

[Securities Regulation Daily Wrap Up, TOP STORY—SEC Director Hinman’s Ether comments wake up cryptocurrency markets and industry, \(Jun. 15, 2018\)](#)

Securities Regulation Daily Wrap Up

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By [Brad Rosen, J.D.](#)

The highlight of the Yahoo All Markets Summit: Crypto was the remarks by SEC Corporation Finance Director William Hinman where he stated, "Based on my understanding of the present state of Ether, the Ethereum network and its decentralized structure, current offers and sales of Ether are not securities transactions." [Hinman’s comments](#) resulted in an immediate spike in [Ether’s price](#) of approximately 10 percent and were the topic throughout the day at the summit, which was held in San Francisco on June 14. Moreover, many industry participants also welcomed the long-awaited clarification from the SEC regarding Ether and the applicability of securities laws.

Importantly, Hinman also provided further clarification and guidance regarding whether a digital asset being offered should be considered to be an investment contract, and thus a security. Specifically, he listed a number of factors to facilitate determining whether a third party drives the expectation of a return, as well as the economic substance of a token transaction. This analysis will provide further direction concerning whether a particular instrument should be deemed a security. In response to audience questions, Hinman made it clear that the SEC seeks to be practical and transparent, and welcomes the opportunity to work closely with the digital asset industry in the future.

Yahoo Summit participants respond favorably. The comments from Michael Sonnenshein, Managing Director of Grayscale Investments, an asset manager, were typical. He observed, "We are glad to see regulatory clarity. That will certainly help innovation."

Grant Fondo, partner and chair of the Digital Currency + Blockchain Technology Practice at Goodwin Procter LLP, enthusiastically noted, "This is huge and it will really help ... The SEC has announced what you cannot do and has said what you can do." Fondo also indicated that Hinman’s pronouncement will likely prompt lawyers and their clients to reevaluate all matters in the pipeline, be it a proposed token transaction or pending litigation involving digital assets. Fondo also shared his view that the SEC’s pronouncement may well cause more token transactions to remain in the U.S. as opposed to migrating to offshore jurisdictions.

Joseph Lubin, founder of ConsenSys and a co-founder of Ethereum, stated that the SEC’s evolving policy reflected in Hinman’s comments will have profound implications and will further enable advances in the Ethereum network, a protocol based on an open platform to build applications. Lubin also observed that Ether will now be able to trade freely and will not be constrained to being traded on a registered securities exchange.

Status of Ripple remains unclear. It is worth noting that that Director Hinman was silent with respect to the popular Ripple token (XRP) and its status as being excluded as a security. XRP is the digital asset associated with the Ripple protocol which provides a payment platform for banks and financial institutions. Nonetheless, Cory Johnson, the Chief Market Strategist for Ripple, took Hinman’s comments as an indication that XRP is not a security. Johnson stated that "this kind of clarity really helps and will help spur innovation." Johnson also observed that other jurisdictions like Switzerland and Singapore are well ahead of the U.S. insofar as providing clear lanes to operate. He was very encouraged to hear Hinman’s comments and thinks U.S. competitiveness will increase as a result.

Prominent industry players weigh in. CFTC Commissioner Brian Quintenz shared his observation of Director Hinman’s remarks via Twitter. Quintenz described the framework outlined by Hinman, [tweeting](#) "A thoughtful and

considered approach to an innovative and evolving landscape." Meanwhile, Gary DeWaal, Special Counsel at Katten Muchin Rosenman LLP specializing in derivatives and securities, had this to say: "It's the first time that something about Ether woke me up!" DeWaal added, "The decision on Ether in isolation is a good and correct decision given the reality of how Ether today is subject to proof of work and the current consensus methodology. More important are the practical considerations William Hinman provided for looking at cryptos going forward."

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