was in-house at the client. So that would
8 identify the client. It would be easy to identify
9 the client if you knew the name of this person. So
10 I'm going to say no -- or can't answer.

11 Q. Again, we will -- I think we've created
12 the record and, you know, just so the record's
13 clear, we don't believe that's an appropriate
14 privilege instruction, but we'll move on.

15 Before the break I was asking you about
16 whether you were aware in, say, the first six
17 months after you became the division director about
18 various work product that had been created. Were
19 you aware of any work product that had been created
20 within the division of corporate finance as to
21 whether XRP or transactions in XRP were securities
22 or investment contracts under the federal

1 securities laws?

2 MR. TENREIRO: Yes or no, please.

3 A. No.

4 Q. And by no does that mean you are not aware
5 of any such work product that had been created?

6 A. Not that I recall. The six-month time
7 frame I'd have to think about when did that extend
8 to. That's starting to get into late 2017. So I
9 think the answer is no.

10 Q. All right. When you left the SEC in
11 December of 2020, who did you consider the most
12 knowledgeable members of the division of corporate
13 finance with respect to the application of the
14 federal securities laws to transactions in digital
15 assets?

16 A. This is within the division of corporation
17 finance?

18 Q. Uh-huh.

19 A. I think as I left Val Szczepanik and the
20 FinHub were still part of corporation finance.
21 They've now become an independent office. So I
22 would identify Val as the most knowledgeable.

1 Q. And other than Ms. Szczepanik, anyone else
2 that you considered particularly knowledgeable on
3 that issue?

4 A. There were a number.

5 Q. Give me the two or three other individuals
6 other than Ms. Szczepanik that you would consider
7 most knowledgeable?

8 A. It's really the same group we talked about
9 before.

10 Q. So Mr. Frederickson?

11 A. Yes.

12 Q. And Ms. Starr?

13 A. Yes. And others that I mentioned earlier.

14 Q. All right. Focusing now on the time frame
15 when you left the SEC. We'll do essentially a
16 snapshot of your recollection, you know,
17 immediately before your resignation became
18 effective. Were you aware of any work product that
19 had been generated by the division of corporate
20 finance as to whether Bitcoin or transactions in
21 Bitcoins were securities or investment contracts
22 under the federal securities laws?

1 MR. TENREIRO: Yes or no, please.

2 A. Can you clarify what you mean by work
3 product? I mean, what would you included in work
4 product in your mind?

5 Q. I mean in the broadest sense of
6 deliverables that a lawyer can -- can provide.
7 Memoranda, collection of facts, evaluation of
8 facts, policy papers. Again, I'm not asking what
9 they are yet. I just want to know whether --

10 A. In that broad -- sorry. In that broad
11 sense, yes.

12 Q. And what specific work product had been
13 created on the issue of whether Bitcoin or
14 transactions in Bitcoins were securities or
15 investment contracts at the time you left?

16 MR. TENREIRO: Wait a second. So you're
17 asking him was it a memo or was it a video?

18 MR. FIGEL: Correct. Yes.

19 MR. TENREIRO: Thank you.

20 A. I would think there would be internal
21 correspondence among staff members that would
22 encompass Bitcoin in its characterization as to

1 whether it was a security or not at that point.

2 Q. Are you aware of whether a memoranda on
3 that issue had been prepared? You can answer yes
4 or no.

5 A. No.

6 Q. With respect to Ether, again, the time
7 frame just before you leave the SEC, were you aware
8 of any work product that had been created as to
9 whether Ether or transactions in Ether were
10 securities or investment contracts under the
11 federal securities laws?

12 MR. TENREIRO: That's a yes or no,
13 please.

14 A. Again, the time frame we're talking about
15 is created when? I mean, I know it's what I knew
16 as I left the SEC, but when would this have been
17 created?

18 Q. At any time -- in other words, it's a
19 snapshot of anything that had been created as of
20 the time you left.

21 A. Yes.

22 Q. And yes means you're aware of work

1 product?

2 A. Yes.

3 Q. Without telling me the substance of the
4 work product, what form did that work product take?

5 A. Internal memoranda.

6 Q. Anything else?

7 A. Potentially e-mails.

8 Q. Anything else?

9 A. Well, if you consider speeches work
10 product, I would say there are speeches, statements
11 that probably refer to Ether.

12 MR. FIGEL: For the hotseat on the line,
13 this is BB in the outline, and we're up to 7; is
14 that correct?

15 THE REPORTER: Correct.

16 (Hinman Exhibit 7 was marked
17 for identification.)

18 BY MR. FIGEL:

19 Q. I'll show you what I will ask the court
20 reporter to mark as Exhibit 7.

21 A. Okay.

22 Q. I'll represent to you that this is a

1 document that we printed off the SEC's Website, and
2 I believe it is a description on the Website about
3 the division of corporate finance. Are you
4 familiar with this document?

5 A. It looks familiar. Now that you show it
6 to me, it looks like something that was on the
7 Website.

8 Q. And you'll see it's -- in the lower right
9 it says "Modified September 27, 2019"?

10 A. Right.

11 Q. Had you reviewed this Web page during the
12 time of your service as the director of the
13 division of corporate finance?

14 A. I don't remember specifically reviewing
15 this set of paragraphs, but I do remember reviewing
16 the Website generally, the corp fin part of the
17 Website.

18 Q. And this isn't a reading test. I'm just
19 trying to make a clear record. Could you read out
20 loud for the record the last full paragraph of
21 Exhibit 7.

22 A. I'm sorry. The last full paragraph?

1 Q. Yes.

2 A. "The division also provides legal and
3 accounting advice and recommendations to the
4 commission and to the public."

5 Q. You can stop there. Is that an accurate
6 statement of the work of the division of
7 corporation finance during the time that you served
8 as the director?

9 A. Actually I think it overstates what the
10 division does in terms of providing legal advice.
11 We're always careful to say we're not providing
12 legal advice to the public in terms of here's what
13 you need to do in this particular matter. We may
14 provide our thoughts on how the law's applied to
15 particular fact patterns, to the extent you
16 consider a no action letter to be sort of our view
17 of a legal position and things like that, but I
18 don't think we would -- I don't think the division
19 would view itself as counsel to the public or
20 counsel to a particular member of the public, a
21 company.

22 Q. Did you in your personal capacity provide

1 legal and accounting advice to the public?

2 MR. TENREIRO: While he was a member --
3 while he was the director?

4 MR. FIGEL: Yes.

5 A. I don't believe so.

6 Q. Did your responsibilities as the director
7 of the division of corporate finance include
8 meeting from time to time with lawyers and industry
9 participants to discuss legal and accounting issues
10 related to the application of the federal
11 securities laws to transactions in digital assets?

12 A. Yes.

13 Q. And can you describe -- if you don't
14 accept the characterization from the Web page, how
15 would you describe what service you were
16 provided -- providing as the director in these
17 meetings?

18 MR. TENREIRO: Object to form and service,
19 but go ahead.

20 A. In those meetings generally I think what
21 people are gleaning from that is how the staff and
22 how the director of the division views a particular

1 issue, the application of the law as to a
2 particular issue. They're looking for our views,
3 how do you look at it.

4 Q. And you would provide your views as you
5 just defined it to lawyers or industry participants
6 in these meetings, correct?

7 A. That's right.

8 Q. And just so the record's clear, you
9 personally met with lawyers and industry
10 participants to discuss the application of the
11 registration and exemption provisions of the
12 federal securities laws to digital asset
13 transactions, correct?

14 A. Yes.

15 Q. And as part of your duties as the director
16 of the division enforcement you provided public
17 statements as to the circumstances in which a
18 digital asset transaction could be a security or an
19 investment contract under the federal securities
20 laws, correct?

21 MR. TENREIRO: Object to form. What do
22 you mean as part of your duties? Did you mean

1 during his time there, or are you asking him for
2 what his --

3 MR. FIGEL: Let me make sure you
4 understand my question. You were the director of
5 the division of corporate finance, correct?

6 A. Right.

7 Q. And you had certain duties?

8 A. Right.

9 Q. And part of those duties included making
10 statements to the public, correct?

11 A. Again, Jorge's point is sort of is it a
12 duty. It's something that is often done by the
13 director, but I don't think there's any job
14 description that says you have to do this.

15 Q. But, in fact, you did do that, correct?

16 A. That's right.

17 Q. So going back to my question just so the
18 record's clear --

19 A. Yes.

20 Q. -- as part of your actions as the director
21 of the division of corporate finance you provided
22 public statements as to the circumstances in which

1 a digital asset transaction could be a security or
2 investment contract under the federal securities
3 laws, correct?

4 A. I provided my views on that topic, yes.

5 Q. And you also provided those views in
6 meetings at the SEC with lawyers representing
7 clients or industry participants, correct?

8 A. Yes.

9 Q. And you supervised other staff members of
10 the division of corporate finance who also met with
11 lawyers and individuals involved in digital asset
12 transactions, correct?

13 A. Yes.

14 Q. And do you recall the names of staff
15 members of the division of corporate finance who
16 met with lawyers and industry participants to
17 discuss the application of the federal securities
18 laws to digital asset transactions?

19 A. I certainly remember some of the names,
20 the names I've already talked about I think engaged
21 in those meetings. There were probably a host of
22 others.

1 Q. Well, just so, again, the record's clear
2 and just so you understand what I'm looking for, is
3 the individuals that you supervised within the
4 division of corporate finance who you knew were
5 meeting with lawyers representing companies or
6 representatives of companies as to the application
7 of the federal securities laws to digital asset
8 transactions?

9 A. Right.

10 Q. And was there a person that you understood
11 was meeting with your approval with the public on a
12 more frequent basis? Let me ask the question
13 different.

14 Was there a staff member that you tasked
15 with conducting these meetings when you were
16 unavailable?

17 A. Different staff members would attend
18 different meetings. Val Szczepanik as the head of
19 the FinHub, you know, this innovative -- financial
20 center for innovation, I'm not quite sure of the
21 exact translation of FinHub, that was part of her
22 day-to-day work to engage those meetings, as well

1 as many others.

2 Q. Was Ms. Starr someone who you understood
3 met frequently with third parties to discuss the
4 application of the federal securities laws to
5 digital asset transactions?

6 A. She did meet on -- you know, I don't know
7 if frequent -- you know, define frequent, but I
8 think she met on a number of occasions with folks
9 in that area.

10 Q. If it were possible to have a list of
11 every staff member of the division of corporate
12 finance who met with a third party and you had a
13 tally for meetings, who do you think would be at
14 the top of the list?

15 A. Val.

16 Q. Okay. And who would be second?

17 A. There are a lot of people that went
18 together to these meetings. So hard to say.

19 Q. Who in your mind would be the people who
20 would have met most frequently?

21 A. Mr. Frederickson, you know, Ms. Starr, my
22 counsel Michael Seaman. In the capacity as my

1 counsel and as deputy chief counsel Tamara
2 Brightwell, John Ingram, who is also in the chief
3 counsel's office, went to a number of these
4 meetings. They all went to about the same
5 meetings. They often went together.

6 Q. And you understood that staff of the other
7 divisions at the SEC also meet with third parties
8 to discuss the application of the federal
9 securities laws to digital asset transactions,
10 correct?

11 A. That's right.

12 Q. You never served as the division of
13 investment management, correct?

14 MR. TENREIRO: I'm sorry. Object to form.
15 You never served as the division?

16 MR. FIGEL: As the director of the
17 division of investment management.

18 A. No.

19 Q. And you didn't make public statements
20 regarding the policies of the division of
21 investment management, correct?

22 A. No.

1 Q. And you didn't personally provide guidance
2 to third parties or to the public on behalf of the
3 division of investment management, correct?

4 MR. TENREIRO: Object to form.

5 A. No.

6 Q. Okay. You also didn't serve as the
7 director of trading and markets, correct?

8 A. That's right.

9 Q. And you didn't make public statements
10 about the policy of the director of the division of
11 trading and markets, correct?

12 A. Not that I recall.

13 Q. And you didn't provide guidance personally
14 to the public on behalf of the division of trading
15 and markets, correct?

16 MR. TENREIRO: Object to form.

17 A. I don't believe I did.

18 Q. If I could just ask you to go back to
19 Exhibit 5, which is your bio on the Web page. I
20 just want to make sure that I ask you one more
21 question on that.

22 A. Sure.

1 Q. As you review that do you see anything on
2 that document that's inaccurate or untruthful?

3 A. I don't think so, no.

4 Q. And any material omissions about your
5 professional background from that document?

6 MR. TENREIRO: Objection to form. Just
7 give him a second, please, just to look at it
8 again. Thank you.

9 (Witness reviewing document.)

10 A. This looks accurate to me.

11 Q. I'd like to direct your attention now to
12 the second page, the first full paragraph, second
13 complete sentence. "He also provided," could you
14 just read that into the record.

15 A. "He also provided critical and timely
16 guidance to market participants on emerging issues
17 ranging from innovation such as direct listings and
18 digital assets and novel offerings such as direct
19 listings and special purpose acquisition offerings
20 to questions arising from the impact of COVID-19,
21 the effects of Brexit, the replacement of LIBOR,
22 and the disclosure of risk related to foreign

1 issuers and emerging markets."

2 Q. And, again, that's an accurate statement?

3 A. Yeah. Yeah, I think that's right.

4 Q. I'd like to direct your attention to the
5 term "digital assets" in that sentence. What was
6 the critical and timely guidance you provided to
7 market participants with respect to digital assets?

8 A. I think the division while I was there
9 provided guidance in a number of arenas, meetings
10 with market participants, speeches, testimony in
11 front of Congress about the application of how the
12 division viewed the application of the federal
13 securities laws to digital assets.

14 Q. We'll come to the meetings later. Did you
15 consider your June 14th, 2018 speech an instance in
16 which you provided timely guidance to market
17 participants with respect to digital assets?

18 A. I think it was a time when we provided
19 guidance to the marketplace, yes.

20 Q. And in what respects was your June 14,
21 2018 speech critical and timely guidance?

22 MR. TENREIRO: I'm going to object to the

1 form. You know, this is -- you can answer, but
2 you're looking at Simpson's Website and you're
3 assuming something that's not in evidence that
4 they're referring to that speech. But go ahead.

5 MR. FIGEL: Let's make sure the record's
6 clear. You just testified, if I understood your
7 testimony, that you considered your June 14th, 2018
8 speech an example of timely and critical guidance
9 on digital asset transactions, correct?

10 A. Yes.

11 Q. Now I'm asking you what about that speech
12 in your opinion made it critical and timely
13 guidance?

14 MR. TENREIRO: Don't disclose, you know,
15 deliberations with the staff of the SEC or facts
16 that you might have learned from your discussions
17 with the staff of the SEC or commissioners.

18 A. Right. Well, for that -- for that
19 particular speech I think it was a continuation of
20 some themes that had been articulated in the Dow
21 case, in my congressional testimony. I'd have to
22 go back and look at times I spoke publicly whether

1 some of these things had been said before or not.
2 That speech in part because I think it was covered
3 by Yahoo News got a fair amount of publicity and
4 got more coverage than some of the earlier
5 discussions.

6 Q. What in your mind was significant about
7 that speech?

8 MR. TENREIRO: Again, same instruction not
9 to disclose. If you can -- if you can answer that
10 question without revealing what's in your mind
11 because of discussions that you had with SEC staff
12 or commissioners.

13 A. I think that speech, you know, provided a
14 framework for the marketplace to think about
15 digital asset offerings generally. I tried to
16 provide things that would make an offering more
17 likely to be viewed as a security or less likely,
18 to provide contrast, and to give folks a sense of
19 the kind of thing that we did not think the
20 securities laws applied to. We spoke about -- a
21 little bit about Bitcoin and more about Ether as
22 currently being offered, but trying to make clear

1 that depending on how it was being offered that
2 could still be a securities offering. But trying
3 to provide examples.

4 (Hinman Exhibit 8 was marked
5 for identification.)

6 BY MR. FIGEL:

7 Q. Needless to say, we'll come back to the
8 speech. I'm going to shift gears for a moment.
9 I'm now going to show you a document that I will
10 ask to be marked as Exhibit 8, and for the hotseat
11 it's in the outline as UU. I'm sorry. UUU.

12 Are you familiar with Exhibit 8?

13 A. Yes.

14 Q. And what is Exhibit 8, Director Hinman?

15 A. I think this was a blog posting that was
16 done by Andreessen Horowitz with respect to a
17 cryptofund they were just closing on.

18 Q. As relates to you, do you see anything in
19 this document that is inaccurate or untruthful?

20 MS. KELLY: Take a moment to read.

21 A. Yes -- no, I don't see anything that's
22 inaccurate. Sorry.

1 MR. FIGEL: Madam Court Reporter, is there
2 a quick way to get to the bottom of the text?

3 THE REPORTER: There's a resume button.
4 Are you good?

5 MR. FIGEL: I got it. Thank you very
6 much.

7 Q. Did you review this blog post before it
8 went out?

9 A. I think I saw an earlier draft, but yes.

10 Q. All right. Do you see at the bottom of
11 the first page your name in bold?

12 A. Yes.

13 Q. Could you read for the record the first --
14 the first two sentences of that paragraph.

15 A. The entire paragraph then?

16 Q. Yep.

17 A. Okay. "Bill Hinman, the former director
18 of the Securities and Exchange Commission's
19 division of corporation finance, joins us as an
20 advisory partner. Bill spearheaded the SEC's early
21 work with digital assets and made critical
22 contributions that provided clarity to companies

1 operating in the space. Bill will provide valuable
2 insights to us and our portfolio companies as well
3 as play a key role in shaping the future regulatory
4 environment in which we and they operate."

5 Q. Now, as I read this paragraph, it relates
6 to work that you did personally; would you agree
7 with that?

8 MR. TENREIRO: Object to form.

9 A. It says I spearheaded the early work,
10 which would mean I think they're talking about me
11 leading the work.

12 Q. Fair enough.

13 So directing your attention to the
14 sentence you spearheaded the SEC's early work with
15 digital assets; do you see that?

16 A. I do.

17 Q. What early work with digital assets did
18 you spearhead while you were the director of the
19 division of corporate finance?

20 A. So I'm trying to think about what was
21 going on when, but I think the -- one of the first
22 things might have been the Dow case, which was a

1 21A report issued by corp fin enforcement, I think
2 maybe division of investment management,
3 articulating why in that particular case the staff
4 viewed the offering done through the Dow as a
5 securities offering. That was early -- there were
6 a number of ICO's that were happening at that time.
7 So I would have been talking to folks about those
8 as well.

9 Q. Okay. I'd like to focus on the verb
10 "spearheaded." What specifically did you do --
11 withdrawn.

12 What early work at the SEC did you
13 personally spearhead that made critical
14 contributions and provided clarity with respect to
15 digital asset transactions?

16 MR. TENREIRO: I'm just going to just
17 again caution the witness not to discuss
18 deliberative process communications.

19 A. Yeah. Some -- it's hard to answer without
20 getting into the deliberative process in terms of
21 who I talked about -- you know, who I talked to
22 what about, but --

1 Q. I don't want to interrupt you, but just so
2 the record's clear's so I think we can navigate
3 Mr. Tenreiro's suggestion, I'm not asking you about
4 the communications.

5 A. Yeah.

6 Q. Think about it as, you know, what the
7 project was or what the output is that you
8 spearheaded, in other words, what effort?

9 MR. TENREIRO: I understand, but the
10 problem is some of the projects might be things
11 that are part of the deliberative process that are
12 not final that have not been disclosed. So that's
13 the genesis of my instruction. I get that you're
14 trying to get not at the communications, but there
15 might be projects that are not being -- that are
16 being discussed as part of the deliberation.

17 So I have to repeat the instruction. I
18 appreciate what you're trying to get at, but I have
19 to repeat the instruction.

20 MR. FIGEL: With Mr. Tenreiro's
21 instruction, can you identify any actions or events
22 that you spearheaded that was the early work of the

1 SEC with respect to digital asset transactions?

2 A. In terms of important work, I think the
3 Dow as I talked about was something that I took a
4 pretty significant role in.

5 Q. Anything else?

6 A. There were other ICO cases where folks
7 would come to the division and ask for the
8 division's views. Again, I'm having a hard time
9 not getting deliberative process, but there were
10 those types of things. There was meetings with
11 market participants about, you know, how to do a
12 securities offering compliance, there were legal
13 groups that would come in, you know. So if it was
14 something that involved digital assets in corp fin,
15 I was fairly involved.

16 Q. Did you spearhead the SEC's early work in
17 enforcement actions with respect to ICO's?

18 MR. TENREIRO: Object to form.

19 A. I don't think it's fair to say I
20 spearheaded the enforcement work. I think I played
21 a significant role in some of the enforcement cases
22 in terms of providing thoughts about how the

1 application of the securities law may be relevant.

2 Q. Right. So we'll put out the ICO
3 enforcement actions. Anything else that you can
4 identify that you personally spearheaded as the
5 director of the division enforcement?

6 MR. TENREIRO: Objection. He was not the
7 director of the division of enforcement.

8 MR. FIGEL: I'm sorry.

9 MR. TENREIRO: I'm also objecting to
10 "spearheaded," by the way, just to be clear. So
11 you might want to try a different word.

12 MR. FIGEL: I'm using the word in the
13 document.

14 Mr. Hinman, I misspoke about the division
15 of enforcement. While you were the director of the
16 division of corporate finance, can you identify any
17 other events, actions, statements that you
18 spearheaded that made a critical contribution or
19 provided clarity to companies operating in the
20 space?

21 A. Any other while I was the head of the
22 division?

1 Q. Right. As I understand it, you identified
2 the Dow report?

3 A. Right.

4 Q. And I'm asking if there's anything other
5 than the Dow report and ICO enforcement actions?

6 A. I'd have to go back and look at a time
7 line of all the public speeches I gave where this
8 topic was there, but this was a topic that was of
9 general interest to the marketplace. So it was
10 usually something I would cover in a PLI discussion
11 of securities laws. I'd have to go back and look
12 at my calendar to see when each of those happened
13 and that kind of thing. There was a speech you
14 referred to already, there was staff guidance that
15 was put out in this area.

16 Q. What was the staff guidance that you have
17 in mind?

18 A. There was something called -- I have to
19 think about what the name was, but there was a
20 framework for analysis of issues in this area that
21 the staff published on the Website.

22 Q. That was what FinHub I believe put out,

1 correct?

2 A. FinHub which was then part of corp fin,
3 yes.

4 Q. Other than the framework, can you identify
5 any other guidance that the division of corporate
6 finance put out while you were director?

7 A. You know, "any other" is broad, but,
8 again, some of the things that we did were I asked
9 Val to have office hours where she would go out and
10 make herself available to people who had any
11 questions in this space around the country, not
12 just people having to come to D.C. to do this.

13 Q. Okay.

14 A. Again, a number of speeches. I think the
15 framework came out maybe in two bites where there
16 was something done at the time of the speech or
17 maybe even a little bit before the speech and then
18 in a little more plain English version and a longer
19 version after. Yeah.

20 Q. Now, directing your attention to the
21 phrase "critical contributions that provided
22 clarity to companies operating in the space." Can

1 you identify what issues you are referring to here?

2 Withdrawn.

3 Can you identify what issues this document
4 refers to that you believe you provided clarity on
5 with respect to digital asset issues?

6 MR. TENREIRO: Object to form.

7 A. I think it's the things we've been talking
8 about.

9 Q. Nothing else comes to mind when you're
10 talking about the clarity of an issue as opposed to
11 a speech or a more generic event?

12 A. Well, again, I'm a little bit hamstrung by
13 not wanting to get into deliberative process.
14 That's internal. In terms of external things,
15 there were a number of law firms that are active in
16 this space that would come and visit with the SEC,
17 you know, talk about the prospects for a no action
18 letter in a particular area. We did do a number
19 of -- not number, a few no action letters in this
20 space for people who wanted to use a digital token
21 to have a business offering that they felt wasn't a
22 securities offering. They would come to the SEC

1 and meet with my colleagues about does this look
2 like a security or something that could be done
3 without implicating the securities laws. We did a
4 lot of that kind of activity.

5 Q. Did you answer that question to lawyers
6 that came in to speak to you how can I do a -- I'm
7 sorry. Withdrawn.

8 You said in substance, if I understand
9 your testimony, that law firms would come in and
10 meet with you and your colleagues and ask questions
11 does this look like a security or something that
12 would be done without implicating the securities
13 laws?

14 A. Correct.

15 Q. Can you be more specific about what the
16 issues were that these lawyers brought to you and
17 your staff?

18 A. Well, the easiest ones to talk about would
19 be the ones where no action letters were issued.
20 There was a young man who had developed a coin to
21 be used on video sites that, you know, could be
22 exchanged and had some liquidity, but it didn't

1 look like an investment opportunity. His counsel
2 put together a set of facts that was presented, and
3 the division agreed that that did not look like a
4 securities offering and they would recommend no
5 action to enforcement if they were to proceed with
6 that offering without registering.

7 Same thing in the digital token that was
8 designed to help people who were trying to charter
9 private jets without going through a lot of
10 background checks and without a lot of difficulty,
11 and it was a payment mechanism for that as well as
12 a way to simplify that process. That again is
13 something we gave a no action letter on.

14 Then some folks would come in and we'd say
15 that you're kind of on your own here, you have to
16 decide for yourself, but that's not something we
17 could give you a no action letter on. We would,
18 you know, provide that kind of dialogue, and then
19 they would potentially come back and revise it.

20 Q. So the no action letters are public,
21 correct?

22 A. That's right.

1 Q. So any time the division of corporate
2 finance issued a no action letter that would be
3 publicly available?

4 A. That's right.

5 Q. So let's put aside interactions with
6 lawyers and the public that are requesting a no
7 action letter.

8 A. Okay.

9 Q. Do you recall other issues that were
10 brought to you and members of your staff about the
11 application of the federal securities laws to
12 digital asset transactions in which they sought
13 guidance without seeking a no action letter?

14 A. Yes.

15 Q. Tell me what you -- tell me what you
16 recall on that issue.

17 A. Frankly, the one I recall the most clearly
18 is probably the one when XRP came in with a person
19 who had my position before me, as well as
20 enforcement counsel. They were interested in is
21 there a way to restructure what we're doing to
22 bring it within compliance of the securities laws,

1 and the first thing I said to them was you're
2 continuing to offer XRP without any kind of
3 restrictions that would apply as a securities
4 offering. If you want to come into compliance you
5 have to stop doing that, and they understood that.

6 Q. All right. Other than the issues with
7 respect to Ripple, can you identify any other
8 lawyers that came to you, not seeking a no action
9 letter, but seeking guidance with respect to
10 transactions in digital assets?

11 A. Yes.

12 Q. What else do you recall?

13 A. I remember specifically a group that came
14 in which included [REDACTED] it included I think
15 some people that were not at [REDACTED] They were
16 interested in an ERC-based token I believe that
17 would allow folks that are interested in swapping
18 news stories to create a -- I'm hesitating a little
19 bit because I don't want to talk so much about
20 somebody else's business idea, but they had a
21 business idea that would be mediated by a coin and
22 they were interested in learning how to do that in

1 compliance with the securities laws.

2 Q. Any other lawyers representing --
3 withdrawn.

4 Any other lawyers you recall coming to you
5 or members of the staff seeking advice on digital
6 asset -- the application of the federal securities
7 laws to digital asset transactions other than what
8 you've testified to?

9 A. Yes. I mean, this is a -- this is a big
10 topic at the SEC. So there's lots of folks coming
11 in and asking for advice how to comply. I don't
12 want to get into law firm names or -- unless you
13 think it's relevant, but, you know, other folks at
14 law firms would come in, talk about an idea that
15 would be embedded in a token, and there were a
16 number of folks that said we'd like to do this on a
17 registered basis because we think -- we recognize
18 it is a security and how would we best do that,
19 could we use regulation A, could we use form S1.

20 Because these were somewhat novel
21 securities there were questions around what's
22 material in terms of the disclosures you might have

1 to do in that context. We had those kinds of
2 discussions with XRP specifically, if they were
3 going to register, what would the things be that
4 would be relevant.

5 Q. Move to strike about XRP because I asked
6 you for your recollection of meetings that didn't
7 involve XRP or --

8 A. I'm sorry. I missed that.

9 Q. There were frequent meetings; is that fair
10 to say?

11 A. Yes. I mean, it was something that
12 happened with some frequency at the division.

13 Q. And when lawyers or industry participants
14 came to you and asked for guidance, I believe you
15 earlier testified that the division of corporate
16 finance didn't provide legal advice, correct?

17 A. That's right.

18 Q. So how were you able to -- withdrawn. Let
19 me try this differently.

20 Did you keep a calendar when you were at
21 the SEC?

22 A. Yes.

1 Q. And can you describe the -- was it a paper
2 calendar, technology, digital?

3 A. It was an on-line calendar.

4 Q. And did you keep it or did one of your
5 assistants keep it?

6 A. A few people had access to it. So
7 different folks could either read it or in a few
8 cases like my counsel could add to it. And then I
9 had an assistant who I think had the ability to add
10 or take off things from the calendar as they
11 changed.

12 Q. And were meetings with lawyers
13 representing clients or industry participants with
14 respect to issues related to the application of the
15 federal securities laws to digital asset
16 transactions reflected on that calendar?

17 A. Generally. There might be a meeting that
18 would be on the calendar that I ended up not being
19 able to go to. There might be meetings that came
20 up that staff had arranged that they would say, oh,
21 we're having a meeting, do you want to drop in,
22 things of that sort. So in general it's a record

1 of the meetings that I either had or planned to
2 have, but probably not every single meeting I ever
3 had was on that calendar.

4 Q. And presumably if you had that calendar in
5 front of you you could identify more specifically
6 some of the meetings you had with third parties in
7 which the application of the federal securities
8 laws to digital asset transactions was discussed?

9 A. Possibly.

10 Q. But as you sit here today, other than what
11 you've testified to previously, you don't recall
12 any other meetings, correct?

13 A. You know, to recall every meeting I had
14 over a four-year period, I mean, I can tell you I
15 tried to describe the kinds of meetings and the
16 things we did. I'm sure there were additional
17 meetings of importance that we had that just don't
18 come to memory right now, but as you say, if I had
19 a calendar in front of me I would probably remember
20 more of those.

21 Q. All right. Going back to Exhibit 8, the
22 paragraph under your bolded name also says that you

1 will "play a key role in shaping the future
2 regulatory environment in which we and they
3 operate."

4 A. Right.

5 Q. What actions have you taken on behalf of
6 the A16z cryptofund to shape future regulatory --
7 shape the future of the regulatory environment as
8 it relates to digital assets?

9 MR. TENREIRO: Object to form.

10 A. I don't want to get into confidential
11 Andreessen portfolio issues. So it's very hard for
12 me to actually say that without getting into
13 something where I feel like a confidential matter
14 would be disclosed, but in the last few weeks --

15 MR. TENREIRO: Wait a second. Let's not
16 discuss attorney-client communications, work
17 product communications. If there's anything
18 external, for example, that refers to regulatory,
19 if you've called someone outside of the company in
20 a nonconfidential manner, you can talk about that.
21 Otherwise let's move on.

22 A. Yeah. In general I've had conversations

1 with some of the -- their portfolio companies about
2 the application of the securities laws. They want
3 to know how to comply.

4 Q. You testified earlier you're an advisory
5 partner to the A16Z -- withdrawn.

6 You testified earlier that you're an
7 advisory partner to Andreessen Horowitz, I believe,
8 correct?

9 A. Right.

10 Q. Do you provide legal advice to Andreessen
11 Horowitz as an advisory partner?

12 A. I'm still involved with Simpson. So there
13 are situations where that can happen.

14 Q. Do you consider the services you provide
15 to Andreessen Horowitz as an advisory partner to be
16 a representation of Andreessen Horowitz in your
17 capacity as a partner -- as a senior advisor to
18 Simpson Thacher?

19 MS. KELLY: Object to form.

20 A. Yeah. Not unless they've engaged the
21 firm, there's consideration of those things, but at
22 this point I'm more giving them my direct advice.

1 But it's very early. You know, this was June 15th,
2 I believe.

3 Q. Has Andreessen Horowitz retained you as a
4 lawyer?

5 A. They've hired me as a senior advisor.
6 It's the advisor to the fund. So Andreessen
7 Horowitz Capital Management I think is the --

8 Q. But did they retain you to provide --
9 withdrawn.

10 As an advisory partner to Andreessen
11 Horowitz have you formed an attorney-client
12 relationship with Andreessen Horowitz?

13 MR. TENREIRO: Object to form.

14 A. I am not certain as we speak, you know,
15 whether there's an attorney-client privilege there
16 or not. The things that they ask me about are
17 legal questions generally.

18 Q. You're familiar with the term "engagement
19 letter"?

20 A. Yes.

21 Q. As it relates to a law firm and its
22 clients?

1 A. Uh-huh.

2 Q. Have you entered into an engagement letter
3 with Andreessen Horowitz as part of your advisory
4 partner role at Andreessen Horowitz?

5 A. I have a contract with them, not an
6 engagement letter.

7 Q. Does that contract create an
8 attorney-client relationship in your judgment?

9 MR. TENREIRO: Object to form. You're
10 asking for a legal conclusion, but go ahead.

11 A. I'm not sure.

12 Q. Has Simpson Thacher executed an engagement
13 letter with Andreessen Horowitz in connection with
14 the advisory services you provide?

15 A. Not that I'm aware of.

16 Q. This is a deposition that's been
17 designated confidential. I don't believe you have
18 established that you have a -- you have privileged
19 attorney-client communications with Andreessen
20 Horowitz. So I'll put the question to you again
21 just so we have a record. Mr. Tenreiro can direct
22 you whether to answer.

1 What have you done as an advisory partner
2 to Andreessen Horowitz to shape the future
3 regulatory environment in which Andreessen operates
4 with respect to digital assets?

5 MR. TENREIRO: Before we get to an answer
6 and an objection, Reid, I'm just struggling with
7 the relevance of this. He didn't talk to them when
8 he was working at the SEC. This is after his SEC
9 life. Why are we talking about what he's doing
10 now? I just don't understand it.

11 We were both at the Court conference.
12 Judge Netburn made some rulings about why she
13 thought you needed to talk to him. None of it has
14 to do with what he's doing today. So I understand
15 that there's a designa- -- you know, a
16 confidentiality designation, but despite that, I
17 just don't see why we're talking to a former
18 director of the SEC about what he does after he
19 leaves the SEC.

20 You've asked him about whether he's
21 getting, you know, compensation related to Ethereum
22 or Ethereum-related partners, he's already answered

1 those questions. So can you tell me anything else
2 about why we're talking about this right now?

3 MR. FIGEL: I don't think I have to create
4 a record on relevance, but I will do it at a very
5 high level. He has stated publicly on a number of
6 Websites that he is involved in, among other
7 things, shaping regulatory policy. That seems to
8 be a fair question to -- that seems a fair basis
9 from which to ask him questions about what are the
10 open issues on regulatory policy that he intends to
11 address that weren't addressed when he was the
12 director of the division of enforcement.

13 MR. TENREIRO: Thank you. That's a
14 different question than what I heard you ask. I
15 mean, open issues of regulatory -- you know, are
16 there -- where are the open issues on regulatory
17 policy that you intend to address? I mean, I think
18 he probably can answer that question.

19 MR. FIGEL: I'd like to make the record
20 the way I would like to make the record. I think
21 I'm getting at the same issue but by asking for,
22 you know, facts as opposed to conclusions.

1 MR. TENREIRO: Right. I just don't want
2 to get into the confidentiality -- the confidential
3 information of the current people he's working for.
4 So that's what I'm trying to skirt around. It's
5 not relevant, but let's see what he can answer
6 without him offering --

7 MR. FIGEL: Mr. Hinman, do you understand
8 the question that I asked you, which is if you're
9 going to follow Mr. Tenreiro's advice and not
10 identify the specific issue, I still would like to
11 know at whatever level of specificity you can
12 provide what key role you have played in shaping
13 future regula- -- shaping the future regulatory
14 environment as it relates to digital assets.

15 A. Again, early days, you know, the issues
16 that are relevant today have moved quite a bit. I
17 don't think people are as focused on is something a
18 securities offering or not. I think they
19 understand that pretty well. So the issues today
20 tend to be ones in DFIE, decentralized finance
21 exchanges, cryptocurrencies like fiat,
22 cryptocurrencies -- will the U.S. Treasury form,

1 you know, a cryptocurrency or a stable coin.

2 So there's a range of issues that are more
3 topical today that I would think they'll be
4 interested in discussing with me.

5 Q. Do those topics include shaping regulatory
6 policy as to when transactions in digital assets
7 are investment contracts under the federal
8 securities laws?

9 A. Again, I don't think that's the key issue
10 today. I think people understand that pretty well.
11 I don't think there's a lot of shaping to do there.
12 I think the principles are pretty well understood.
13 So I think the issues are more decentralized
14 exchanges, again, fiat currencies being done in a
15 cryptographic way, not so much the old stuff.

16 Q. So do you believe that the state of law
17 and regulation has evolved to the point where there
18 are no open issues with respect to the application
19 of the federal securities laws to digital asset
20 transactions?

21 MR. TENREIRO: Let's start with a yes or
22 no on that, please.

1 A. No.

2 Q. And why not?

3 MR. TENREIRO: Just don't -- don't
4 discuss -- I'm sorry. Don't discuss your
5 communication -- you know, your thought processes
6 with the staff or the commissioners.

7 A. When you say are there no open issues, I
8 think in the areas that I've talked about, which I
9 think are the more topical areas today, how, you
10 know, exchange rules apply to digital exchanges
11 that are decentralized, how laws may apply to a
12 stable coin or a fiat currency that's been done in
13 a digital manner, I think there's still questions
14 around that, but, you know, you asked a very broad
15 question, are there any open issues in this area,
16 and I think there are some.

17 Q. Let's just make sure we're communicating.
18 We have an agreement on defined terms. Do you have
19 an understanding what the term "digital asset"
20 means?

21 A. Yeah. I think that's a very broad term
22 too. I mean, I think there's nothing that says --

1 there's no book that says a digital asset is this
2 or that, but I think people use it as shorthand to
3 mean things that may be recorded on the blockchain
4 for the most part, you know, transfers of assets
5 that are recorded on the blockchain, a blockchain.

6 Q. Are you familiar with the term
7 "cryptocurrency"?

8 A. Yes.

9 Q. What's your understanding of the term
10 "cryptocurrency"?

11 A. Again, I don't think there's a defined
12 specific term of art, but I think a cryptocurrency
13 would be an asset that generally would have a
14 stable value so it could be used as a currency and
15 transfer on the blockchain. Some people would say
16 Bitcoin is, which obviously doesn't have a stable
17 value, but, again, it kind of depends on context
18 and how people are looking at that issue.

19 Q. So fair to say there's still uncertainty
20 on the basic definition of what is and what is not
21 a digital asset, correct?

22 MR. TENREIRO: Object to form.

1 MS. KELLY: Object to form.

2 A. I think because of the flexibility of the
3 blockchain mediated assets, you know, you could
4 make them into almost anything. You need to look
5 at the facts and circumstances of a particular
6 asset to sort it out. So is that uncertainty or is
7 that just someone's created something innovative
8 and you need to think it through in terms of how
9 the securities laws apply.

10 Q. What is your understanding as to how a
11 cryptocurrency is different from a digital asset?

12 MR. TENREIRO: Object to form. Go
13 ahead.

14 A. I think when people -- again, not solid
15 defined terms here, but I think when people refer
16 to a cryptocurrency versus a digital asset,
17 generally they're trying to talk about an asset
18 that may be a substitute for a fiat currency but
19 also recorded on the blockchain.

20 Q. And what would be the substitute for the
21 fiat currency as you just testified?

22 A. Like a U.S. dollar coin -- what do you