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April 29, 2021

<u>By ECF</u>
Hon. Sarah Netburn
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: SEC v. *Ripple Labs, Inc. et al.,* No. 20-cv-10832 (AT) (SN) (S.D.N.Y.)

Dear Judge Netburn:

Last night, after Defendants had filed our April 28, 2021 reply letter on the MOU issue to be taken up by Your Honor at tomorrow's scheduled conference, the SEC sent Defendants the attached letter (Exhibit A hereto). The letter, for the first time, disclosed the full breadth of the MOU requests they sent around the world – information which, for the last two months the SEC withheld from Defendants. Three short points are in order regarding this disclosure:

First, we now can see that the SEC has leveraged MOUs to seek discovery from 30 different entities and individuals. Previously, the SEC had represented in its letter to the Court filed April 23, 2021, that "the SEC has issued 11 Requests to 9 foreign regulators, covering approximately 20 entities . . . and their affiliates."

Second, more than 20 of the MOU targets reside in jurisdictions where local regulators have determined that XRP is not a security (Japan, UK and Singapore). Nevertheless, those entities and individuals have been served with compulsory process through MOUs into which the Defendants and Court have had zero visibility. Moreover, the compulsory process served on those foreign entities and individuals by foreign regulators seeks incredibly burdensome and extensive documents, including documents the SEC can get or has already obtained from Defendants. However, any objections along these lines that the MOU targets could raise if the SEC sought discovery from them in this Court under the Federal Rules of Civil Procedure are not available in response to the MOU requests.

Third, the SEC's letter, without basis, accuses Defendants of violating privilege by sharing the two FCA cover letters with the Court under seal, even though the SEC (i) produced those letters to Defendants without asserting any claim of privilege, and (ii) explicitly told Defendants and this

Court that it intended to produce to Defendants such communications to which no privilege applied. *See* April 23 letter (stating that "the SEC contacted the foreign regulators who had received requests to ask whether the communications from that regulator to the SEC were subject who had received requests to ask whether the communications from that regulator to the SEC were subject to protection under the laws of their own jurisdictions [and] … the SEC notified Defendants that the SEC had engaged in this endeavor and would disclose to defendants any such communications as to which no foreign-law privilege or protection applies"). To be clear, this privilege issue is *not* before the Court and Defendants will respond to the SEC's privilege claim by separate letter. We mention it only to prevent confusion when Your Honor reviews the SEC letter.

We look forward to further addressing these issues with the Court at tomorrow's hearing.

Respectfully submitted,

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