



CRYPTOCURRENCY AND CONFLICTS OF INTEREST AT THE SEC:

The Case for an Investigation

Many start-ups in the cryptocurrency and blockchain technology industry have an ambition to democratize banking and finance with this disruptive technology. By developing new peer-to-peer financial transaction solutions, they have the potential to cut out onerous fees charged by retail banks that push poor and working class Americans into the ranks of the unbanked or underbanked, and which act as a usurious burden on migrant workers whose families depend on cross-border remittances. This new technology, therefore, has drawn the ire of big banks and large financial corporations.

As has been true in the past with other innovations, regulators have struggled with how to handle this new technology. This could not be any more evident than the actions taken by former Securities and Exchange Commission (US) Chairman Jay Clayton and his chief lieutenant, the former Director of Corporation Finance William Hinman. They were put in charge of the agency that possesses the most power to regulate such companies, but given no specific regulatory framework on how to treat cryptocurrencies – the asset class which powers this new technology. The result was a free hand for Clayton and Hinman to pick winners and losers at whim, which opened the door for potential abuse and self-dealing.

When Clayton was nominated to head the Securities and Exchange Commission in 2017, Democrats warned he'd be "[the most conflicted SEC chairman in history](#)." Sen. Sherrod Brown (D-OH), who at the time was the ranking Democrat on the GOP Senate Banking Committee, said that it was "hard to see how an attorney who's spent his career helping Wall Street beat the rap" could "stop big banks and hedge funds from 'getting away with murder.'" Looking back now over Clayton's tenure as Donald Trump's man at the SEC, it appears Sen. Brown may have been more right than he'd imagined in 2017.

Unexpectedly, however, the biggest controversy over his tenure had to do with cryptocurrencies. Clayton and Hinman gave themselves sweeping powers to regulate these digital assets. It has been alleged that they used this power ways that [put millions in their own pockets](#) after leaving the SEC. As you'll see, there has been many accusations that the pair's actions while at the SEC were questionable at best and necessitate a further investigation.





SEC v. Ripple Labs: The Turning Point

This controversy has come to a head by virtue of the fact that on the last day of Clayton's chairmanship, the SEC sued a blockchain technology company, Ripple Labs, for selling \$1.3 billion in the digital currency XRP, alleging that all sales of this cryptocurrency have been unregistered securities trades since 2013. This action flew in the face of several public declarations made by this duo during their SEC tenures, where on more than one occasion Clayton and Hinman declared that various cryptocurrencies were not securities:

First, at a 2018 Congressional hearing, **Clayton** publicly [declared](#) **bitcoin** to not be a security, and the markets reacted by pushing the price of bitcoin [up](#).

Second, during a 2018 Yahoo Finance summit in San Francisco, **Hinman** delivered a prepared speech in which he [said](#) that the Ethereum token, **ether**, is not a security. The markets reacted again, sending the price of ether [upwards](#).

Based on [published reporting](#) by Attorney John E. Deaton, who filed a [Motion to Intervene](#) in the case of SEC v. Ripple on behalf of over 18,000 retail holders of XRP who say they were harmed by the agency's lawsuit, the story of Clayton's and Hinman's conflicts of interest in the regulation of cryptocurrencies at the SEC is one of the more shocking stories of greed and appearance of corruption coming out of the Trump presidency.

Clayton and Hinman were longtime colleagues with lucrative partnerships at highly connected Wall Street law firms – [Sullivan & Cromwell](#) and [Simpson Thacher](#), respectively. Their personal fortunes were nourished by [their joint work in taking China's Alibaba public](#) in New York in 2014, a company that has made a very public bet on its subsidiary Alipay – the [largest payments platform in the world](#) – to compete with U.S. fintechs in the global payment space, including those using blockchain technology like San Francisco-based Ripple Labs. Hinman's law firm is [part of the Enterprise Ethereum Alliance](#), a corporate network of companies dedicated to promoting the business case of the cryptocurrency and blockchain platform Ethereum. Hinman left Simpson Thacher to work at the SEC, but [continued to receive millions](#) in financial payments from the firm throughout his tenure, something a former SEC ethics lawyer [said](#) was “a little unsettling.”

Clayton appointed Hinman to be Director of Corporation Finance, putting him in charge of [key enforcement decisions like “no action”, interpretive and exemptive letters](#) for specific cryptocurrencies. Throughout their tenure, Clayton and Hinman publically picked only two “winners” among cryptocurrency tokens – bitcoin and ether. They gave no public regulatory pass to any other digital asset.

Then, in 2019, while Simpson Thacher is still paying Hinman during his tenure at the SEC, they [led](#) Chinese-based crypto mining company Canaan to their IPO. [Canaan](#) provides the technology used for mining bitcoin.

In December 2020, Hinman and Clayton both resigned from the SEC. But on December 22, 2020, Clayton's last day in office, the SEC picked a “loser” which happened to be [a growing player](#) in the cross-border payments business in [Asia](#) – Ripple. Clayton set in motion the bombshell [lawsuit](#) against Ripple and its executives alleging that sales of the cryptocurrency XRP – at the time, the third largest token behind bitcoin and ether – were unregistered securities trades over seven years. This happened despite – [according](#) to documents filed in court by Ripple – repeated public and private queries to Clayton and the SEC over whether XRP was or was not a security, which they



refused to answer. The Clayton complaint indicates “all sales” were illegal, and thus ensnared millions of retail XRP holders who have never heard of Ripple but traded the digital currency for years. The price of XRP [plummeted](#).



In early January, 2021, it was [reported](#) that Hinman would return to Simpson Thacher, who continue to sit on the Enterprise Ethereum Alliance. Government documents indicate [Hinman disclosed a total over \\$15 million in payments from Simpson Thacher](#) coinciding with the four years he served at the SEC:

- [2017 Public Financial Disclosure Form OGE 278e](#)
- [2018 Public Financial Disclosure Form OGE 278e](#)
- [2019 Public Financial Disclosure Form OGE 278e](#)
- [2020 Public Financial Disclosure Form OGE 278e](#)

In March, Clayton [accepted](#) a position at One River Asset Management, who have invested \$2.5 billion into bitcoin and ether. On June 24, 2021, Silicon Valley venture capital titans Andreessen Horowitz [announced](#) that **Hinman would be an advisory partner in their \$2.2 billion crypto industry fund.**

Throughout his tenure at the SEC, Clayton was asked if XRP was a security various times. The SEC never gave any guidance in response. At least one crypto exchange [asked Clayton's agency](#) whether XRP was a security, and when not given guidance to dissuade it the exchange listed XRP on its trading platform. Then the SEC filed the Ripple lawsuit and crashed the value of XRP, then the



closest rival to bitcoin and ether on global trading platforms, and harmed thousands of XRP holders. Furthermore, the SEC alleged that Ripple and all holders of XRP [should have known](#) for the last seven years that XRP was a security when the SEC itself repeatedly said it didn't know it until the day it filed the lawsuit in December 2020. **Ripple has raised a defense based on the [lack of fair notice](#) by the SEC, but the lack of clarity may have been intentional, and may have been connected to the personal financial interests of the two Trump appointees responsible for providing clarity: Clayton and Hinman.**

As regulators tried to legitimately come to terms with the cryptocurrency industry, it is imperative that all parties feel the process is fair and well reasoned. These serious allegations of improprieties surrounding Hinman's and Clayton's actions on cryptocurrencies deserve a clear vetting. Both Congress and the SEC Inspector General's Office should conduct thorough investigations into these matters. Only then will investors and innovators feel comfortable operating in this cutting edge space.



More background on Clayton, Hinman, the Ripple Case and Crypto Technology:

[“Cryptocurrencies can help solve economic injustice. Democrats shouldn't fear them”](#) by Sheila Warren and Michael Casey. *Roll Call*. 5/28/2021.

[“Cryptocurrency's Future in the U.S. Is Threatened By SEC Action Against Ripple”](#) by J. Carl Cecere. *Bloomberg Law*. 4/19/2021.



["Washington Must Get Serious About the Digital Economy"](#) by Don Tapscott. *Morning Consult*. 7/7/2021.

["Was There Corrupt Intent at the SEC?"](#) by John E. Deaton. *CryptoLaw*. 4/29/2021.

["What the Heck Was Happening at Clayton's SEC? Time For Some Answers"](#) by Jared Whitley. *Seeking Alpha*. 6/15/2021.

["We Need A Ripple Test To Stop The SEC's Overreach On Cryptocurrency"](#) by Roslyn Layton. *Forbes*. 5/18/2021.



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