

1 Q. Do you recall attending a meeting on
2 December -- December 13th, 2017 with
3 representatives of [REDACTED]

4 A. I don't have a specific recollection of
5 the date that I met with folks from [REDACTED] or
6 participated in a meeting, but it's possible that
7 was the December 13th meeting, yeah.

8 Q. And what was your understanding of the
9 reason that the division of corporate finance was
10 meeting with [REDACTED]

11 MR. TENREIRO: And just -- I'm sorry.
12 Just answer without getting into the substance of
13 conversations with staff or the commissioners.

14 A. To the best of my recollection, they were
15 coming in to discuss an idea around a blockchain
16 token and how the securities laws applied to that
17 enterprise.

18 Q. And did the division of corporate finance
19 request the meeting or did [REDACTED] request the
20 meeting?

21 A. I don't remember us asking for a meeting
22 with them. I would have guessed it would be the

1 other way around.

2 Q. All right. If you could look at Bates
3 ending in 445.

4 A. Yeah.

5 Q. You'll see that on that page at the top
6 there's an e-mail from [REDACTED] with a [REDACTED]
7 e-mail address to Amy Starr on December 8th, 2017
8 at 6:17 p.m.

9 A. Okay.

10 Q. And you'll see under "Background" -- it's
11 a little hard to tell from this, but these appear
12 to be links that Mr. [REDACTED] provided to Ms. Starr in
13 advance of the meeting; do you see that?

14 A. Yep.

15 Q. And you'll see in the e-mail itself he
16 says at the last portion of the first paragraph of
17 the e-mail he's sending "some links to some of our
18 collective public thoughts on these issues."

19 A. Okay.

20 Q. And the issues as he describes it above
21 are issues involving blockchain tokens and
22 securities regulations.

1 A. Okay.

2 Q. Did you have an understanding in advance
3 of the December 13th meeting with [REDACTED] as to
4 what specific issues involving blockchain tokens
5 and securities regulations they wanted to address?

6 A. No, I don't have a recollection of a
7 specific set of topics.

8 Q. This may be an unfair question, but I'm
9 going to ask it. Do you have any recollection of
10 clicking on the links to these e-mails or reviewing
11 the documents that are associated with these links?

12 MR. TENREIRO: He's not copied on the
13 e-mail, but go ahead.

14 A. Yeah. I was just going to say that. I'm
15 not sure I got this e-mail, but I don't remember
16 clicking on any links.

17 Q. Do you remember doing any reading before
18 the December 13th meeting?

19 A. No, I don't.

20 Q. So let's go to the meeting on December 13,
21 2017. You attended a meeting on that date with
22 representatives of [REDACTED] correct?

1 MR. TENREIRO: Object to form.

2 A. Yeah. I attended meetings where [REDACTED]
3 people were there. Whether that was the
4 December 13th meeting or some other meeting I
5 really don't know.

6 Q. Do you have a recollection of the first
7 meeting you attended with representatives of
8 [REDACTED] putting aside the date?

9 A. I have a recollection of the first time we
10 met with them having discussions around this
11 project that they were interested in.

12 Q. Just a couple foundational things. Where
13 did that meeting occur?

14 A. I think at the SEC.

15 Q. And focusing on staff of the SEC, who
16 other than you attended that meeting?

17 A. Again, it's pretty fuzzy at this point,
18 but it probably would have been Amy, Amy Starr,
19 possibly Val Szczepanik, possibly David
20 Frederickson --

21 Q. It's hard to tell --

22 MR. TENREIRO: Let him answer, please.

1 A. One of my counsel would have probably gone
2 with me if I went to the meeting. Which one is
3 hard to say. Maybe John Ingram who was also in the
4 chief counsel's office.

5 Q. So it sounds as though there were more
6 than two or three representatives of the SEC at
7 this meeting; is that correct?

8 A. Yes.

9 Q. And who do you recall attending from
10 [REDACTED]

11 A. Actually, the person I remember the most
12 is actually not at [REDACTED] I think he was a
13 professor from the Brooklyn Law School named [REDACTED]
14 [REDACTED] - or no, [REDACTED]. I don't
15 remember if [REDACTED] was at the first meeting or
16 not. I think he was. They had a fellow who was
17 either formerly with Sullivan & Cromwell or maybe
18 was with Sullivan & Cromwell at the time, a
19 technologist or two. Yeah, it's pretty vague.

20 Q. And during that meeting you were told in
21 substance that [REDACTED] believed there were
22 circumstances in which "you may view a token as not

1 a security," correct?

2 MR. TENREIRO: Object to form. Told by
3 whom?

4 A. Yeah. Who said what to who?

5 Q. Someone from [REDACTED] stating in
6 substance "you may view a token as not a security."

7 MR. TENREIRO: I object to form.

8 A. I don't have a specific recollection of
9 that, but...

10 Can I just ask one clarifying question
11 about your last question? When you said you were
12 told?

13 Q. You attended the meeting?

14 A. Right.

15 Q. And so you would have heard from
16 representatives --

17 A. So you're saying the you meaning me?

18 THE REPORTER: Guys.

19 THE WITNESS: Sorry.

20 Q. Yes.

21 MR. TENREIRO: Wait a second. Wait a
22 second. You attended the meeting. Are you talking

1 about the meeting he recalls being the first one
2 without being tied to the state?

3 MR. FIGEL: Yes.

4 MR. TENREIRO: Okay.

5 A. Yeah. So I don't remember being told that
6 that was their view, but okay.

7 Q. Do you recall any discussions at that
8 meeting, whenever it occurred, about circumstances
9 in which a digital asset -- whether it was unclear
10 as to whether a digital asset was a security?

11 A. What I remember of the discussion was they
12 wanted to have some enterprise use a token as a
13 nominal sort of way to get in and out of a system
14 to, if I recall right, go to news stories or get
15 rewarded for posting news stories, but it would be
16 a self-contained system and I think the question
17 was could that be structured in a way where the
18 securities laws wouldn't be implicated.

19 Q. Okay. Other than that particular
20 application of digital asset technology, do you
21 recall any other discussions about whether in
22 certain circumstances a digital asset would not be

1 an investment contract or a security under the
2 federal securities laws?

3 A. I don't have a specific recollection of a
4 broader sort of generic discussion. It was -- what
5 I remember was the context of their project.

6 Q. Did anyone from [REDACTED] at that meeting
7 ask you or any member of the division of corporate
8 finance to make a determination that Ether was not
9 a security?

10 A. No.

11 Q. Did that topic come up at that meeting?

12 A. No.

13 Q. I know you don't recall the specific date,
14 but the e-mail suggests that there was a meeting on
15 December 13th. As of December 13th, 2017 had you
16 contemplated -- contemplated making a speech as to
17 under what circumstances a digital asset may not be
18 a security?

19 A. Not a specific speech, you know, like on
20 December 18th I'm going to make a speech. I think
21 it was a topic that I knew we would be addressing
22 whenever we spoke to the public, just how the Howey

1 case applied to this area.

2 Q. Had you started drafting the speech you
3 delivered on June 14th, 2018?

4 A. I don't believe so. That seems like a
5 long lead time.

6 Q. Do you know whether there were any
7 documents created by division of corporate finance
8 staff that memorialized the substance of what
9 occurred at this first meeting?

10 A. Not that I'm aware of.

11 Q. I'm going to show you a document which
12 I'll ask the court reporter to mark as Exhibit 15,
13 OO. Oh, and for the hotseat, it's a document we
14 received this morning that has an interim number of
15 OO.

16 MR. TENREIRO: This will be 15, right?

17 THE REPORTER: Correct.

18 MR. FIGEL: Mr. Hotseat, I think what you
19 have up is the older version of OO. If you could
20 put up the one from this morning.

21 MR. TENREIRO: What you gave us has
22 Bates 273 and he had 273.

1 MR. FIGEL: Oh, did he?

2 MR. TENREIRO: Now he has up Exhibit 146,
3 which is Exhibit 3.

4 MR. FIGEL: So let's go back to the one
5 you did have up then. He was correct. Sorry.

6 (Hinman Exhibit 15 was marked
7 for identification.)

8 BY MR. FIGEL:

9 Q. Do you recall reading this document before
10 the meeting that you attended that you recall as
11 the first meeting you had with representatives of

12 

13 A. I don't recall that.

14 (Hinman Exhibit 16 was marked
15 for identification.)

16 BY MR. FIGEL:

17 Q. I'm going to show you a document that I'll
18 ask the court reporter to mark as Hinman
19 Exhibit 16. Again, you're not on this, but I think
20 for the record it will be useful.

21 A. Okay.

22 MR. FIGEL: And Mr. Tenreiro, I'll just

1 represent to you that our understanding of the
2 documents we got from [REDACTED] last night suggests
3 that Exhibit 15, which is in front of Mr. Hinman,
4 was attached to this e-mail that has been marked as
5 Exhibit 16 and was transmitted by Mr. [REDACTED] to Amy
6 Starr on December 12th.

7 Q. I don't have any questions for you on
8 that, Mr. Hinman, other than I'm just making a
9 representation that our understanding is this was
10 something that was circulated to the division of
11 corporate finance before the meeting.

12 A. When you say "the meeting" --

13 Q. Well, the meeting --

14 MR. TENREIRO: There's no -- there's no
15 question on the record. I don't have any -- I
16 don't have any -- you know, thank you for your
17 representation. I don't think there's any question
18 pending.

19 MR. FIGEL: There is not.

20 If you could take a look at --

21 MR. TENREIRO: Just, you know, you do keep
22 saying "the meeting" and there's a little bit of

1 confusion here because, you know, he says he
2 doesn't remember attending this meeting. I think
3 that's hopefully clear on the record to everybody.

4 MR. FIGEL: Fair enough.

5 BY MR. FIGEL:

6 Q. The meeting that you recall, do you recall
7 any discussion at the meeting of Exhibit 15?

8 A. No.

9 Q. Let me direct your attention to Bates
10 No. 280 -- ending 286 in Exhibit 16. You'll see on
11 the left there's a reference to the blockchain
12 project at [REDACTED] do you see that?

13 A. Yes.

14 Q. Is that the project that you testified to
15 earlier that Mr. [REDACTED] was affiliated with in some
16 way?

17 A. I don't think so. This seems more generic
18 than the thing I was referring to with specific,
19 you know, news focused token project.

20 Q. Do you recall anyone stating to you at the
21 meeting that you recall in substance that the
22 purpose of what Mr. [REDACTED] was working on was to

1 explore the regulatory challenges raised by
2 blockchain technology?

3 A. Do I recall someone saying that to me?

4 Q. Yes.

5 A. No.

6 Q. In substance.

7 If you could look at the page of this
8 exhibit that ends with Bates 299. Do you recall
9 seeing this page in connection with the meeting
10 that you recall?

11 A. I don't recall this slide deck. So
12 certainly not this page.

13 Q. Do you remember anyone telling you in
14 substance that entrepreneurs and others lack
15 guidance on how to sell tokens that should not be
16 securities?

17 MR. TENREIRO: From the outside, is that
18 what you're asking, someone from the outside
19 telling him that?

20 MR. FIGEL: Yes. Yes. Sorry.

21 Did you understand my question,
22 Mr. Hinman?

1 A. Why don't you repeat it.

2 Q. I'm focusing you on the meeting that you
3 recall and Mr. Tenreiro's observation that you
4 don't remember the date, which I understand. I
5 think the record's clear on that. I'm now asking
6 you if you recall that during that meeting that you
7 remember you were told in substance that
8 entrepreneurs and others lack guidance on how to
9 sell tokens that should not be securities.

10 A. I don't have a specific recollection of
11 that being said to me at that meeting, no.

12 Q. How about a general recollection?

13 A. Well, you made a very specific statement.
14 Anything like that in terms of people lacking
15 guidance?

16 Q. Uh-huh.

17 A. No, I don't remember that coming up.

18 Q. If you could turn the page to the next
19 page ending in Bates No. 300.

20 A. Yes.

21 Q. I take it this doesn't refresh your
22 recollection of seeing this slide deck, correct,

1 seeing this page?

2 A. It doesn't.

3 Q. All right. Do you remember anyone stating
4 in substance at the meeting you remember that
5 entrepreneurs and investors may lack an
6 appreciation for regulatory risk?

7 A. Not at that -- not at the meeting I do
8 recall, no.

9 Q. How about more generally? Do you remember
10 hearing from third parties that entrepreneurs and
11 investors lack an appreciation of the regulatory
12 risk of transactions in digital assets?

13 A. I didn't hear something specifically
14 lacking an appreciation of regulatory risk. I did
15 hear -- not at this meeting that we're talking
16 about, but in general that some people had the idea
17 that if you called something a token it wouldn't be
18 subject to the U.S. securities laws, that just by
19 naming it a token and by creating a digital token
20 you create an instrument that wasn't subject to
21 U.S. securities law regulation.

22 Q. And that was a perception that you

1 understood that various lawyers and industry
2 participants had prior to the speech you delivered
3 on June 14th, 2018, correct?

4 MR. TENREIRO: Object to form.

5 A. I wouldn't say so much the lawyers, but
6 more people that were offering these ICO's were
7 under the impression that somehow by calling it an
8 ICO they didn't have to register.

9 Q. Directing your attention back to the
10 meeting as you recall it, do you remember being
11 told in substance, in substance, not word for word,
12 entrepreneurs are not being provided with an
13 accurate picture of the penalties they may face
14 when engaging in a token sale?

15 A. I don't recall that, no.

16 Q. And do you recall being told at that
17 meeting in substance that purchasers of digital
18 assets may not recognize the risks they may be
19 acquiring -- withdrawn.

20 Do you recall being told at that meeting
21 in substance that purchasers may not recognize the
22 risk that they may be acquiring securities subject

1 to transfer restrictions?

2 A. No, not at the meeting I recall.

3 Q. Do you recall hearing that entrepreneurs
4 were not being provided with an accurate picture of
5 the penalties they faced in any other context other
6 than communications with SEC staff?

7 A. No.

8 Q. Do you recall being told in substance that
9 purchasers who acquired digital assets may not
10 appreciate the risks that they might be acquiring
11 securities subject to transfer restrictions?

12 A. I have a recollection of folks were
13 concerned that purchasers of these assets didn't
14 realize that they were always -- you know, that
15 they might be securities and that they would --
16 there would be consequences if they had been
17 offered on an unregistered basis, including
18 transfer restrictions.

19 Q. And when did you come to have that
20 understanding?

21 A. I think that was early days where people
22 were buying ICO's that weren't registered and

1 somewhat naively buying an instrument that operated
2 like a security, but they didn't have the
3 disclosures that they would have had if it had been
4 done on a registered basis.

5 Q. So the purchasers of these digital assets
6 didn't appreciate that they might be acquiring a
7 security?

8 A. Correct.

9 MR. FIGEL: Why don't we take another
10 break.

11 THE VIDEOGRAPHER: Off the record at
12 12:54.

13 (Whereupon, at 12:54 p.m., the
14 deposition was recessed, to
15 reconvene at 2:00 p.m., this
16 same day.)

17
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1 AFTERNOON SESSION (1:59 p.m.)

2 THE VIDEOGRAPHER: Back on the record at
3 1:59.

4 WILLIAM HINMAN,
5 the witness at the time of recess, having been
6 previously duly sworn, was further examined and
7 testified as follows:

8 EXAMINATION

9 (Resumed)

10 BY MR. FIGEL:

11 Q. Good afternoon, Director Hinman.

12 A. Hello.

13 Q. Do you know Chris Austin, a partner
14 formerly at Orrick and now at Paul Hastings?

15 A. I don't think so.

16 Q. Do you know Jeff Cullen, a lawyer at
17 Linklaters?

18 A. I don't think so.

19 Q. Do you know someone named Lowell Ness at
20 Perkins Coie?

21 A. It's ringing a faint bell, but don't
22 really -- I couldn't pick him out of a crowd.

1 Q. Do you know Dixie Johnson at King &
2 Spalding?

3 A. Same thing. Sort of a faint bell, but I
4 couldn't pick her out of a line-up.

5 Q. And Rob Rosenblum at Wilson Sonsini?

6 A. Yes.

7 Q. And Mr. Rosenblum is a respected member of
8 the securities bar, correct?

9 A. As far as I know.


10 MR. FIGEL: We're going to go to QQ in the
11 outline, and it should be 17 in the...

12 (Hinman Exhibit 17 was marked
13 for identification.)

14 BY MR. FIGEL:

15 Q. Directing your attention to the last page
16 of the e-mail that ends with Bates No. 1454.

17 A. Right.

18 Q. That appears to be an e-mail you wrote to
19 

20 A. Right.

21 Q. Do you recognize that e-mail?

22 A. It refreshes my recollection, yes.

1 Q. Any reason to think that's not a true and
2 accurate copy of an e-mail you sent on April 12th,
3 2018 to Mr. [REDACTED]

4 A. No.

5 Q. And you said you greatly enjoyed meeting
6 with Mr. [REDACTED] and his team a couple months ago.
7 Was there more than one meeting that you were
8 referring to in which you met with Mr. [REDACTED] and
9 his team?

10 MR. TENREIRO: Object to form.

11 A. The only meeting I recall specifically
12 with [REDACTED] was the one I mentioned. But it feels
13 like we may have had more than one interaction, but
14 I just don't have a specific recollection of
15 multiple meetings.

16 Q. In your e-mail you wrote him that you were
17 "wondering if we could have a brief call in order
18 to discuss the possibility of another meeting"; do
19 you see that?

20 A. Right. Yes.

21 Q. Why were you reaching out to Mr. [REDACTED] to
22 request another meeting?

1 MR. TENREIRO: Just without disclosing
2 deliberations with staff or commissioners.

3 A. It goes to something we were deliberating.
4 So I'm not sure I can answer without doing that.

5 Q. If you go up the e-mail chain to
6 page 1453, you see Mr. [REDACTED] says he's happy to get
7 on a call and he says "I can loop in members of our
8 internal legal team who have been in discussions
9 with you and your colleagues."

10 A. Right.

11 Q. Do you have a recollection of being in
12 discussions with members of Mr. [REDACTED] internal
13 legal team?

14 A. The ones I mentioned earlier.

15 Q. Then going up the e-mail chain at,
16 according to the e-mail, 6:13 p.m. you write back
17 to Mr. [REDACTED] The call's to set up a possible
18 meeting. The meeting was to learn more about the
19 Ethereum support network." What is it that you
20 wanted to learn about the Ethereum support network
21 from Mr. [REDACTED]

22 MR. TENREIRO: If you can discuss, for

1 example, what you might have explained to him such
2 as what the meeting was for rather than the
3 internal deliberations of what you wanted to know,
4 try to limit your answer to that.

5 A. Okay. Sort of what it says, we wanted to
6 know more about how the Ethereum support network
7 operated.

8 Q. What specifically did you want to know
9 about the Ethereum support network?

10 MR. TENREIRO: Same instruction. Just,
11 you know, do you recall conveying something to him
12 about what specifically you wanted to know about
13 the Ethereum support network or someone from the
14 staff expressing something to them, for example?

15 MR. FIGEL: Mr. Hinman, right now I'm just
16 asking about your state of mind when you wrote the
17 e-mail.

18 A. Right, but I had a state of mind that was
19 related to some deliberative things that we were
20 engaged in. So I want to be careful that I don't
21 override what Jorge is telling me to do here.

22 We wanted to understand how the Ethereum

1 support network operated, how centralized was it,
2 you know, was this a private company behind it or
3 was this more decentralized than that, was this a
4 network where there were information asymmetries or
5 not, things of that sort.

6 Q. And what was your understanding of the
7 term "Ethereum support network" as you use it in
8 this e-mail?

9 A. By that I think I would be referring to
10 the people that authenticate Ethereum transactions.
11 There's nodes on the Ethereum network that affect
12 mined Ethereum by authenticating transactions.
13 There was a foundation that kept the software
14 up-to-date, there were GitHub discussion fora that
15 were dedicated to Ethereum as I recall.

16 Q. Then you say in the next paragraph "I can
17 give you more background on a call if you like"; do
18 you see that?

19 A. Sure.

20 Q. Did you have a call with Mr. [REDACTED]

21 A. I don't remember having a call, but I may
22 have.

1 Q. Did you communicate either directly or
2 indirectly through your staff to Mr. [REDACTED] about
3 what information you were seeking from him?

4 A. I don't specifically recall saying
5 anything ahead of the meeting, but it's possible.

6 Q. And did you, in fact, meet with Mr. [REDACTED]
7 after this exchange of e-mails?

8 A. I don't know if we had a meeting or a
9 call, no. I would think we would have.

10 Q. What's your best recollection about any
11 communications in whatever form you had with
12 Mr. [REDACTED] after April 12, 2018?

13 A. I recall that -- and I don't remember if
14 it was [REDACTED] himself, but getting answers to
15 the questions that we were deliberating.

16 Q. At any time did you or members of your
17 staff ask Mr. [REDACTED] directly or indirectly how many
18 units of Ether [REDACTED] owned?

19 A. I don't think I asked that direct
20 question. I think we would have asked that
21 question -- again, I don't want to get into
22 deliberations, but if we asked them, we asked them.

1 Q. The question is what, if anything, do you
2 know about what [REDACTED] reported to you or your
3 staff about their ownership of Ether?

4 MR. TENREIRO: Sorry. Maybe it's
5 better -- I thought it was better before. External
6 communications -- external questions are fine. So
7 if you sat there and asked them or heard someone
8 else ask them, we can talk about that, right?
9 Isn't that what you wanted?

10 MR. FIGEL: Why don't you answer the
11 question as you understand it, and then we'll take
12 it from there.

13 A. I think we learned whether it was through
14 questions I asked or staff that asked how much
15 Ethereum, if any, [REDACTED] owned.

16 Q. As you sit here today without telling me
17 how you learned it, what was your -- what is your
18 understanding as to how much Ethereum [REDACTED]
19 owned in April of 2018?

20 A. As I sit here today I don't recall.
21 Sorry.

22 Q. At any time did you or staff of the

1 division of corp fin ask anyone at [REDACTED] how
2 many -- withdrawn.

3 At any time did you or members of corp fin
4 staff ask Mr. [REDACTED] in substance how many shares of
5 Ether the Ethereum Foundation owned?

6 MR. TENREIRO: Reid, so that we can do
7 this clear, would you mind just asking him and then
8 the staff as separate questions because if there's
9 a communication that the staff had.

10 MR. FIGEL: Fair enough.

11 Did you have any communications with [REDACTED]
12 [REDACTED] s to how many shares of Ether the Ethereum
13 Foundation controlled?

14 A. I don't recall a specific, you know, Q&A
15 between me and him on that topic.

16 Q. Do you know whether anyone on the staff of
17 the division of corporate finance asked Mr. [REDACTED]
18 how many shares of Ether the Ethereum Foundation
19 controlled?

20 MR. TENREIRO: Let's start with a yes or
21 no on that one.

22 A. Yes.

1 Q. What facts did you understand the staff
2 learned from Mr. [REDACTED] on that issue?

3 A. I think they learned the amount of
4 Ethereum that was held in the foundation.

5 Q. And what was that amount?

6 A. I don't remember.

7 Q. Substantial? De minimis?

8 MR. TENREIRO: Object to form.

9 A. I don't recall whether it was, you know,
10 substantial -- I don't know what you mean by
11 substantial in this context, you know, substantial
12 as a dollar amount or as a percentage of the
13 outstanding. I think as a percentage of the
14 outstanding it was not substantial.

15 Q. And by "not substantial" can you give me
16 an approximation of percentage of total
17 outstanding?

18 A. You know, anything over 30, 40 percent
19 would seem substantial to me, but, you know, where
20 you draw that line, I'd want to know more.

21 MR. FIGEL: All right. This is PP in the
22 outline. I think we are up to 18.

1 (Hinman Exhibit 18 was marked
2 for identification.)

3 BY MR. FIGEL:

4 Q. Do you recall receiving this e-mail from
5 Mr. Seaman on or about May 17, 2018?

6 A. I don't have a specific recollection of
7 receiving it, but I'm sure I did.

8 Q. Do you recall learning from Mr. Seaman in
9 substance that there was a Website that reported
10 that three entities controlled over 50 percent of
11 the voting/mining power of the ETH?

12 A. Do I remember hearing that from
13 Mr. Seaman?

14 Q. Why don't we start do you remember hearing
15 it at all prior to June 14?

16 A. As I sit here today I wouldn't have been
17 able to recall that, but reading this e-mail seems
18 like that informs me of some views on that topic.

19 Q. Do you consider --

20 MR. TENREIRO: Alex (indecipherable), mute
21 your line, please?

22 Q. Would the fact that three entities

1 controlled more than 50 percent of the voting or
2 mining power of Ether been relevant to the views
3 you expressed in your speech on June 14, 2018?

4 MR. TENREIRO: Go ahead.

5 A. That's relevant, yes.

6 Q. What, if anything, did you personally do
7 to follow up on the question of whether three
8 entities controlled more than 50 percent of the
9 voting and mining power of Ether?

10 MR. TENREIRO: Focus that on external --
11 did he say external? No. So just focus that on
12 external first, please, you know, do you recall.

13 A. Things that we would have done externally
14 would be talking to people involved in the Ether
15 network. I don't remember specifically doing that,
16 but in order to give the speech we would want to
17 understand that and we did a lot of diligence
18 before we did the speech.

19 Q. So focusing just on the concentration of
20 voting and mining power, as you sit here today, are
21 you aware of any communications between the staff
22 of the division of corporate finance and any third

1 party as to the accuracy of the statement that
2 three entities controlled more than 50 percent of
3 the voting and mining power of Ether?

4 MR. TENREIRO: As of the time of the
5 e-mail.

6 THE WITNESS: Sorry. I didn't hear you.

7 MR. TENREIRO: As of the time of the
8 e-mail.

9 A. Yes.

10 Q. Or before your speech.

11 A. Could you repeat that? I lost the train.

12 Q. Sure.

13 So focusing on the information about
14 concentration of voting and mining power --

15 A. Right.

16 Q. -- as you sit here today, are you aware of
17 any communications between the staff of the
18 division of corporate finance and any third party
19 as to the accuracy of the statement that three
20 entities controlled more than 50 percent of the
21 voting and mining power of Ether? And the time
22 frame is prior to your June 14th speech.

1 A. As I sit here today, I don't have a
2 specific recollection what they found in that area.

3 Q. You said that there was a lot of due
4 diligence done by the staff prior to your speech?

5 A. Yes.

6 Q. What due diligence did the staff do with
7 respect to communications with third parties with
8 respect to any of the factual underpinnings of any
9 of the views you expressed on June 14, 2018?

10 A. I think the staff got themselves informed
11 on how the decisions were made around the Ethereum
12 network, like governance, was that controlled by a
13 corporation or one specific entity or was it
14 more -- distributed more broadly to the holders of
15 the coins, things of --

16 Q. Yeah.

17 MR. TENREIRO: Let him finish.

18 A. Things of that sort was all I was going to
19 say.

20 Q. What third parties did you understand the
21 staff spoke to to get that information?

22 A. I think they would have spoken to people

1 that were knowledgeable about the Ethereum network,
2 which would have included people at [REDACTED]
3 people like Professor [REDACTED] I'm not sure how
4 many people they spoke to. They may have talked to
5 other agencies. You know, this would be something
6 that they would talk to anyone who had any
7 knowledge of it.

8 Q. Was the information they acquired as part
9 of the due diligence for your speech memorialized
10 in some fashion?

11 A. Beyond sort of e-mails or discussions, I
12 don't believe so. I don't remember a memo laying
13 it all out.

14 Q. No central file of the due diligence that
15 supported the statements made in your June 14, 2018
16 speech?

17 A. Not that I recall.

18 Q. Did you tell Mr. [REDACTED] at any time between
19 April 12, 2018 when you sent him the e-mail and
20 June 14, 2018 that you were planning to give a
21 speech in which you would announce that your
22 understanding was that transactions in Ether were

1 not securities?

2 A. No.

3 Q. Did you tell any third party, anyone
4 outside of the staff of the Securities and Exchange
5 Commission generally in the buildings, all of them,
6 that you intended to -- in advance of your speech
7 that you intended to announce that based on present
8 circumstances you did not believe that Ether was a
9 security?

10 A. Not that I recall, and I would likely
11 recall that.

12 Q. Did Chairman Clayton suggest that you
13 reach out to Mr. [REDACTED] prior to your April 12, 2018
14 e-mail?

15 MR. TENREIRO: Object -- objection to
16 disclos- -- you know, disclosing communications
17 with Chair Clayton and directions that he might
18 have given him as part of the deliberative process.
19 So I'm going to instruct him not to answer.

20 MR. FIGEL: All right.

21 Now, directing your attention to
22 communications with Andreessen Horowitz. Did you

1 direct Mr. Seaman to contact Andreessen Horowitz in
2 or about March of 2018 to request a meeting?

3 A. I don't remember doing that.

4 Q. Prior to March 2018 did you personally
5 meet with representatives of Andreessen Horowitz?

6 A. Prior to when? I'm sorry.

7 Q. March 28, 2018.

8 A. I don't remember a meeting with them prior
9 to then. But I did have meetings with a person who
10 is now there, but I don't think he was there at the
11 time.

12 Q. Do you recall meeting with representatives
13 of Andreessen Horowitz in connection with their
14 suggestion that the division of corporate finance
15 formulate a safe harbor for the issuance of digital
16 assets?

17 MR. TENREIRO: Objection to form.

18 MS. KELLY: Objection to form.

19 A. Could you repeat? I'm sorry.

20 Q. Do you recall meeting with representatives
21 of Andreessen Horowitz in connection with a
22 suggestion they made that the division of corporate

1 finance formulate a safe harbor for the issuance of
2 digital assets?

3 MR. TENREIRO: Just object to form.

4 A. Not with them, but with the person who I
5 just mentioned. I didn't think he was with
6 Andreessen at that time.

7 Q. Who is that person?

8 A. His name is Scott Kupor, K-U-P-O-R.

9 Q. What do you remember about any proposal
10 made by Mr. Kupor with respect to a safe harbor for
11 the -- for transactions in digital assets?

12 A. One thing that I'd like to clear up a
13 little bit, when folks come in and ask for
14 consultations like that with the staff, we usually
15 tell them that we expect it to be confidential both
16 on their part and our part. So I don't know if
17 it's appropriate for me to answer that in light of
18 that, but I'll look to direction from counsel.

19 MR. TENREIRO: I think we should go on and
20 answer the question if you recall and we'll have
21 confidentiality designations.

22 THE WITNESS: Okay.