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August 27, 2021

By ECF

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:

We write on behalf of Defendants Ripple Labs Inc., Bradley Garlinghouse, and Christian A. Larsen (together, the “Defendants”) to request a Local Rule 37.2 conference regarding the SEC’s refusal to produce certain information necessary to complete Defendants’ understanding of the SEC’s trading policies governing digital assets and whether the SEC permitted its own employees to trade XRP. Specifically, Defendants seek production of anonymized documents reflecting trading preclearance decisions with regard to XRP, bitcoin and ether, *or alternatively*, for that information to be produced in aggregate form. Defendants also seek certifications concerning SEC employees’ XRP holdings – again, either with redactions of personal information or in aggregate form. We met and conferred with the SEC on this issue on July 8, July 15, August 18 and August 25, without progress.¹

In June 2021, this Court granted Defendants’ motion to compel the SEC to produce its trading policies regarding digital assets. Your Honor found that Defendants’ request met the threshold for relevance. *See* ECF No. 253.

The SEC accordingly produced to Defendants a January 16, 2018 policy, entitled “Ethics Guidance Regarding Digital Assets,” that took effect on January 19, 2018 (the “January 2018 Policy”). That policy shows that, until January 19, 2018, the SEC had not adopted or imposed any policy restricting SEC employees from trading in digital assets – which is consistent with the

¹ The SEC has requested Defendants’ consent to five business days to respond to this letter-motion from date of filing. Defendants consent, subject to the Court’s approval of that schedule.

Hon. Sarah Netburn

August 27, 2021

SEC not having viewed digital assets as securities.² See Ex. A, SEC-LIT-EPROD-001462924 at 1 (January 2018 Policy). At all times from 2013 until at least January 19, 2018, SEC employees were free to buy, sell and hold XRP without any restriction by the SEC.

This evidence provides strong corroboration of the Defendants' defenses in this case and undermines the SEC's claims. Specifically, the now-acknowledged fact that the SEC itself did not restrict its own employees from selling or buying XRP, notwithstanding its longstanding regulation against its employees engaging in securities transactions without preclearance, indicates that the SEC had not concluded, prior to at least January 2018, that sales and offers of XRP were securities transactions. See 5 C.F.R. § 4401.102(d) (2021) (describing the SEC's preclearance requirement, effective as of August 19, 2010). That fact undermines the SEC's allegations that the Individual Defendants were reckless in failing to determine as early as 2013 that offers and sales of XRP were securities. Likewise, it supports Ripple's fair notice defense: that the SEC itself had not concluded that sales and offers of XRP were transactions in securities is evidence that market participants lacked the requisite fair notice that XRP later would be deemed a security.

The January 2018 Policy does not tell a complete story, however. In particular, although the January 2018 Policy acknowledged that digital assets *could be subject* to the SEC's prohibitions against securities transactions, it neither declared all digital assets to be securities nor addressed whether any particular digital asset is a security in the SEC's view. The January 2018 Policy thus apparently, for the very first time, extended 5 C.F.R. § 4401.102 to digital assets but left it to the "preclearance" process to sort out digital asset transactions on a case-by-case basis. See 5 C.F.R. 4401.102(d). As a result, Defendants cannot know whether the SEC actually prohibited or allowed transactions in XRP, bitcoin or ether without the preclearance documents, which the SEC has refused to provide.

Other representations by the SEC have further demonstrated the need for more information. The SEC maintains a "Prohibited Holdings" list pertaining to securities that fall within the SEC's securities trading ban at 5 C.F.R. § 4401.102(c)(1), along with a "Watch List" identifying assets that are subject to case-by-case reviews rather than blanket prohibitions. The SEC has represented that "BTC, ETH, and XRP have never appeared on [the Prohibited] list," and that XRP was first added to the "Watch List" on April 13, 2018. See Ex. B, E-mail from L. Stewart to M. Hirsch at 1 (Aug. 11, 2021). This means that any SEC employee transactions in XRP after April 13, 2018 were evaluated on a case-by-case basis – again through the preclearance process.

² In contrast, the SEC has had a longstanding policy, reflected in 5 C.F.R. § 4401.102 (c), (d), that restricts SEC employees from engaging in securities transactions absent preclearance. Prior to the January 2018 Policy, the SEC's only guidance to its employees relating to digital currencies was a 2014 policy specific to members of a "Bitcoin working group" at the SEC.

Hon. Sarah Netburn

August 27, 2021

At the August 25 meet and confer, Defendants asked the SEC (again) to advise, directly, whether the SEC ever permitted its employees to trade XRP after the January 2018 Policy took effect.³ Defendants did not ask for the details of employees' transactions, only for the basic fact of whether such trading had been authorized by the SEC. The SEC again refused to answer on the basis that the information requested was not relevant in the SEC's view. However, SEC counsel stated that he had learned that SEC employees could not trade XRP after the formal order of investigation was issued as to Ripple, which did not occur until *March 9, 2019*. The clear implication of SEC counsel's statement is that the SEC *did* allow SEC employees to trade XRP prior to March 9, 2019. But the SEC refused to confirm or deny that point, or to produce any records reflecting how many SEC employees requested and/or received permission to trade XRP. The SEC has likewise refused to produce any documents bearing on its oral representation that SEC employees could not trade XRP on or after the March 9, 2019 issuance of the formal order.

Defendants proposed – and the SEC also rejected – an approach whereby the SEC could produce the requested information in the aggregate, so as to avoid completely any possible identification of individual SEC employees. *See* Ex. D, E-mail from L. Zornberg to J. Tenreiro at 1-2 (August 20, 2021). The SEC rejected that proposal on the basis that the SEC simply does not regard the information as relevant. In other words, the SEC – having already been ordered by this Court to produce its trading policies – now resists producing the modicum of additional information needed to complete Defendants' understanding of how the trading policies applied to XRP, bitcoin and ether solely on relevance grounds.

Defendants also requested – and the SEC has additionally refused to produce – the certifications by its employees showing the amounts of XRP they bought, sold, or held on an annual basis. Such certifications are required under January 2018 Policy, *see* Ex. A at 1, and Defendants thus seek the annual certifications (just relating to XRP) filed by employees for the years 2018, 2019 and 2020. Defendants are willing to receive those certifications in redacted, anonymized form, or in an aggregate form whereby the SEC provides to Defendants the total number of SEC employees, by year, who bought, sold or held XRP, with the amounts bought, sold or held.

The SEC should be compelled to produce the requested information. Accordingly, with respect to preclearance documents, Defendants seek production of either (i) anonymized

³ Defendants have been seeking this information since serving Defendants' RFP 27 on February 12, 2021, which called for production of "All Documents or Communications Concerning any policy, guidance, clearance or other permission or restriction given to current or former SEC Commissioner, staff member, officer or employee Concerning ownership or trading in XRP by such Person or their family members, including, but not limited to general SEC policies and individualized Communications with individuals." Ex. C, Defendants' Second Request for Production of Documents to Plaintiff Securities and Exchange Commission, at Request for Production No. 27.

Hon. Sarah Netburn

August 27, 2021

documents concerning preclearance requests to trade XRP, bitcoin and ether, and the responses to those preclearance requests, from January 19, 2018 to December 22, 2020, or (ii) aggregate summary information showing how many such preclearance trades were made and how many were approved or rejected (and the basis for any denials), in accordance with the monthly chart we proposed to Defendants in Exhibit D, from January 19, 2018 to December 22, 2020.⁴ Defendants also request that the SEC be ordered to produce information about its employees' annual certifications of their XRP purchases, sales, and holdings for 2018, 2019 and 2020 – either the certifications themselves with personal information redacted or, alternatively, by means of an aggregate table.

Our request is neither burdensome nor disproportionate to the needs of the case. The information sought should be readily available, and appears to have already been reviewed by the SEC's counsel in the course of our meet and confer process. Defendants are entitled to know whether the SEC permitted its own employees to sell, buy and hold XRP *as market participants* during the very period the SEC now claims that Defendants violated the law and acted recklessly by selling XRP. Defendants are entitled to know whether the SEC ever prohibited its employees from trading XRP and if, as the SEC has orally suggested, that occurred for the first time only in March 2019. Defendants are also entitled to know whether the SEC's approach to allowing employees to trade ether or bitcoin changed after William Hinman's speech on June 14, 2018 – another issue that is highly relevant to this litigation.

⁴ As set forth in Exhibit D, this proposal also requests that the SEC break out responses for before and after January 19, 2018 (date when the preclearance requirement for digital asset trading took effect); before and after April 13, 2018 (date on which the SEC has represented that XRP was added to the Watch List); and before and after June 14, 2018 (date of the Hinman speech).

Hon. Sarah Netburn

August 27, 2021

Respectfully submitted,

/s/ Lisa Zornberg

Lisa Zornberg
DEBEVOISE & PLIMPTON LLP
Counsel for Defendant Ripple Labs Inc.

PAUL, WEISS, RIFKIND, WHARTON
& GARRISON LLP
*Counsel for Defendant Christian A.
Larsen*

KELLOGG, HANSEN, TODD, FIGEL,
& FREDERICK PLLC
Counsel for Defendant Ripple Labs Inc.

CLEARY GOTTlieb STEEN &
HAMILTON LLP
*Counsel for Defendant Bradley
Garlinghouse*

cc: All Counsel of Record

Exhibit A



Ethics Guidance Regarding Digital Assets

Memorandum

To: All SEC Employees
From: Office of the Ethics Counsel
Date: Jan. 16, 2018
Subject: Ethics Guidance Regarding Digital Assets

This guidance addresses several ethics issues related to digital coins, tokens, cryptocurrencies and similar assets (collectively “digital assets”), including: 1) the application of the SEC’s supplemental ethics rules to transactions and holdings in digital assets, 2) restrictions on outside employment involving digital assets and 3) financial disclosure requirements. Importantly, these products and markets are evolving, and additional steps may be taken in the future. This guidance is **effective Jan. 19, 2018**.

I. Digital Asset Holdings & Transactions – Personal Trading Compliance System (PTCS)

The current SEC Supplemental Ethics Regulations apply to digital assets. Accordingly, effective Jan. 19, 2018, SEC employees and members are required to preclear all digital asset transactions in PTCS prior to purchasing or selling a digital asset. This requirement includes any transaction where a digital asset is redeemed or exchanged in connection with obtaining goods or services. Employees and members also must provide statements or other evidence of digital asset holdings and transactions as part of their annual certification of financial holdings. **Employees and members are reminded that the fact that a transaction has been cleared by PTCS does not mean that the underlying offer, purchase or sale is being conducted in accordance with securities laws or that the SEC endorses or sanctions the particular asset.**^[1] [URL: \(#_ln1\)](#) Rather, clearance by PTCS simply confirms that the transaction is not prohibited by SEC ethics regulations for the purchase or sale of financial holdings.

The following rules apply to all digital asset holdings and transactions made by or on behalf of a Commission member or employee, or the member’s or employee’s spouse or unemancipated minor child, or any person for whom the member or employee serves as legal guardian:

A. Prohibitions. Commission members and employees are prohibited from:

1. Purchasing or selling a digital asset while in possession of material nonpublic information;
2. Recommending or suggesting the purchase or sale of a digital asset based on material nonpublic information about the digital asset or which the member or employee could not purchase or sell

because of the restrictions contained in the SEC's Supplemental Ethics Regulations and this guidance;

3. Purchasing a digital asset in an initial asset offering for seven calendar days after the offering is effective; and
4. Purchasing or selling any digital asset that is issued by an entity under investigation by the Commission, a party to a proceeding before the Commission or a party to a proceeding in which the Commission is a party.

B. Holding Periods. As a general rule, Commission members and employees must hold a digital asset purchased after joining the Commission for six months. Exceptions to this rule are enumerated at 5 C.F.R. § 4401.102(e)(2)

URL: ([https://www.ecfr.gov/cgi-bin/text-idx?](https://www.ecfr.gov/cgi-bin/text-idx?SID=36ebfe7cf117c36324e1985109216b31&mc=true&node=pt5.3.4401&rgn=div5#se5.3.4401_1102)

[SID=36ebfe7cf117c36324e1985109216b31&mc=true&node=pt5.3.4401&rgn=div5#se5.3.4401_1102](https://www.ecfr.gov/cgi-bin/text-idx?SID=36ebfe7cf117c36324e1985109216b31&mc=true&node=pt5.3.4401&rgn=div5#se5.3.4401_1102))

C. Reporting & Preclearance. All Commission members and employees are required to report their digital asset transactions through PTCS. In addition, Commission members and employees are required to preclear and report all proposed digital asset transactions through PTCS. **NOTE:** When preclearing a transaction in digital assets, or funds comprised of digital assets, you must note in the comment field of the request that the request pertains to digital assets or funds of digital assets.

II. Outside Employment Restrictions on Mining Digital Assets

SEC employees and members are prohibited from mining digital assets.

III. OGE 278 Guidance

Employees and members who file an OGE Form 278 must report digital assets on their annual report on OGE Form 278 if the value of the holding was more than \$1,000 and/or the digital asset produced more than \$200 of income during the reporting period. This information must be included whether the digital asset is held by the filer, the filer's spouse and/or the filer's dependent children. Please consult with the Ethics Office if you purchase, sell or exchange a digital asset for instructions about filing a periodic transaction report on OGE Form 278-T.

IV. OGE 450 Guidance

Employees who file an OGE Form 450 must report digital assets on Part I, assets and income, of their Form 450 if the value of the holding was more than \$1,000 and/or the digital asset produced more than \$200 of income during the reporting period. This information must be included whether the digital asset is held by the filer, the filer's spouse and/or the filer's dependent children.

V. General Conflict Rules

If you (your spouse or minor child) hold digital assets, please be mindful of potential conflicts of interest with your SEC assignments and remember that you are prohibited from working on any matter that will have a

direct and predictable effect on your financial interests pursuant to [18 U.S.C. § 208](#)

[URL: \(https://www.govinfo.gov/content/pkg/USCODE-2016-title18/pdf/USCODE-2016-title18-partI-chap11-sec208.pdf\)](https://www.govinfo.gov/content/pkg/USCODE-2016-title18/pdf/USCODE-2016-title18-partI-chap11-sec208.pdf). For example, employees and members generally may not work on matters affecting particular digital assets when in possession of those assets. In addition, it is possible that a matter concerning the issuer of one digital asset, for example, could have a follow-on effect on other digital assets. In that case, employees and members must recuse from participating in the matter even if they hold a different type of digital asset than the digital asset in question. However, each particular matter must be analyzed based on the specific facts and circumstances. Please see the following guidance on [bitcoin matters](#) [URL: \(/node/12706\)](#) and [digital asset matters generally](#) [URL: \(/node/13211\)](#), and contact the Ethics Office with any questions.

[1] [URL: \(#_ftnref1\)](#) The Commission issued a Section 21(a) report indicating that digital coin or token offerings may be securities subject to the registration requirements of the securities laws, and subsequently brought an enforcement action against a token issuer for offering and selling unregistered securities. See [Report of Investigation Pursuant to Section 21\(a\) of the Securities Exchange Act of 1934](#)

[URL: \(https://www.sec.gov/litigation/investreport/34-81207.pdf\)](https://www.sec.gov/litigation/investreport/34-81207.pdf); The DAO (July 25, 2017); [In the Matter of Munchee Inc.](#) [URL: \(https://www.sec.gov/litigation/admin/2017/33-10445.pdf\)](https://www.sec.gov/litigation/admin/2017/33-10445.pdf), Securities Act Rel. No. 10445 (Dec. 11, 2017). The Commission also recently brought an enforcement action to halt fraudulent conduct in connection with an initial coin offering. See [SEC Emergency Action Halts ICO Scam](#)

[URL: \(https://www.sec.gov/news/press-release/2017-219\)](https://www.sec.gov/news/press-release/2017-219) (Dec. 4, 2017). The Commission also recently issued [this relevant guidance](#)

[URL: \(https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-initial-coin-offerings\)](https://www.investor.gov/additional-resources/news-alerts/alerts-bulletins/investor-bulletin-initial-coin-offerings).

Source: Office of the Ethics Counsel

Modified: Jan. 16, 2018

Exhibit B

From: Stewart, Ladan F <stewartla@SEC.GOV>
Sent: Wednesday, August 11, 2021 2:50 PM
To: Hirsch, Matt; Zornberg, Lisa; Tenreiro, Jorge; Guo, Joy; 'Levander, Samuel'; 'Tatz, Nicole'; 'mflumenbaum@paulweiss.com'; 'mgertzman@paulweiss.com'; 'Dearborn, Meredith (mdearborn@paulweiss.com)'; 'Linsenmayer, Robin (rlinsenmayer@paulweiss.com)'; 'Bunting, Kristina' (kbunting@paulweiss.com); 'mkellogg@kellogghansen.com'; 'rfigel@kellogghansen.com'; 'Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com> (boppenheimer@kellogghansen.com)'; 'Pfeffer, Eliana M. (epfeffer@kellogghansen.com)'; 'White, Collin R.' (cwhite@kellogghansen.com)'; Gressel, Anna; Ford, Christopher S.; Ceresney, Andrew J.; Gulay, Erol; 'Solomon, Matthew'; 'Janghorbani, Alexander'; 'Bamberger, Nowell D.'; Waxman, Daphna A.; Daniels, Jon; Moye, Robert M.; Hanauer, Benjamin J.
Cc: Goody, Elizabeth; Guerrier, Pascale; Sylvester, Mark
Subject: RE: Trading Policy-Related Documents --follow-up for tomorrow's meet and confer

Matt –

Thanks for your email. We did not agree to produce any DAEO list but did agree to look into your question regarding the presence of BTC, ETH, or XRP on such a list and to provide any additional SEC internal trading policies from 2013-18. This email addresses your questions re the DAEO list and we will produce a small number of additional policies this week.

Our Ethics Office has a “Prohibited Holdings” list pertaining to securities that fall within 5 C.F.R. 4401.102(c)(1). BTC, ETH, and XRP have never appeared on this list.

Our Ethics office also has a “Watch List” that lists certain tickers and names of entities designated by the Division of Enforcement as potentially relevant to an investigation that may fall within 5 C.F.R. 4401.102(c)(7). The Ethics Office conducts a case-by-case analysis of whether any security on this list may be traded at the time the Office receives a pre-clearance request from an individual for a security that appears on the list at the time of the request. BTC and ETH have never appeared on this list. XRP first appeared on this list on April 13, 2018.

As to your request for SEC employees’ trading requests and annual certifications, we reiterate, as we have stated before and as the 1/16/18 policy “Ethics Guidance Regarding Digital Assets” itself states, “the fact that a transaction has been cleared by [the SEC’s Personal Trading Compliance System] does not mean that the underlying offer, purchase or sale is being conducted in accordance with the securities laws or that the SEC endorses or sanctions the particular asset.” Your requests for SEC employees’ financial requests and records are wholly irrelevant, unduly burdensome, and disproportionate to the needs of the case.

Thanks,
 Ladan

From: Hirsch, Matt
Sent: Saturday, August 07, 2021 1:07 PM
To: Zornberg, Lisa ; Tenreiro, Jorge ; Guo, Joy ; 'Levander, Samuel' ; 'Tatz, Nicole' ; 'mflumenbaum@paulweiss.com' ; 'mgertzman@paulweiss.com' ; 'Dearborn, Meredith (mdearborn@paulweiss.com)'; 'Linsenmayer, Robin (rlinsenmayer@paulweiss.com)'; 'Bunting, Kristina'

(kbunting@paulweiss.com)' ; 'mkellogg@kelloggghansen.com' ; 'rfigel@kelloggghansen.com' ; 'Oppenheimer, Bradley E. (boppenheimer@kelloggghansen.com)' ; 'Pfeffer, Eliana M. (epfeffer@kelloggghansen.com)' ; 'White, Collin R.' (cwhite@kelloggghansen.com)' ; Gressel, Anna ; Ford, Christopher S. ; Ceresney, Andrew J. ; Gulay, Erol ; 'Solomon, Matthew' ; 'Janghorbani, Alexander' ; 'Bamberger, Nowell D.' ; Waxman, Daphna A. ; Stewart, Ladan F ; Daniels, Jon ; Moye, Robert M. ; Hanauer, Benjamin J. ; 'Matulis, Kerri (Intern)' ; 'Freund, Jacob'
Subject: RE: Trading Policy-Related Documents --follow-up for tomorrow's meet and confer

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Counsel,

We write to follow up on your previous agreement to search for DAEO records reflecting if or when XRP, bitcoin, and/or ether were added to the list of securities SEC employees were prohibited to hold. As laid out in our July 14 email, 5 C.F.R. §4401.102 provides that the SEC's Designated Agency Ethics Official (DAEO) "shall maintain a record of securities that members and employees may not purchase or sell, or otherwise hold."

During the Parties' July 15 meet and confer, you agreed to search for and produce that list. It has now been over three weeks since you agreed to do so, and we have not received any related documents. We ask that you produce those records by no later than this Wednesday, August 11.

In addition, we understand that the SEC's position has not changed since the July 15 meet and confer in that the SEC refuses to produce (i) pre-clearance or waiver applications by SEC employees to buy/sell XRP, bitcoin or ether after the January 2018 policy was imposed, and SEC response(s); and (ii) all annual certifications reflecting the buying, selling, or holding of XRP by any SEC employee. Please advise us immediately if your position has changed on those issues.

Thank you.

Matt Hirsch | Associate | Debevoise & Plimpton LLP | mjhirsch@debevoise.com | +1 202 383 8076 | www.debevoise.com

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From: Zornberg, Lisa

Sent: Wednesday, July 14, 2021 16:16

To: 'Tenreiro, Jorge'; Guo, Joy; 'Levander, Samuel'; 'Tatz, Nicole'; 'mflumenbaum@paulweiss.com';

'mgertzman@paulweiss.com'; 'Dearborn, Meredith (mdearborn@paulweiss.com)'; 'Linsenmayer, Robin (rlinsenmayer@paulweiss.com)'; 'Bunting, Kristina' (kbunting@paulweiss.com); 'mkellogg@kelloggghansen.com'; 'rfigel@kelloggghansen.com'; 'Oppenheimer, Bradley E. <boppenheimer@kelloggghansen.com> (boppenheimer@kelloggghansen.com)'; 'Hirsch, Matt'; 'Pfeffer, Eliana M. (epfeffer@kelloggghansen.com)'; 'White, Collin R.' (cwhite@kelloggghansen.com)'; 'Gressel, Anna'; 'Ford, Christopher S.'; 'Ceresney, Andrew J.'; 'Gulay, Erol'; 'Solomon, Matthew'; 'Janghorbani, Alexander'; 'Bamberger, Nowell D.'; 'Waxman, Daphna A.'; 'Stewart, Ladan F.'; 'Daniels, Jon'; 'Moye, Robert M.'; 'Hanauer, Benjamin J.'; 'Matulis, Kerri (Intern)'; 'Freund, Jacob'

Subject: Trading Policy-Related Documents --follow-up for tomorrow's meet and confer

Counsel, in advance of tomorrow's meet and confer, this will reiterate Defendants' demand for the following documents relating to the SEC's trading policies regarding digital assets and implementation of those policies. We will seek a final answer as to the SEC's position tomorrow.

Defendants raised this issue with you by email on July 7 and at our July 8 meet and confer. The SEC expressed its preliminary view that the additional documents we seek (all of which are responsive to RFPs that Defendants served in February 2021) are irrelevant and that the SEC therefore won't produce them. Please confirm tomorrow whether your position remains the same, before we raise the issue with the Court.

Here are the documents we seek – all of which are relevant, meet the low threshold for relevance, and are tailored to the very trading policies that the SEC finally produced last week pursuant to the order of the Court:

1. *All pre-clearance applications by SEC employees to buy, sell, or hold XRP, bitcoin or ether, after the trading policy went into effect on January 19, 2018, as well as any and all SEC responses to those applications.* While the SEC's January 2018 trading policy for digital assets stated for the first time that "[t]he current SEC Supplemental Ethics Regulations apply to digital assets," that policy did not classify any particular digital assets as being securities, and it subjected digital assets to a pre-clearance process pursuant to which the SEC could still permit its employees to hold, sell or buy particular digital assets. Meanwhile, the SEC has also publicly and repeatedly stated that not all digital assets are necessarily securities; moreover the SEC's officials have made multiple pronouncements that bitcoin and ether are not securities. Particularly given this tension, and ongoing litigation in this matter about SEC determinations of the security status of bitcoin, ether, and XRP, documents showing how the SEC implemented its January 2018 trading policy in the case of specific digital assets is highly relevant. The trading policies by themselves do not provide the full story. The pre-clearance materials may show: whether, through the pre-clearance process, the SEC ever prohibited trading in XRP and if so, when; whether the SEC permitted its employees to buy or sell XRP for any period of time after January 2018, which could further indicate that the SEC did not regard XRP as a security; whether the SEC treated bitcoin and ether as securities during the pre-clearance process.
2. *All annual certifications reflecting the buying, selling, or holding of XRP by any SEC employees.* Similar to our requests for pre-clearance applications, these documents have relevance to understanding and determining during what years SEC employees were permitted to buy, sell, or hold XRP. As just one example, it may show whether SEC employees were permitted to sell XRP in some of the same years during which the SEC alleges that Chris Larsen or Brad Garlinghouse acted recklessly by selling XRP.
3. *SEC Trading Policies related to digital assets effective from 2013 through January 18, 2018, prior to the SEC's issuance of the January 2018 policy.* It appears that 5 C.F.R. §4401.102 – the Supplemental Standards of Ethical Conduct of Members and Employees of the Securities and Exchange Commission – has been in effect since August 19, 2010. However, to the extent the SEC has or had other trading policies for securities in place between 1/1/2013 and 1/19/18, which either apply or do not apply to the trading of digital assets since January 2018, Defendants are entitled to those policies.

4. *DAEO records reflecting if or when XRP, bitcoin, and/or ether were added to the list of securities employees were prohibited to hold.* 5 C.F.R. § 4401.102 provides that the SEC's Designed Agency Ethics Official (DAEO) "shall maintain a record of securities that members and employees may not purchase or sell, or otherwise hold." We ask the SEC to produce any records reflecting if and when XRP, bitcoin, and/or ether were added to that list, for the reasons addressed above.
5. *Any waiver applications, and SEC responses, for XRP, bitcoin, and/or ether.* 5 C.F.R. § 4401.102(h) sets forth a process by which SEC employees may seek waivers of the securities trading prohibitions. Please produce any waiver application made by SEC employees regarding trading in XRP, bitcoin and/or ether, and all SEC responses to such waiver applications. Similar to the request for pre-clearance applications and responses, these documents are relevant for the reasons discussed above.

Thank you,
Lisa

<< OLE Object: Picture (Device Independent Bitmap) >>
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Lisa Zornberg
Partner

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www.debevoise.com

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Exhibit C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RIPPLE LABS, INC., BRADLEY GARLINGHOUSE, and
CHRISTIAN A. LARSEN,

Defendants.

No. 20-cv-10832 (AT)

**DEFENDANTS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO
PLAINTIFF SECURITIES AND EXCHANGE COMMISSION**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (the “Local Rules”), Ripple Labs, Inc. (“Ripple”), Bradley Garlinghouse, and Christian A. Larsen (collectively, “Defendants”) submit the following requests for the production of documents (“Requests for Production”) to Plaintiff Securities and Exchange Commission (the “SEC” or “Plaintiff”). Subject to any scheduling order of the Court, Plaintiff shall make such production by **March 15, 2021**, pursuant to the Definitions and Instructions set forth below, to the offices of Defendants’ under-signed counsel, or by such other means as the parties may agree.

DEFINITIONS AND INSTRUCTIONS

The Definitions and Instructions set forth in Defendants’ First Request for Production of Documents, as well as the additional definitions set forth below, shall apply to the requests that follow:

- A. “On-Demand Liquidity” has the same meaning as it does in Paragraph 123 of the Complaint.
- B. “XRP Escrow” has the same meaning as it does in Paragraph 198 of the Complaint.

C. “XRP Ledger” has the same meaning as it does in Paragraph 38 of the Complaint.

SECOND REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 26:

All SEC policies governing SEC employees’ trading in, or purchase or sale of, Digital Assets and/or Virtual Currencies, including all changes and updates to those policies.

REQUEST FOR PRODUCTION NO. 27:

All Documents or Communications Concerning any policy, guidance, clearance or other permission or restriction given to current or former SEC Commissioner, staff member, officer or employee Concerning ownership or trading in XRP by such Person or their family members, including, but not limited to general SEC policies and individualized Communications with individuals.

REQUEST FOR PRODUCTION NO. 28:

All Documents or Communications Concerning any ownership or trading in XRP by You or any current or former SEC Commissioner, staff member, officer or employee, including (1) Documents sufficient to identify all digital asset wallet addresses over which You or such Person exercises or has exercised control, or maintains or has maintained the private keys, and (2) any wallet address used to distribute XRP, and any wallet address maintained on you or such Person’s behalf by any third party, digital asset trading platform or exchange.

REQUEST FOR PRODUCTION NO. 29:

All Documents Concerning analyses (including, but not limited to, any regression and correlation, or event study analysis) whether done by you or on your behalf relating to:

- a. Ripple and/or XRP;
- b. The XRP Ledger;
- c. On-Demand Liquidity;
- d. Correlations between the market performance of XRP and other Digital Assets and/or Virtual Currencies;
- e. Correlations between the market performance of XRP and public statements by Ripple, including, but not limited to, with respect to the XRP Escrow (as described in paragraph 198 of the Complaint) and On-Demand Liquidity; and
- f. The size and value of XRP sales over time, including, but not limited to, sales by Defendants.

REQUEST FOR PRODUCTION NO. 46:

All Documents and Communications Concerning the civil action *Tetragon Financial Group Ltd. v. Ripple Labs, Inc.*, C.A. No. 2021-0007-MTZ.

REQUEST FOR PRODUCTION NO. 47:

All Documents and Communications Concerning the following civil actions:


- *In re Ripple Labs Inc. Securities Litigation*, Case No. 18-06753, which consolidated several putative class actions brought in other courts. Those actions are:
 - *Zakinov, et al. v. Ripple Labs, Inc., et al.*, Case No. 18CIV02845;
 - *Oconer v. Ripple Labs, Inc., et al.*, Case No. 18CIV03332;
 - *Greenwald v. Ripple Labs, Inc., et al.*, Case No. 18CIV03461;
 - *Simmons v. Ripple Labs, Inc., et al.*, Case No. 20-02236; and
 - *Bitcoin Manipulation Abatement v. Ripple Labs, Inc., et al.*, Case No. 20-cv-03022.
- *Toomey v. Ripple Labs, Inc., et al.*, Case No. 21-00093.
- *Coffey v. Ripple Labs, Inc., et al.*, Case No. 18-3286.
- *Stelmaszyk v. Ripple Labs, Inc., et al.*, Case No. 20-584488.

REQUEST FOR PRODUCTION NO. 48:

All Documents and Communications Concerning the application of *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010), to Regulation S, including but not limited to, potential revisions to Regulation S.

Dated: New York, New York
February 12, 2021

DEBEVOISE & PLIMPTON LLP

By: 

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(aceresney@debevoise.com)
Mary Jo White
Lisa Zornberg
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Exhibit D

From: Zornberg, Lisa
Sent: Friday, August 20, 2021 8:50 PM
To: 'Tenreiro, Jorge'; Gulay, Erol; Guo, Joy; 'Waxman, Daphna A.'; 'Levander, Samuel'; 'Tatz, Nicole'; 'mflumenbaum@paulweiss.com'; 'mgertzman@paulweiss.com'; 'Dearborn, Meredith (mdearborn@paulweiss.com)'; 'Linsenmayer, Robin (rlinsenmayer@paulweiss.com)'; 'Bunting, Kristina' (kbunting@paulweiss.com); 'mkellogg@kellogghansen.com'; 'rfigel@kellogghansen.com'; 'Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com> (boppenheimer@kellogghansen.com)'; 'Pfeffer, Eliana M. (epfeffer@kellogghansen.com)'; 'White, Collin R.' (cwhite@kellogghansen.com); Gressel, Anna; Ford, Christopher S.; Ceresney, Andrew J.; 'Solomon, Matthew'; 'Janghorbani, Alexander'; 'Bamberger, Nowell D.'
Cc: 'Daniels, Jon'; 'Moye, Robert M.'; 'Hanauer, Benjamin J.'; 'Stewart, Ladan F'; 'Guerrier, Pascale'; 'Sylvester, Mark'
Subject: RE: Preclearance Applications

We're fixing at typo below. "June 25, 2018" has been corrected to read "January 14, 2018."

From: Zornberg, Lisa
Sent: Friday, August 20, 2021 15:53
To: 'Tenreiro, Jorge'; Gulay, Erol; Guo, Joy; 'Waxman, Daphna A.'; 'Levander, Samuel'; 'Tatz, Nicole'; 'mflumenbaum@paulweiss.com'; 'mgertzman@paulweiss.com'; 'Dearborn, Meredith (mdearborn@paulweiss.com)'; 'Linsenmayer, Robin (rlinsenmayer@paulweiss.com)'; 'Bunting, Kristina' (kbunting@paulweiss.com); 'mkellogg@kellogghansen.com'; 'rfigel@kellogghansen.com'; 'Oppenheimer, Bradley E. (boppenheimer@kellogghansen.com)'; 'Pfeffer, Eliana M. (epfeffer@kellogghansen.com)'; 'White, Collin R.' (cwhite@kellogghansen.com); Gressel, Anna; Ford, Christopher S.; Ceresney, Andrew J.; 'Solomon, Matthew'; 'Janghorbani, Alexander'; 'Bamberger, Nowell D.'
Cc: 'Daniels, Jon'; 'Moye, Robert M.'; 'Hanauer, Benjamin J.'; 'Stewart, Ladan F'; 'Guerrier, Pascale'; 'Sylvester, Mark'
Subject: Preclearance Applications

Jorge – Thank you for meeting and conferring on Wednesday on this issue. Following up on that discussion, below for the SEC's consideration is a proposed approach for the SEC to supply the requested information on preclearance applications for XRP, bitcoin and ether in an aggregate form that would avoid the need to identify SEC employees. Defendants request the SEC's response by next Wednesday. Thank you and have a good weekend,

Lisa

-
1. For the period January 1, 2012 – December 22, 2020, identify by month: (1) the number of SEC employees that submitted preclearance applications to transact in each of (a) XRP, (b) bitcoin, or (c) ether; (2) whether the application sought permission to purchase or sell the asset in question; and (3) the number of applications that were approved or denied. For the month of January 2018, break out your responses for before and after January 19, 2018. For the month of April 2018, break out your responses for before and after April 13, 2018. For the month of June 2018, break out your responses for before and after June 14, 2018.
 2. For applications identified in response to #1 that were denied, identify the basis for the denials.

Sample template for response to #1:

Month	January 2012	February 2012	<i>Etc.</i>
Approved XRP Purchase Applications			
Denied XRP Purchase Applications			
Approved XRP Sale Applications			
Denied XRP Sale Applications			
Approved BTC Purchase Applications			
Denied BTC Purchase Applications			
Approved BTC Sale Applications			
Denied BTC Sale Applications			
Approved ETH Purchase Applications			
Denied ETH Purchase Applications			
Approved ETH Sale Applications			
Denied ETH Sale Applications			