

1 Mr. Kupor came in with I think a group of
2 folks, maybe some people from Perkins, maybe some
3 people from Cooley, you know, it's possible there
4 was someone from Andreessen, I don't remember that,
5 suggesting that perhaps there could be a safe
6 harbor developed for digital asset transactions.

7 Q. And fair to say that there was no such
8 safe harbor at the time that Andreessen Horowitz
9 made that proposal, correct?

10 A. Correct.

11 Q. And during your tenure as the director of
12 the division of corporate finance did corp fin ever
13 issue such a safe harbor?

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

15 A. No. We felt a safe harbor would
16 potentially get away from the (inaudible) approach.

17 MR. TENREIRO: I'm sorry.

18 THE REPORTER: I'm sorry. Get away
19 from --

20 MR. TENREIRO: I'm just interrupting him
21 because I don't want him to get into --

22 MR. FLUMENBAUM: The principle-based

1 approach is what he said.

2 MR. TENREIRO: He said that.

3 THE REPORTER: Hey, guys.

4 MR. FLUMENBAUM: The record should reflect
5 what he said.

6 MR. TENREIRO: Absolutely.

7 MR. FLUMENBAUM: Principle-based approach,
8 and then you interrupted.

9 MR. TENREIRO: Yes. I just want to
10 caution Director Hinman not to discuss
11 deliberations with the staff.

12 THE WITNESS: Got it.

13 MR. TENREIRO: Sorry. And thank you.

14 BY MR. FIGEL:

15 Q. Why don't we try this. Yes or no, did the
16 commission promulgate regulations that created a
17 safe harbor for the issuance of digital assets
18 during your tenure as the director of the division
19 of corporate finance?

20 A. No.

21 MR. FIGEL: All right. Let's go to in the
22 outline it is tab UU, and we're up to 19.

1 MR. TENREIRO: There's more here.

2 (Hinman Exhibit 19 was marked
3 for identification.)

4 BY MR. FIGEL:

5 Q. Mr. Hinman, you have before you what's
6 been marked as Exhibit 19. Have you seen this
7 document before?

8 A. This may have been what was sent to us in
9 anticipation of the meeting we have been talking
10 about.

11 Q. In connection with the proposal for a safe
12 harbor?

13 A. I think so.

14 Q. And were you familiar with the Venture
15 Capital Working Group?

16 A. No.

17 Q. But you were familiar with I believe Scott
18 Kupor?

19 A. Right.

20 Q. Is he a lawyer?

21 A. I don't know. I don't think so. I think
22 he's a businessman.

1 Q. I'd like to direct your attention to the
2 second full paragraph of page 1 of this document,
3 the sentence that begins with "The Howey case law";
4 do you see that?

5 A. Yes.

6 Q. Can you read into the record looks like
7 there are two sentences ending with "Investment
8 contract-type securities."

9 A. Sorry. Start with the second sentence and
10 go to where?

11 Q. End with the phrase "contract-type
12 securities" just before the sentence that begins
13 "Under the Howey test."

14 A. Got it. Okay.

15 "The Howey case law is highly nuanced and
16 therefore challenging to interpret leading to
17 uncertainty. As a general matter U.S. federal
18 securities laws were developed and have evolved
19 primarily for and around equity securities (and
20 other corporate obligations)."

21 Is that it? Did you want me to read the
22 next sentence?

1 Q. Yeah. Read one more if you would.

2 A. "There is much less clarity around
3 investment contract-type securities."

4 Q. Fair to say that the views expressed by
5 the Venture Capital Working Group about clarity
6 with respect to the application of Howey was
7 different than what you testified to earlier?

8 MR. TENREIRO: Object to form.

9 A. I'd say this is somewhat different. It
10 goes into issues beyond what I was talking about.

11 Q. Do you agree that the Howey case law is
12 highly nuanced as of March 26, 2018?

13 A. It can be depending on the facts you're
14 trying to apply it to.

15 Q. And it can be challenging to interpret
16 leading to uncertainty; do you agree with that?

17 A. Again, depending on the facts.

18 Q. And do you agree with the statement "There
19 is much less clarity around investment contract-
20 type securities"?

21 A. That's a pretty broad statement. I think
22 you'd have to look at a range of things to

1 understand whether there's less clarity on all
2 investment contract securities.

3 Q. Fair to say that the Venture Capital
4 Working Group thought that there was much less
5 clarity around the application of Howey to
6 investment contract-type securities, correct?

7 MR. TENREIRO: Object to form.

8 A. That's what they said in a paper asking
9 for a safe harbor, yes.

10 Q. All right. Directing your attention to
11 footnote 1 on this page, could you read that into
12 the record, please.

13 A. "For example, the courts are not merely
14 divided but fractured with respect to the proper
15 application of the common enterprise prong of the
16 Howey test. Moreover, the staff's position that
17 the common enterprise prong should not have
18 independent significance is part of the 'lore' of
19 securities laws known to some but not others."

20 Q. Fair to say that the Venture Capital
21 Working Group expressed a view contrary to your
22 earlier testimony that it was generally understood

1 among securities practitioners that the application
2 of Howey to digital assets was well understood?

3 MR. TENREIRO: Object to form.

4 A. I think they're picking up a particular
5 part of the Howey test and saying the courts
6 haven't consistently interpreted that. It's not a
7 central part in my mind.

8 Q. Do you have an understanding as to whether
9 under Howey an instrument or a transaction has to
10 meet all of the prongs in order to be viewed as an
11 investment contract?

12 A. I think courts have held that it doesn't
13 have to meet every single prong. Howey is one
14 articulation of when you have an investment
15 contract. It's not the only case law in the area.

16 Q. Let me make sure I understand your
17 testimony. Your understanding as you sit here
18 today is that it's not necessary to satisfy all of
19 the elements set out in the Howey test, is that
20 correct, in order to find a contract scheme or
21 transaction is an investment contract under the
22 federal securities laws?

1 MR. TENREIRO: Object to form.

2 A. My personal view is that you don't have to
3 satisfy every single prong, and there are examples
4 of that.

5 Q. And that was your understanding on
6 June 14th, 2018 when you delivered your speech?

7 A. That you didn't need to satisfy every
8 prong of Howey?

9 Q. Yes.

10 A. Yes.

11 MR. FIGEL: I'm going to show you what's
12 in the outline as tab VV. I guess we're up to 19?

13 THE REPORTER: 20.

14 (Hinman Exhibit 20 was marked
15 for identification.)

16 BY MR. FIGEL:

17 Q. Have you reviewed -- had a chance to
18 review the document?

19 A. I have.

20 Q. I believe you testified that you knew Joe
21 Hall at Davis Polk?

22 A. I do.

1 Q. He was a respected member of the
2 securities bar?

3 A. Yes.

4 Q. Do you recall receiving this e-mail from
5 Mr. Hall?

6 A. Now that I see it.

7 Q. You do recall that?

8 A. Now that I see it again, yes.

9 Q. Directing your attention to the phrase "We
10 have received and responded to two rounds of
11 comments focused exclusively on our Howey analysis
12 of the initial three assets in the fund's
13 portfolio, Bitcoin, Ether and Ripple"; do you see
14 that?

15 A. Yes.

16 Q. Do you have an understanding as to what
17 Mr. Hall was referring to when he wrote about two
18 rounds of comments focused on the application of
19 Howey?

20 A. I think I do.

21 Q. What's your understanding?

22 A. I think the staff had asked him to provide

1 an analysis of how Howey might apply to those three
2 assets.

3 Q. And fair to say from this that there was a
4 disagreement between the staff and Mr. Hall as to
5 how he applied to Bitcoin, Ether, and Ripple,
6 correct?

7 A. I don't recall there being a disagreement.
8 You know, the way the comment process works it's
9 usually a question from the staff asking for
10 counsel's views. I don't think it was resolved at
11 this point.

12 Q. And what was it that you understood had
13 not been resolved at this point?

14 A. The comment as to whether the portfolio
15 would be holding securities or other commodities.

16 Q. And that's because there was a difference
17 of opinion between Mr. Hall and the staff as to
18 whether a fund that held Bitcoin, Ether, and Ripple
19 was holding securities, correct?

20 A. Again, I don't think the staff had come to
21 a conclusion at this point. I think they --
22 especially at this stage, but I think they were

1 asking for his views.

2 Q. And when you say you don't think the staff
3 had come to a conclusion at that point, what do you
4 mean?

5 A. I think they were waiting to hear from
6 Mr. Hall before they issued further comments.

7 Q. So at least as of April 23rd, 2018 the
8 staff had not yet come to a view as to whether
9 Bitcoin, Ether, and -- it should be XRP, but it
10 says Ripple was a security?

11 A. No. I'm saying they hadn't resolved
12 whatever the comment was. I don't even know what
13 the comment was, why they were asking for his
14 analysis.

15 Q. As of April 23rd, 2018 had the staff come
16 to a view as to whether Bitcoin was a security?

17 A. I don't know if they had at that point.

18 Q. As of April 23rd, 2008 --

19 A. Probably.

20 Q. I'm sorry. Did you finish?

21 A. I don't think the staff at corp fin has
22 ever expressly put out a view on that other than in

1 my speech in terms of Bitcoin as we see it being
2 offered at that time.

3 Q. I'm not asking whether it put out a
4 statement. I'm asking whether as of March 23rd,
5 2018 the staff of corp fin had come to a
6 determination as to whether Bitcoin was a security?

7 MR. TENREIRO: Let's just answer that yes
8 or no.

9 A. I believe they had a view.

10 Q. And what was that view?

11 MR. TENREIRO: Only disclose what was
12 expressed externally. Otherwise don't answer.

13 A. I believe the staff has -- I don't know
14 for sure if the staff has ever expressed as the
15 staff of the division of corporation finance, other
16 than my speech, a view on that topic.

17 Q. And as of April 23rd, 2018 do you have an
18 understanding as to whether the staff of the
19 division of corporate finance had come to a view as
20 to whether Ether was a security?

21 A. In April -- I do not believe they had.
22

1 (Hinman Exhibit 21 was marked
2 for identification.)

3 BY MR. FIGEL:

4 Q. Mr. Hinman, I'm showing you a document
5 that is marked in the outline as ZZZ and which I
6 believe the court reporter will mark as Exhibit 21.

7 (Witness reviewing document.)

8 A. Okay.

9 Q. Do you recall seeing this document within
10 a week or two of December 15, 2017?

11 A. I think I did.

12 (Hinman Exhibit 22 was marked
13 for identification.)

14 BY MR. FIGEL:

15 Q. I think we'll leave it alone with that.

16 I'd now like to show you a document that
17 will be marked as Exhibit 22 that's in the outline
18 as AAAA.

19 (Witness reviewing document.)

20 A. Okay.

21 Q. Do you recall seeing Exhibit 22 before?

22 A. I'm not sure if I read this file comment

1 letter.

2 (Hinman Exhibit 23 was marked
3 for identification.)

4 BY MR. FIGEL:

5 Q. Let me now show you a document that's in
6 the outline as BBBB, and I'll ask the court
7 reporter to mark as Exhibit 23.

8 (Witness reviewing document.)

9 A. Okay.

10 Q. Do you recall seeing Exhibit 23 on or
11 about April 16, 2018?

12 A. I don't remember specifically seeing this
13 format, but I may have seen the responses at some
14 point.

15 Q. And what do you recall about the
16 responses?

17 A. Specific recollection of this without
18 reading it, probably not that much.

19 (Hinman Exhibit 24 was marked
20 for identification.)

21 BY MR. FIGEL:

22 Q. Let me show you a document that is in the

1 outline as CCCC and I'll ask the court reporter to
2 mark as Exhibit 24. Mr. Hinman, I may have given
3 you the wrong document. Are you looking at a
4 document submitted on behalf of [REDACTED]

5 MR. TENREIRO: Yes. Sorry. For the court
6 reporter, I said yes, not him.

7 MR. FIGEL: We actually do have a mistake
8 here. Apologies. The internal document code is
9 YYY.

10 MR. TENREIRO: Okay.

11 MR. FIGEL: And that should be 24.

12 MR. TENREIRO: Well, this has been marked
13 24. So let's mark it 25 maybe.

14 MR. FIGEL: It's correct. Just the
15 broadcasting is wrong.

16 MR. TENREIRO: Ah.

17 BY MR. FIGEL:

18 Q. Do you recall seeing this document on or
19 about April 8, 2019?

20 A. I don't have a recollection of seeing this
21 document, no.

22

1 (Hinman Exhibit 25 was marked
2 for identification.)

3 BY MR. FIGEL:

4 Q. All right. I am going to next show you a
5 document that's in the outline as Exhibit WW and
6 which I'll ask the court reporter to mark as
7 Exhibit 25.

8 MR. TENREIRO: This is for the court
9 reporter, this is for you.

10 (Witness reviewing document.)

11 BY MR. FIGEL:

12 Q. You testified before the House
13 Subcommittee on Capital Markets on April 26, 2018,
14 correct?

15 A. Yes.

16 Q. And you had prepared written remarks that
17 you gave to the committee prior to your testimony,
18 correct?

19 A. Yes.

20 Q. And directing your attention to page 36,
21 the first page of the appendix to Exhibit 25.

22 A. Page 36?

1 Q. At the top, yes.

2 A. Okay.

3 Q. Do you see this is the prepared written
4 remarks you gave in connection with your testimony,
5 correct?

6 MR. TENREIRO: Object to form. I mean, he
7 has to look at that.

8 (Witness reviewing document.)

9 A. Okay. Yes.

10 Q. And if you look at the first full
11 paragraph on page 36, can you just read the first
12 sentence into the record, please.

13 A. "Thank you for inviting me to testify
14 today on behalf of the U.S. Securities and Exchange
15 Commission (SEC or commission) about the division
16 of corporation finance's activities and
17 responsibilities. Since arriving at the SEC in May
18 2017 I have felt privileged to serve alongside such
19 dedicated and talented individuals."

20 Q. That's good.

21 You were testifying before the
22 subcommittee on behalf of the Securities and

1 Exchange Commission, correct?

2 A. That's right.

3 Q. These were not your private remarks?

4 A. Unless I said so, these would have been --
5 these were my thoughts, but they were on behalf of
6 the commission. So yes.

7 Q. And what was the process within the
8 Securities and Exchange Commission that provided
9 the basis for you to be testifying before the
10 subcommittee on behalf of the SEC?

11 A. "The process" meaning -- what do you mean
12 by "process"?

13 Q. Well, your written remarks said that you
14 were testifying -- you just testified that you were
15 testifying on behalf of the SEC as opposed to in
16 your private capacity.

17 A. Right.

18 Q. I'm trying to understand if there was a
19 process within the SEC that --

20 A. Right.

21 Q. -- resulted in you testifying on behalf of
22 the Securities and Exchange Commission as opposed

1 to --

2 A. Sure.

3 Q. -- the representations you make in -- for
4 instance, in connection with your June 14, 2018
5 speech?

6 A. Okay.

7 MR. TENREIRO: I'm just going to instruct
8 the witness not to answer to the extent you're
9 asking him to disclose deliberations or the
10 deliberative process. So --

11 Q. I'm not asking for an authorization
12 process or a basis for him to make that
13 representation to Congress.

14 A. Okay. I think when someone in Congress
15 wants to hear from the SEC, they contact the
16 division of legislative affairs, they determine who
17 should appear in front of the committee. And then
18 they generally ask the committee or the
19 subcommittee in this case what is it you're
20 interested in, and then they pick someone to go see
21 that committee.

22 Q. So it's the office of legislative affairs

1 that allows you to testify on behalf of the
2 Securities and Exchange Commission?

3 A. That's the process, yeah.

4 Q. You were under oath when you gave these
5 remarks, correct?

6 A. Yes.

7 Q. And in addition to your written remarks
8 you actually gave oral testimony, correct?

9 A. That's right.

10 Q. If you could look at page 19. You were
11 asked the following question by Congressman Emmer,
12 correct? "How can we improve the regulatory
13 clarity for entrepreneurs here in the United States
14 so that their contribution to something that may
15 not be a security will not see enforcement actions
16 by the SEC?"

17 Can you read your response to that
18 question after the chairman's permission to give a
19 quick reply.

20 A. "One of the things we do is meeting with
21 participants who have these ideas that think they
22 may have a token that shouldn't be regulated as a

1 security to work through with them how that may be
2 structured."

3 Q. And you didn't disagree with the premise
4 of Congressman Emmer's question that there was a
5 need to improve the regulatory clarity of the
6 application of the securities laws to digital
7 assets, correct?

8 MR. TENREIRO: Object to form.

9 A. I just tried to answer the substance of
10 his question. I wasn't going to debate with the
11 congressman whether things were clear or not.

12 Q. All right. If you could turn to page 22,
13 and do you see -- I'll just read it to make it
14 easier for you. This is your response to a
15 question from Congressman MacArthur. You say "One
16 thing we are trying to do is provide as much
17 guidance as we can to the marketplace so we don't
18 have a chilling effect, but it is still something
19 that is being worked on by all agencies and we're
20 trying to coordinate to make sure we don't stifle
21 innovation."

22 MR. TENREIRO: Wait a second, Reid, this

1 seems to be a response to the chairman's question,
2 Chairman Huizenga.

3 MR. FIGEL: Did I miss that?

4 MR. TENREIRO: I just want there to be a
5 clear record. Towards the top it says "Chairman
6 Huizenga: Thank you."

7 MR. FIGEL: Thanks. You're correct.

8 You gave that testimony, correct?

9 A. Yes.

10 Q. And you were under oath?

11 A. Yes.

12 Q. Was it true that you were trying to
13 provide as much guidance as you could to the
14 marketplace?

15 A. Yes.

16 Q. As of April 26, 2018 had the division of
17 corporate finance issued an interpretive relief
18 about the circumstances under which a digital asset
19 transaction would be an investment contract or a
20 security?

21 A. Did you say "interpretive release"?

22 Q. Uh-huh.

1 A. No.

2 Q. As of April 26, 2018 had the SEC --
3 withdrawn.

4 As of April 26, 2018 had the division of
5 corporate finance issued a regulation about the
6 circumstances under which a digital asset
7 transaction would be an investment contract or a
8 security?

9 A. No.

10 Q. And the division of corporate finance had
11 not engaged in any rulemaking activity about the
12 circumstances in which a digital asset transaction
13 would be a security, correct?

14 MR. TENREIRO: I object to form and also
15 instruct the witness not to answer internal
16 deliberations about potential rulemaking. Are you
17 talking about rulemaking activities externally such
18 as requesting notice of comments or --

19 MR. FIGEL: Yes.

20 MR. TENREIRO: Okay.

21 MR. FIGEL: Public announcement of a
22 potential rulemaking as to when a digital asset

1 transaction would be viewed as a security under the
2 federal securities laws.

3 A. No.

4 Q. And that is all guidance that you could
5 have provided, correct?

6 A. That's a form of guidance, yes.

7 (Hinman Exhibit 26 was marked
8 for identification.)

9 BY MR. FIGEL:

10 Q. Director Hinman, I'm now going to show you
11 what's in the binder as tab YY and which I will ask
12 the court reporter to mark as Exhibit 26 I believe.

13 (Witness reviewing document.)

14 A. Okay.

15 Q. Do you recall receiving this e-mail from
16 Ms. Szczepanik on May 16, 2018?

17 A. This refreshes my recollection.

18 Q. And you responded to that e-mail, correct,
19 at the top?

20 A. Yes.

21 Q. Any reason to believe this is not a true
22 and accurate copy of the e-mail that you exchanged

1 with Ms. Szczepanik on May 16, 2018?

2 A. No.

3 Q. Ms. Szczepanik wrote to you "Subject:
4 Buterin, listen to my panel," and then says "He
5 came up to me right after the panel and said he
6 really appreciated my remarks and would like to
7 talk to us at some point. I said our doors are
8 always open."

9 Do you recall what panel Ms. Szczepanik
10 was speaking on --

11 A. No.

12 Q. -- on or about May 16, 2018?

13 A. No.

14 Q. And your response to her statement that
15 Mr. Buterin would like to talk to us at some point
16 and that you would -- the division of corporate
17 finance would appreciate the opportunity to talk
18 was to say "Terrific," correct?

19 A. Yes.

20 Q. And then you wrote "The [REDACTED] folks
21 are very happy we are talking with him as well."
22 How did you know the [REDACTED] folks were happy

1 that the division of corporate finance was speaking
2 to Mr. Buterin?

3 A. I think I arranged the call with
4 Mr. Buterin to do our diligence through [REDACTED]

5 Q. Did you have a call with Mr. Buterin?

6 A. I think a few of us did together.

7 Q. You were on that call?

8 A. I think so.

9 Q. Approximately when was that?

10 A. Right around the time of this e-mail
11 actually.

12 Q. And how did -- what did you -- withdrawn.

13 What did you hear on that call that
14 allowed you to form the impression that the
15 [REDACTED] folks are very happy that the division of
16 corporate finance was talking with Mr. Buterin?

17 A. I think you're referring to my call with
18 Mr. [REDACTED]

19 Q. I'm referring to the basis for your
20 statement --

21 A. Right.

22 Q. -- that the [REDACTED] -- that you were

1 relating that the [REDACTED] folks were happy that
2 the division of corporate finance --

3 A. Right. No, because we were talking
4 about --

5 Q. -- were talking to Mr. Buterin.

6 A. We were talking about the call with
7 Mr. Buterin. There was a previous call with [REDACTED]
8 [REDACTED] and on that call he was happy to hear that
9 we were going to be talking to Buterin as we did
10 our diligence.

11 Q. And what did you tell Mr. [REDACTED] about any
12 arrangements you had made to speak to Mr. Buterin?

13 MR. TENREIRO: Objection to form, asked
14 and answered.

15 A. Yeah. I didn't tell [REDACTED] anything about
16 the arrangements. I was asking [REDACTED] if he could
17 help us set up the call.

18 (Hinman Exhibit 27 was marked
19 for identification.)

20 BY MR. FIGEL:

21 Q. I'd now like to show you what is marked as
22 ZZ in the outline and will be Exhibit 27.

1 Again, Mr. Tenreiro, I'll state for the
2 record that we understand that these e-mails were
3 all produced together and are therefore one
4 document. That may not be accurate, but I do
5 believe they all relate to the same topic.

6 MR. TENREIRO: Yeah. I mean, I'll just
7 note that the Bates stamps are not sequential, but,
8 you know, we can figure out the authenticity point
9 later.

10 MR. FIGEL: Okay.

11 MR. TENREIRO: I'm just struggling, Reid,
12 because he's not copied on the first e-mail, but
13 then there appears to be another one where he's
14 copied. So I'm just going to ask that the witness
15 have enough time to review the documents and then
16 we can ask the questions.

17 MR. FIGEL: Fair enough.

18 (Witness reviewing document.)

19 A. Okay.

20 Q. Did you participate in a telephone call
21 with the Ethereum Foundation I believe it would be
22 on June 8, 2018?

1 A. I think I did. I think that's where we
2 ended up having the call. It looks like from this
3 e-mail chain it's going back and forth, but that
4 sounds right.

5 Q. And you were on that call, correct?

6 A. Let's just check. There's another
7 statement here about a 1:00 p.m. call on June 25th,
8 but I did participate in a call with the Ethereum
9 folks, yes, (inaudible).

10 Q. And according to the portion of this
11 exhibit that ends in 58 at the top --

12 MR. TENREIRO: 58 at the bottom.

13 Q. I'm sorry, 58 at the bottom, yes, in
14 addition to you it was David Frederickson, Jonathan
15 Ingram, and Michael Seaman from corporate finance,
16 and Gary Goldsholle from trading and markets,
17 correct?

18 A. Yeah. That's who we thought was going to
19 participate in the call. I don't know if others
20 were added on or came off that, but probably many
21 of those folks were on the call.

22 Q. And directing your attention to Bates

1 number ending 9677.

2 A. Yeah.

3 Q. Mr. Seaman, who is your counsel, correct?

4 A. Yes.

5 Q. Wrote you and identified the participants
6 for the call from the Ethereum Foundation, correct?

7 A. Yes.

8 Q. And were those the individuals both from
9 the foundation and from Sidley Austin and Pryor
10 Cashman that participated in the call on June 8,
11 2017?

12 A. The only folks I specifically remember on
13 this list would be Vytalik and Tom Kim.

14 Q. If you could turn to the next page you'll
15 see there's a document that's entitled "Questions
16 for the call."

17 A. Right.

18 Q. Did you draft these questions?

19 A. I think I might have with my counsel
20 probably.

21 Q. And these questions were provided to
22 representatives of the Ethereum Foundation prior to

1 the call?

2 A. I believe they were.

3 Q. And they told you that they wanted the
4 "Focus to remain on the attached questions that we
5 previously provided to them"?

6 A. I think that's what the e-mail says.

7 Q. And, in fact, were these seven questions
8 discussed on the call?

9 A. Best of my recollection, sure.

10 Q. And you understood that they would not
11 entertain questions from the staff of the division
12 of corporate finance that went beyond these seven
13 questions, correct?

14 A. I don't know if they would or wouldn't
15 have, if we even stuck to this, but the idea was to
16 give them notice so they could be prepared and this
17 was the substance of what we wanted to cover.

18 Q. And as of June 8th, 2018 was your speech
19 essentially in final form?

20 A. As of when? I'm sorry.

21 Q. June 8, 2018.

22 A. It would have been close.

1 Q. Do you recall whether you made any
2 modifications to the draft of your speech following
3 this meeting?

4 MR. TENREIRO: Let's just answer that yes
5 or no, please.

6 A. Yes.

7 Q. Do you recall what facts you learned on
8 this phone call that caused you to modify your
9 June 18th speech -- June 14th speech?

10 A. No, none of the facts on the call.

11 Q. So there's nothing you learned on the call
12 from the Ethereum Foundation that caused you to
13 change the substance of the draft of your speech as
14 it existed on or about June 8, 2018?

15 A. Not that I recall.

16 Q. Do you recall when you were first invited
17 to speak at the Yahoo conference when you delivered
18 your June 14th speech?

19 A. The date I was asked to do that?

20 Q. Roughly.

21 A. Probably a couple months ahead of time.

22 Q. And who did you speak to that invited you

1 to give a speech?

2 A. Who was it that invited me?

3 Q. Yes.

4 A. Frankly, I don't remember. They may have
5 asked through my counsel.

6 Q. Did -- did some third party suggest to you
7 what the substance of your speech would be or
8 should be?

9 A. Not that I recall.

10 Q. So in other words, it was an invitation to
11 give any speech that you elected to give; is that
12 correct?

13 MR. TENREIRO: Object to form. You asked
14 about substance, not the subject matter, but
15 okay.

16 A. Right. I mean, it was a digital asset
17 conference. So that was going to be the focus,
18 but -- so they would have asked me if I wanted to
19 speak, you know, on that topic.

20 Q. And did they give you any more guidance or
21 suggestions as to what specifically they would like
22 you to address on that topic?

1 A. No.

2 Q. If we could turn back -- just a second --
3 to Exhibit 10, which is the text of your speech.
4 Now, if you could, Director Hinman, look at page 4
5 of 6 of your speech.

6 MR. TENREIRO: Wait. I'm sorry. Are you
7 going to get into the substance of his speech now?
8 I just want to make sure --

9 MR. FIGEL: In a very limited way.

10 MR. TENREIRO: Okay.

11 MR. FIGEL: Do you want to take a break?

12 MR. TENREIRO: No. Go ahead. If we need
13 it, we can stop. Go ahead.

14 MR. FIGEL: The only person who matters
15 would love a break.

16 MR. TENREIRO: Let's do it.

17 THE VIDEOGRAPHER: Going off at 3:12.

18 (A short break was had.)

19 THE VIDEOGRAPHER: We are back on the
20 record at 3:29.

21 MR. TENREIRO: Reid, before we'd gone off
22 the record earlier I'd instructed Mr. Hinman not to

1 answer a question when you asked him in sum and
2 substance if Mr. Clayton had directed him to call
3 Mr. [REDACTED] So we're going to withdraw that
4 instruction to the extent you want to ask it again.
5 And if you ask that question again, the instruction
6 is simply, you know, to answer whatever final
7 directive, if any, you might have gotten from
8 Mr. Clayton, but don't discuss any back and forth
9 you might have had with him about whether you
10 should be calling Mr. [REDACTED]

11 MR. FIGEL: Give me just a second.

12 Do you mind if we go back off the record
13 for a second.

14 THE VIDEOGRAPHER: Off the record at 3:31.

15 (A short break was had.)

16 THE VIDEOGRAPHER: Back on the record at
17 3:32.

18 BY MR. FIGEL:

19 Q. Mr. Hinman, I'm going to ask you to go
20 back to Exhibit 17 so I can pose a question to you
21 that Mr. Tenreiro said you couldn't answer but now
22 he says you can.

1 A. Okay.

2 Q. Directing your attention to the e-mail you
3 sent to [REDACTED] that's reflected on the page of
4 Exhibit 17 that ends with 1454, do you see "Wrote
5 to Mr. [REDACTED] at 2:06 p.m."?

6 A. Yes.

7 Q. Did Chairman Clayton ask you to reach out
8 to Mr. [REDACTED]

9 A. Not to my recollection.

10 Q. All right. Let's go back. I think we
11 were on EE, which is your speech.

12 A. All right.

13 Q. All right. Mr. Hinman, I'm directing your
14 attention to Exhibit 10, which is your speech.
15 Your speech included remarks that you included in a
16 declaration in support of Mr. Tenreiro's efforts to
17 quash your deposition in which you stated at
18 paragraph 11 "I began the speech with the following
19 disclaimer. My remarks are mine alone, not
20 necessarily those of the commission, the
21 commissioners, or the staff."

22 Is that -- I'll represent to you that's

1 what it says. That was a statement you made under
2 oath, correct?

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

4 A. Yes.

5 Q. And when you said your remarks were yours
6 alone, what did you mean by that?

7 A. That these would be my remarks. We as a
8 very standard practice whenever an SEC official
9 speaks provide a statement to that effect.

10 Q. Well, were these statements your
11 statements alone?

12 MR. TENREIRO: These statements, Reid?

13 MR. FIGEL: I'm sorry. In Exhibit 10.

14 A. The speech reflects my thoughts. I'm
15 comfortable with the speech reflecting my thinking.

16 Q. But were they your statements in your
17 individual capacity alone?

18 MR. TENREIRO: Object to form.

19 A. They are intended to be a speech of my
20 thoughts in the space. Other people may share
21 similar views.

22 Q. If I could direct your attention to page 4

1 of 6 of your speech and in particular the second
2 full paragraph on page 4 of 6 beginning with
3 "Promoters and other market participants"; do you
4 see that?

5 A. Sure.

6 Q. Could you read the first two sentences?

7 A. "Promoters and other market participants
8 need to understand whether transactions in a
9 particular digital asset involve the sale of a
10 security. We are happy to help promoters and their
11 counsel work through these issues."

12 Q. That's it, two sentences. Thank you.

13 Why did you say that promoters and other
14 market participants need to understand whether
15 transactions in a particular digital asset involve
16 the sale of a security?

17 MR. TENREIRO: Without disclosing
18 deliberations.

19 A. I think it's important for promoters,
20 other market participants to understand if they
21 involve the sale of securities so they can comply
22 with the security laws.

1 Q. The reason you had that belief was because
2 you understood that promoters and other market
3 participants did not understand whether
4 transactions in a particular digital asset involve
5 the sale of a security, correct?

6 MS. KELLY: Object to form.

7 MR. TENREIRO: Object to form.

8 A. No.

9 Q. Did you believe that promoters and other
10 market participants understood when transactions in
11 a particular digital asset involve the sale of a
12 security?

13 MR. TENREIRO: Same instruction about not
14 disclosing internal discussions.

15 A. I think what I was trying to say here is
16 that folks need to develop an understanding of how
17 what they're doing in this marketplace implicates
18 the securities laws.

19 Q. And that's because you felt they didn't
20 understand, correct?

21 MR. TENREIRO: Objection to form.

22 MS. KELLY: Objection to form.

1 A. I think some people were not following
2 securities laws. So perhaps maybe that was their
3 excuse, they didn't understand.

4 Q. And some people didn't understand,
5 correct?

6 MR. TENREIRO: Object to form.

7 A. It's hard for me to know what other
8 people's frame of mind was, whether they really
9 understood and said they were not and that was an
10 ease way to avoid compliance or whether they truly
11 didn't understand the law.

12 Q. You didn't know one way or the other?

13 A. I don't.

14 Q. And the next sentence is "We are happy to
15 help promoters and their counsel work through these
16 issues." When you're referring to "we," who are
17 you talking about there?

18 A. The division.

19 Q. So you're not speaking just on behalf of
20 yourself, you're speaking on behalf of the division
21 of corporate finance in that sentence?

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

1 A. I think what I'm trying to say is as the
2 head of the division I would be happy if people
3 came to see us to talk through these issues. I
4 think I can speak that, you know, my colleagues
5 there were also happy to have those opportunities.

6 Q. All right. If you skip down a sentence to
7 the sentence that begins "In addition we
8 recognize." Can you read that sentence to the end
9 of -- that portion of your speech to the end of the
10 paragraph.

11 A. "In addition we recognize that there are
12 numerous implications under the federal securities
13 laws of a particular asset being considered a
14 security. For example, our divisions of trading
15 and markets and investment management are focused
16 on such issues as broker-dealer, exchange and fund
17 registration, as well as matters of market
18 manipulation, custody, and valuation. We
19 understand that the market participants are working
20 to make their services compliant with the existing
21 regulatory framework, and we are happy to continue
22 our engagement in this process."

1 Q. And when you said in the portion you just
2 read "We recognize there's numerous implications,"
3 the "we" refers to the divisions of corporate
4 finance, trading and markets, and investment
5 management, correct?

6 MR. TENREIRO: Objection to form.

7 A. Yes. I think I'm saying I believe we
8 recognize that.

9 Q. And "we" are the three divisions I just
10 named?

11 A. Yeah. It's my view that we recognize
12 that, yes.

13 Q. And the division of corporate finance
14 wasn't responsible for the regulation of
15 broker-dealer exchanges or fund registration,
16 correct?

17 MR. TENREIRO: Object to form. Go
18 ahead.

19 A. The broker-dealer exchange -- generally
20 correct.

21 Q. That's other divisions of the SEC,
22 correct?

1 A. Generally correct.

2 Q. And then when you said "We understand that
3 market participants are working to make their
4 services compliant with the existing regulatory
5 framework," you were referring to broker-dealers,
6 securities exchanges, and fund managers who are
7 registering funds, correct?

8 MR. TENREIRO: Object to form.

9 A. I was actually speaking about market
10 participants. That would include the group you
11 just mentioned, but others as well.

12 Q. So when you say "We understand" in that
13 sentence, the "we understand that market
14 participants are working," you're referring again
15 to the division of corporate finance, the division
16 of trading and markets, and investment management,
17 correct?

18 A. I'm saying I believe that we understand
19 that, yes.

20 Q. And you wouldn't have made those remarks
21 if you thought that the director of the division of
22 trading and markets had a different view, would

1 you?

2 MR. TENREIRO: Object to form.

3 A. I just said I believe -- when I said "we
4 understand," that was my statement of a belief that
5 I had that I understood that those folks were
6 engaged in those activities.

7 Q. And you wouldn't have stated that belief
8 if you had an understanding that the division of
9 trading and markets had a different view, correct?

10 A. No.

11 Q. And the same thing with respect to the
12 statement you made that related to the division of
13 investment management, you wouldn't have made a
14 statement of belief if you thought the then
15 director of investment management didn't share your
16 views on the expression of this belief, correct?

17 MR. TENREIRO: Object to form.

18 A. Yeah. If I -- if I didn't think the
19 director of investment management was focused on
20 those issues, I would not have said that.

21 Q. So fair to say that when you made the
22 statements in this paragraph that you read, you

1 believed you were expressing the views of the
2 directors of three divisions, correct?

3 MR. TENREIRO: Object to form. That's not
4 what he said.

5 A. I think I already answered that, but I
6 think what I was saying was that was my
7 understanding of how these other divisions are
8 operating in this space.

9 Q. All right. I want to go back to another
10 exhibit that we talked about before the break. If
11 you could go to Exhibit 27.

12 A. Which is?

13 MR. TENREIRO: Looks like this.

14 Q. This is the exchange of e-mails you had
15 with Sidley.

16 A. Right.

17 MR. TENREIRO: I'm going to find it for
18 him just because I wrote on it.

19 MR. FIGEL: Sure. You want a clean copy?

20 THE WITNESS: If you have one handy.

21 MR. FIGEL: Actually, Jorge, I don't mind.

22 Just --

1 MR. TENREIRO: You don't mind if I show
2 him --

3 MR. FIGEL: I do not.

4 MR. TENREIRO: You're not going to ask for
5 my -- okay.

6 THE REPORTER: Guys.

7 MR. TENREIRO: So just for the record, to
8 be clear, I'm showing him my marked up copy. Reid
9 will not ask for my marked up copy.

10 BY MR. FIGEL:

11 Q. If I could direct your attention,
12 Mr. Hinman, to the portion of Exhibit 27 that bears
13 Bates No. 659.

14 A. Okay.

15 Q. And this is an e-mail from Thomas Kim to
16 your counsel, Michael Seaman, correct, dated
17 June 6, 2018 at 1:14?

18 A. There are a few e-mails on that page. I'm
19 sorry.

20 Q. You have to actually look at the page
21 before, but I'm focused here at the very top, the
22 very top e-mail.

1 A. On page 659?

2 Q. It goes from 658 is what you actually see,
3 the to and from and --

4 A. Mine says June. Sorry. Sorry.

5 Q. Did I say something else? June 1st, 2018.

6 A. I think you said the 6th. Gotcha. We're
7 on the same page literally.

8 Q. So Mr. Kim held a position at the SEC; is
9 that correct?

10 A. Formerly?

11 Q. Formerly.

12 A. Yes.

13 Q. And what position did he hold?

14 A. I think he was the chief counsel of the
15 division of corporate finance.

16 Q. But he didn't serve under you; is that
17 correct?

18 A. That's right.

19 Q. He writes and says "Michael, I spoke to
20 our client in view of the staff's request. How
21 about next Friday, June 8 at either 10:00 a.m.
22 Eastern time or 11:00 Eastern time for a conference

1 call? Given the short time period to prepare for
2 the call, we would prefer to focus the discussion
3 on the seven or so questions that Bill posed to me
4 yesterday."

5 Do you recall having a conversation with
6 Mr. Kim on May 31st, 2018 in which you discussed
7 the questions that you wanted to pose to his
8 client?

9 A. Now that I see this e-mail chain, yes.

10 Q. And who was on that call?

11 A. With Tom Kim where I posed the questions?

12 Q. Yes.

13 A. I think it was just possibly the two of
14 us.

15 Q. Did you take any notes during that call?

16 A. Not that I recall.

17 Q. Did you have a prepared list of questions
18 that you referred to while you were on the call?

19 A. I don't remember having a prepared list.

20 This is -- I can infer from the questions that are
21 attached at the end that somewhere along the way we
22 developed them into a list.

1 Q. So if I understand your testimony, you had
2 a one-on-one private call with Mr. Kim looks like
3 on May 31st, 2018 in which you identified the
4 questions you wanted to ask his client?

5 A. Best of my recollection, there was no one
6 else on the call. My counsel might have been in
7 the room for part of the call. I just don't
8 remember.

9 Q. And then we have the exchange later in
10 which the questions are prepared in written form
11 and sent, correct?

12 A. That's what it looks like.

13 MR. FIGEL: All right. Let's go to the
14 tab in the outline HHH. I believe we're at 28.

15 (Hinman Exhibit 28 was marked
16 for identification.)

17 (Witness reviewing document.)

18 BY MR. FIGEL:

19 Q. Mr. Hinman, I don't want to interrupt you,
20 but just for the record for Mr. Tenreiro since I
21 can see a wrinkle on his forehead, this reflects
22 two versions of the same document with different

1 presentations based on the metadata. So one
2 effectively a red line which shows what was taken
3 out, and the other is essentially the same
4 information but put in balloon form on the margin.

5 MR. TENREIRO: So you created this exhibit
6 from something we produced to you it seems like?
7 Because the cover e-mail only suggests one
8 attachment.

9 MR. FIGEL: That's correct. There's only
10 one attachment. The metadata was in the native
11 file that you produced to us. So how it's
12 presented depends on the software.

13 MR. TENREIRO: I understand.

14 MR. FIGEL: It's the same -- substantively
15 it's the same. The presentation is just --

16 MR. TENREIRO: I understand.

17 MR. FIGEL: One shows a red line, which I
18 think is easier to read and to follow. The other
19 is the way it presents in balloon form.

20 MR. TENREIRO: It's a native, in other
21 words. Understood. I think, right? Yeah.

22 A. Can I understand that? So the e-mail

1 attached --

2 Q. I don't know.

3 A. Maybe not. The e-mail attaches one of
4 these attachments as an exhibit. Which one is the
5 one that actually shows up when you open up the
6 e-mail?

7 Q. I will try and represent to you what I
8 understand -- and my loyal aide will tell me when I
9 get the technical points wrong -- this was a
10 document that was produced to the Defendants in
11 discovery from the SEC. It is an electronic
12 document effectively --

13 A. Right.

14 Q. -- with metadata as to the archeology, if
15 you will, as to how the document was modified.

16 A. Right.

17 Q. The native file allows it to be printed in
18 different formats, and so what you have here is the
19 same electronic information printed in different
20 formats.

21 MR. TENREIRO: In two different formats.

22 So you have two.

1 MR. FIGEL: But it's substantively the
2 same.

3 A. Right. But we're not sure if you open up
4 the e-mail which of the two you would see or would
5 you even see the red line? I guess that was my
6 question.

7 Q. I don't know that I can answer that.

8 A. Okay. I don't either.

9 Q. So let me start with you'll see on the
10 page that ends with Bates 5281 --

11 A. I don't have Bates numbers here. Oh,
12 okay. I do have that one.

13 Q. -- there's an e-mail from your counsel,
14 Mr. Seaman, to someone named Marvin Ammori that
15 you're CC'd on.

16 A. Right.

17 Q. And what Mr. Seaman writes is "Marvin,
18 here are the questions with a couple revisions we
19 discussed earlier. Please let me know if you have
20 any questions."

21 A. Right.

22 Q. As I understand it, you would have

1 received a copy of this e-mail since you were CC'd
2 on it with the attachment. Do you recall receiving
3 the e-mail and some form of the attachment on or
4 about -- looks like it's October 25th, 2018?

5 A. I don't have a specific recollection of
6 that.

7 Q. Do you recall being invited to speak at
8 the Tech GC National Summit in New York City on or
9 about October 26, 2018?

10 A. Yes.

11 Q. And do you recall when you were invited to
12 speak at that -- to participate in the conference?

13 A. No. Probably, again, a month or two
14 ahead.

15 Q. Directing your attention to the second
16 page -- and this does not bear a Bates number
17 because it wasn't produced as a document.

18 A. Yeah.

19 Q. Do you recognize the name Hilary Kivitz?

20 A. From this, yes.

21 Q. Who is Ms. Kivitz?

22 A. She was one of the folks interviewing me.

1 It says here she's at A16z, which now that I see
2 this it's stirs a memory she may have been there.

3 Q. And do you know Marvin Ammori?

4 A. Yes.

5 Q. And who is Mr. Ammori?

6 A. He's a lawyer that, you know, has spoken a
7 lot in the crypto space. I'm not really sure who
8 Pro Tool Labs is, but he was also someone
9 interviewing me.

10 Q. A16z crypto is the Andreessen Horowitz
11 fund that you're currently a senior advisor to?

12 A. Well, at this time the fund that I'm going
13 to be advising didn't exist, but this was a
14 predecessor fund.

15 Q. And do you know whether Pro Tool Labs is
16 one of the companies sponsored by Andreessen
17 Horowitz?

18 A. I don't know.

19 MR. TENREIRO: I'll object to form. Go
20 ahead.

21 THE WITNESS: Sorry.

22 Q. And what specifically were you invited to