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October 7, 2021

VIA ECF
Hon. Sarah Netburn
United States Magistrate Judge
Southern District of New York
40 Foley Square
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 in opposition to the SEC's request (ECF No. 367) for a protective order permitting it to avoid responding to Defendants' Fourth, Fifth, and Sixth Sets of Requests for Admission ("RFAs"). The RFAs concern critical facts that Defendants believe are not genuinely disputed; truthful admissions by the SEC will therefore significantly narrow the issues for trial.

The SEC does not seriously argue that the RFAs are irrelevant. Instead, it focuses almost exclusively on the sheer number of RFAs to argue (at 4) that they are "unduly burdensome." This is triply wrong. *First*, as a matter of law, "the large number of requests to admit is not in itself a basis for a protective order." *Gen. Elec. Co. v. Prince*, 2007 WL 86940, at *2 (S.D.N.Y. Jan. 10, 2007). *Second*, as a matter of fact, Defendants' instructions will likely require the SEC to respond to only a fraction of these RFAs, as described in greater detail below.

Third, the quantity of RFAs is proportional to the needs of the case; in fact, it is driven by the SEC's own litigation theories. The largest set, Set Six, is based on the SEC's "conten[tion] that every offer, sale and distribution of XRP by [Defendants] during the Relevant Period [2013 through December 2020], was the offer, sale, or distribution of an investment contract." ECF No. 326-1 at 6. That contention puts centrally at issue the express terms of more than 1,700 separate contracts. Yet the SEC now complains (at 5) that it would be unduly burdensome to "require the SEC to review" the contracts it alleges are unlawful securities offerings. This is a remarkable admission; apparently the SEC failed to review these contracts *before* alleging in its complaint that every single one of them was part of a course of unlawful conduct. Indeed, the SEC seeks disgorgement of "at least" $1.38 billion in revenue generated by Ripple from those exact same contracts, *see* Am. Compl. ¶¶ 1, 5, yet says it can't be bothered to actually read them.

Despite multiple invitations to do so, the SEC has not yet identified a *single* contractual provision that supports its claim that these are "investment contracts" under the *Howey* test, yet it has reserved the right to rely on such contracts in support of its claims. Defendants are entitled to answers to RFAs that are expressly targeted at requiring the SEC either to identify such

provisions or admit (as we believe the SEC must do) that such provisions do not exist. The SEC should not be permitted to avoid making these admissions and narrowing the scope of trial merely because it has made extremely broad allegations that touch upon a large number of facts and documents. The Court should deny the SEC's request for a protective order.

I. The RFAs Concern Relevant Issues That Are Not Genuinely Disputed

Each of the three sets of RFAs at issue bears on important issues in the case — issues that the SEC cannot genuinely contest and would only waste the Court's time if presented at trial.

Fourth Set. The SEC expressly admits (at 2) that these 776 RFAs relate to Ripple's fair notice defense.[1] That alone establishes their relevance. Almost every RFA in this set addresses the SEC's own documents, its communications with third parties, or the authenticity of documents that may be introduced at trial.[2] *See* RFA Nos. 255-1007. To take just one example: when one cryptocurrency exchange decided to list XRP, it obtained legal advice that XRP was not likely to be considered an investment contract under existing law, shared that analysis with the SEC, and met with the SEC to discuss the legal status of XRP. As we understand it, not once during those discussions did the SEC indicate that XRP was an investment contract. Accordingly, RFA Nos. 615-640 seek admissions to establish definitively what the SEC said and did during those meetings, which will support Ripple's fair notice defense and the Individual Defendants' scienter defenses. The SEC's claim (at 2) that it "has no firsthand knowledge" of these facts, apart from being legally irrelevant,[3] lacks any genuine basis. Almost all of the RFAs in this set concern meetings the SEC attended or communications the SEC participated in; the remaining few concern documents that the SEC has full access to.

Fifth Set. These 309 RFAs go directly to the SEC's burden under *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010), to prove that Defendants' sales or offers occurred in the United States. The U.S. securities laws do not apply to Defendants' sales or offers of XRP on foreign exchanges. *Id.* at 267-68 ("We know of no one who thought that the Act was intended to 'regulat[e]' *foreign* securities exchanges."); *see In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 532-33 (S.D.N.Y. 2011) (*Morrison* "clearly sought to bar claims based on purchases and sales of foreign securities on foreign exchanges").

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[1] The SEC argues (at 2) that they do not relate to the "central issue" in the case, by which the SEC means its claim that offers and sales of XRP were securities. The SEC does not and cannot cite any authority to support its absurd suggestion that RFAs must relate to a plaintiff's claim and not a defendant's affirmative defense. In any event, the SEC is wrong on the facts; many of these RFAs do go directly to the merits of the SEC's claim. *See, e.g.*, RFA No. 1009 ("Admit that Ripple had no contractual obligation to promote the value of any unit of XRP.").

[2] With respect to the RFAs concerning authenticity, Defendants believe that there is no genuine dispute regarding the authenticity of any of the documents at issue. Accordingly, Defendants proposed a stipulation as to authenticity on September 8, 2021, and followed up with the SEC repeatedly on September 8, 15, 21, 23 and 27 regarding that proposed stipulation. Yet the SEC has stated that it "is not presently prepared to stipulate to the authenticity of all 163 documents proposed by Defendants." *See* Exhibit A at 2. The SEC's refusal to stipulate only underscores the need for these admissions, to avoid wasting time at trial with testimony of custodians.

[3] Rule 36 expressly requires the responding party to make a "reasonable inquiry" beyond its firsthand knowledge into any "readily obtain[able]" information. *See* Fed. R. Civ. P. 36(a)(4) & 1970 Adv. Comm. Note.

Defendants traded XRP on 34 platforms. The requests in this set are designed to elicit admissions that help establish that for most, if not all, of those platforms, there is no dispute that the trades conducted on them were outside the United States and/or that the SEC has identified no evidence demonstrating that trades on those exchanges were domestic. These 309 RFAs consist of nine requests each related to each of the 34 cryptocurrency exchanges, as well as three requests asking the SEC to admit it has no factual basis for asserting that the Defendants sold XRP on any other exchanges. By making such admissions, the SEC will reduce the number of contested facts related to the Defendants' *Morrison* defenses, and thereby narrow the issues in this case, focus the parties' briefing on summary judgment, and reduce trial time.

Citing no legal authority, the SEC bizarrely complains (at 2) that these RFAs are "similar to contention interrogatories" because they "seek to restrict the scope of the SEC's legal arguments, rather than establish any facts that Defendants could offer as evidence." Not so. The RFAs seek to establish that there are no disputes as to certain facts relevant to whether these trading platforms are domestic exchanges. Nor does Rule 36 restrict Defendants from making "negative requests," as the SEC asserts (at 2), again without citing any authority. Indeed, the SEC itself has served several comparable "negative requests" in this case. *Compare* SEC RFA No. 739 ("Admit that at no time did Ripple's offers and sales of XRP comply with Regulation A.") *with* Defendants' RFA No. 1036 ("Admit that the Binance Trading Platform is not located in the United States.").

Sixth Set. This set, to which the SEC devotes the bulk of its attention, seeks admissions concerning the content of the contracts by which Ripple sold or distributed XRP. These admissions are directly relevant to the SEC's claims that, under *Howey*, Ripple's sales and offers of XRP were investment contracts. Admissions to these requests would establish, for example, that the contracts did not include any promises by Ripple to increase the price of XRP, to develop the XRP ecosystem, to improve the XRP Ledger, or to share in any of Ripple's profits. These facts would directly undermine the SEC's *Howey* arguments, and in particular its arguments that XRP purchasers joined a common enterprise in which they had a reasonable expectation of profits based solely on Ripple's efforts.

Despite Defendants' attempts to obtain more detail, the SEC has refused to provide any indication as to which (if any) provisions of the more than 1,700 relevant contracts it will rely on to prove its claims. *See*, *e.g.*, ECF No. 326; Ex. A at 4 ("[T]he SEC is not willing to stipulate to the particular provisions of XRP contracts that the SEC will rely upon, or will not rely upon, in support of its claims against defendants.") At the same time, the SEC has expressly "reserve[d] all of its rights to point to the express or implied provisions of particular contracts in order to present its claims . . . during trial." Ex. A at 4. The SEC's continued efforts to resist any attempt to pin down its theory of this case should not be condoned.

The SEC argues (at 3) that these RFAs are not "truly probative, because under *Howey*, the SEC is not limited to offering the actual provisions of any particular sales agreements." Even assuming that is correct, it misses the point. The SEC *may* attempt to rely on evidence outside the four corners of the contracts, but it also may attempt to rely on evidence within the four corners. Absent a binding representation that the SEC will not rely on any provisions in the

contracts (which the SEC has refused to make), Defendants are entitled to binding admissions in advance of trial to establish the undisputed fact that many (Defendants believe *all*) of the contracts lack provisions that might support the SEC's theories. At the same time, any denials will identify the contracts that the SEC believes contain such provisions, as well as the specific provisions in question. This set of RFAs will thus significantly narrow the issues for trial relating to the contents of the written XRP contracts.

II. The RFAs Are Not Unduly Burdensome

The SEC bears the burden of demonstrating that the RFAs are unduly burdensome. *Sequa Corp. v. Gelmin*, 1993 WL 350029, at *1 (S.D.N.Y. Sept. 7, 1993). Under Rule 26(b)(1), discovery relating to any relevant matter is permissible as long as it is "proportional to the needs of the case" — a decision that depends on, among other things, "the importance of the issues at stake in the action" and "the amount in controversy." Fed. R. Civ. P. 26(b)(1). The SEC has not come close to meeting this burden.

The RFAs are neither difficult to answer, nor burdensome. They seek obvious and indisputable admissions, apparent from even a cursory review of each contract, that the contract does not include, for example, "any provision in which Ripple promised to engage in any efforts to increase the price of XRP," RFA No. 1,340, or "any provision that entitles the counterparty . . . to share, directly or indirectly, in Ripple's profits or net income," RFA No. 1,347. We do not expect any of these admissions to be disputed; nor does the SEC suggest they will be.

In objecting to these RFAs, the SEC relies almost exclusively on the number of RFAs served (or the corollary to that, the amount of time it estimates would be required to respond to the RFAs) to argue that the RFAs are unduly burdensome. That is insufficient as a matter of law: "[The number of] RFAs does not, in itself, establish an undue burden or serve as a basis for a protective order. . . . It is often typical that they set forth in sometimes excruciating detail, the facts, events or communications to which admission is sought." *Pasternak v. Dow Kim*, 2011 WL 4552389, at *5 (S.D.N.Y. Sept. 28, 2011). Courts have approved sets of thousands of RFAs. *See*, *e.g.*, *In re Acushnet River & New Bedford Harbor Proc. re Alleged PCB Pollution*, 712 F. Supp. 1019, 1031 n.20 (D. Mass. 1989) (describing with approval the use of "tens of thousands of requests for admission," enough to "fill four full bookcases"); *United States ex rel. Scott v. Humana, Inc.*, 2019 WL 7403967, at *5 (W.D. Ky. Aug. 30, 2019) (giving Humana the choice to answer 23,000 RFAs or to provide the same information in an interrogatory response); *U.S. ex rel. Minge v. TECT Aerospace, Inc.*, 2012 WL 1631678, at *4-5 (S.D.N.Y. Sept. 28, 2011) (denying motion for protective order against set of 2,826 RFAs).[4]

Moreover, Defendants have attempted to reduce the burden of responding to the Sixth Set of RFAs by including 13 preliminary requests (RFA Nos. 1,340-1,352, attached as Exhibit B).

[4] The SEC's complaints as to the number of requests in the Fourth and Fifth Sets (776 and 309, respectively) are particularly misplaced. As the SEC concedes (at 2), Defendants only served 254 RFAs prior to its Fourth, Fifth and Sixth Sets. Comparatively, the SEC itself has served more than 1,300 RFAs in this litigation (741 to Ripple, 325 to Garlinghouse, and 251 to Larsen). Its complaint (at 5) that Defendants served "hundreds" of RFAs rings hollow.

Under Instruction 8 in the Sixth Set, unqualified admissions to these requests will obviate the need for the SEC to respond to *any* of the remaining RFAs. Under Instruction 9, moreover, partial admissions (*e.g.*, an admission that the request is true as to certain contracts, but not others) will allow the SEC to disregard the later RFAs relating to the contracts for which it has already made admissions, meaning that the SEC will have to answer only a small fraction of the RFAs in this set. Since the SEC can hardly dispute that some (we believe *all*) of the provisions listed in the 13 preliminary requests are not found in any of the XRP contracts, Defendants genuinely expect that if the SEC provides good faith responses to RFA Nos. 1,340-1,352, it will be required to respond to very few, if any, of the remaining RFAs.

Large numbers of RFAs are justified where the "th[e] case is very complicated and fact intensive." *Minge*, 2012 WL 1631678, at *5; *Gen. Elec.*, 2007 WL 86940, at *2 (similar); *Sequa*, 1993 WL 350029, at *1 (similar). This Court has already found "that this case is unique, that the nature of the case involves significant policy decisions in our markets and that the amount in controversy also is substantial and that the public's interest in resolution of this case is also quite significant." July 15, 2021 Hr'g Tr. 40:3-8. This stands in stark contrast to the cases the SEC cites; indeed, the one it relies on most expressly held that the case was not of "any particular importance" and had no "wider significance." *Penn Eng'g & Mfg. Corp. v. Peninsula Components, Inc.*, 2021 WL 4037857, at *3 (E.D. Pa. Sept. 3, 2021). Not a single one of the cases the SEC cites is even remotely comparable to this one in terms of the amount in controversy, the public policy decisions at issue, and the degree of public interest.

Finally, the SEC asserts without elaboration (at 1, 3) that the RFAs are unduly burdensome because "it is unclear how Defendants would ever use the SEC's responses at trial or on summary judgment." This again misunderstands the purpose of RFAs. Admissions to these requests will narrow the issues so that the parties can *avoid* introducing 1,700 separate contracts at trial; so that they can *exclude* from trial the hundreds or thousands of transactions that occurred outside the United States; and so that they can save the Court's and jury's time by omitting other undisputed points relating primarily to the fair notice defense. This does not require reading every RFA into the record; it can be done through jury instructions, motions in limine, summary witnesses or exhibits, or any number of other devices.

All three sets of RFAs concern relevant issues; the SEC cannot seriously argue otherwise. In light of the stakes in this matter, the burden they impose is not unreasonable. The SEC should be required to provide admissions to the RFAs — "even if that admission will gut its case and subject it to summary judgment." *Synthes (U.S.A.) v. Globus Med., Inc.*, 2006 WL 3486544, at *1 (E.D. Pa. Nov. 29, 2006) (internal quotation marks omitted). The Court should deny the SEC's motion and direct the SEC to reply within 30 days. That should be ample time to respond to Sets 4 and 5, and at least the first 13 RFAs in Set 6. If many RFAs remain in Set 6, the SEC may seek additional time.

Respectfully submitted,

/s/ Michael K. Kellogg
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Counsel for Defendant Christian A. Larsen

Exhibit A

From: Oppenheimer, Bradley E.
Sent: Monday, September 27, 2021 7:48 AM
To: 'Moye, Robert M.' <MoyeR@sec.gov>; 'Levander, Samuel' <slevander@cgsh.com>; Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; mflumenbaum@paulweiss.com; 'aceresney@debevoise.com' <aceresney@debevoise.com>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander <ajanghorbani@cgsh.com>; mgertzman@paulweiss.com; Tatz, Nicole <ntatz@cgsh.com>; Dearborn, Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Cc: Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>
Subject: RE: SEC v. Ripple Labs, Inc.

Rob,

Your email misrepresents the record in significant respects. To take just one example: your email below complains that "until last night, [Defendants] had offered no compromise which would prioritize the 5th set of RFAs ahead of the other two." That is simply untrue. My September 15 email in this same thread offered "to prioritize [the RFAs] as follows: 30 days to respond to the Fifth Set; 60 days to respond to the Fourth Set; and 75 days to respond to the Sixth Set." As you know and as the parties discussed, the Fifth Set deals with *Morrison*/foreign exchange issues that are relevant to expert discovery, which is why Defendants prioritized the SEC's timely response. To catalog more examples of the SEC's misrepresentations in the email below would be an inefficient use of time. It seems clear that the SEC is unwilling to entertain any of the multiple, reasonable approaches we have offered and that the SEC simply wants to avoid complying with its discovery obligations.

Brad

From: Moye, Robert M. <MoyeR@sec.gov>
Sent: Friday, September 24, 2021 6:05 PM
To: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>; 'Levander, Samuel' <slevander@cgsh.com>; Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; mflumenbaum@paulweiss.com; 'aceresney@debevoise.com' <aceresney@debevoise.com>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander <ajanghorbani@cgsh.com>; mgertzman@paulweiss.com; Tatz, Nicole <ntatz@cgsh.com>; Dearborn,

Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Cc: Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>
Subject: [EXTERNAL] RE: SEC v. Ripple Labs, Inc.

Brad:

Thank you for your letter. We have considered your proposal for a compromise on the 4th an 5th sets of RFAs, and it is not close to being acceptable. Among other things:

- The extensions previously offered by defendants did not reduce the unreasonable burden of responding to more than 29,000 interrogatories.
- We do not agree that "many" of the RFAs "confirm[] exculpatory facts" and "narrow[] the issues for trial." To the contrary, many of those requests are either contested or not within the SEC's knowledge, and also are subject to other objections, including relevance, hearsay, completeness and foundation.
- It is unreasonable to expect the SEC to respond to more than 300 requests in the Defendants' 5th Set of RFAs by September 30th. Defendants have been on notice since Sept. 2nd that Defendants 4th, 5th, and 6th sets of RFAs were issued in violation of the FRCP and, until last night, had offered no compromise which would prioritize the 5th set of RFAs ahead of the other two. In fact, one of your previous proposals offered the SEC 60 days to respond to the 5th set of RFAs.
- As Mark Sylvester indicated during our last M&C, the SEC remains interested in finalizing a stipulation with Defendants regarding the authenticity of documents. However, there is no court order or deadline that would require such a stipulation to be finalized now.
- The SEC is not presently prepared to stipulate to the authenticity of all 163 documents proposed by Defendants. More importantly, any stipulation entered into by the parties should be mutual, and the SEC has not shared a list of proposed documents to be stipulated to by the Defendants.
- Finally, it is unclear why a stipulation regarding the authenticity of 163 documents would allow the Defendants to reduce and reissue the number of requests in their 4th Set of RFAs by 426 requests – unless that set currently contains at least 263 irrelevant, redundant or objectionable requests.

Despite the parties' good faith efforts to consider and propose potential compromises, those efforts have been unsuccessful. Unless Defendants accept the SEC's proposal to respond to 500 RFAs selected by Defendants within 90 days of the agreement, by Monday, then we are at impasse.

The SEC is not willing to consider any additional proposals for compromise, or to continue negotiating about prior proposals, because doing so would impact significantly our ability to seek the Court's assistance in resolving this dispute. Accordingly, the SEC intends to prepare and file a motion for a protective order regarding all three sets of RFAs, and defendants can respond as they think best.

Please let me know if you have any questions, or wish to discuss this further.

Rob

From: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>
Sent: Thursday, September 23, 2021 9:38 PM
To: Moye, Robert M. <MoyeR@sec.gov>; 'Levander, Samuel' <slevander@cgsh.com>; Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; mflumenbaum@paulweiss.com; 'aceresney@debevoise.com' <aceresney@debevoise.com>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander <ajanghorbani@cgsh.com>; mgertzman@paulweiss.com; Tatz, Nicole <ntatz@cgsh.com>; Dearborn, Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Cc: Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>
Subject: RE: SEC v. Ripple Labs, Inc.

Rob,

Thank you for your email. In light of the SEC's unwillingness to identify the particular contractual provisions on which it may rely, we are unable to offer a stipulation in lieu of the Sixth Set of RFAs and appear to be at impasse as to those.

As to the Fourth and Fifth Sets of RFAs, I believe the parties may still be able to reach a compromise. Please see the attached correspondence for Defendants' proposal in that regard.

Best regards,
Brad

From: Moye, Robert M. [mailto:MoyeR@sec.gov]
Sent: Thursday, September 23, 2021 7:15 PM
To: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>; 'Levander, Samuel'

<slevander@cgsh.com>; Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; mflumenbaum@paulweiss.com; 'aceresney@debevoise.com' <aceresney@debevoise.com>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander <ajanghorbani@cgsh.com>; mgertzman@paulweiss.com; Tatz, Nicole <ntatz@cgsh.com>; Dearborn, Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Cc: Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>
Subject: [EXTERNAL] RE: SEC v. Ripple Labs, Inc.

Brad:

Thank you for clarifying Ripple's request about potential stipulations regarding the XRP sales contracts. By way of response:

First, under the *Howey* test, the SEC is not limited to offering the actual provisions of any particular sales agreements between Ripple and Market Makers or other parties to prove that Ripple engaged in the offer and/or sale of securities. The SEC can rely on other evidence, including but not limited to Ripple's emails, public statements and internal documents, as well as expert analysis, to show that Ripple engaged in efforts relevant to the *Howey* analysis.

Second, to the extent that defendants' request for stipulations seeks to limit the SEC's ability to present documentary or other evidence, at trial or on summary judgment, the SEC objects that such an effort is premature and inappropriately asks the SEC to reveal its work product or trial strategy. We remain willing to consider any particular stipulation that Defendants may propose. But we don't think that discussing stipulations in the abstract is very helpful, and we are uncertain whether the effort to craft acceptable stipulations ultimately would be worthwhile.

Third, at this point the SEC is not willing to stipulate to the particular provisions of XRP contracts that the SEC will rely upon, or will not rely upon, in support of its claims against defendants. However, Defendants should understand that the SEC may refer to Ripple's imposition of restrictions on its transfers or sales of XRP, including the use of "Lockup Periods" and "Daily Sale Limitations, in support of its claims.

Please be advised that the SEC reserves all of its rights to point to the express or implied provisions of particular contracts in order to present its claims and/or respond to arguments raised by the defendants, including during trial or on summary judgment.

Rob

From: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>
Sent: Tuesday, September 21, 2021 8:02 PM
To: Moye, Robert M. <MoyeR@sec.gov>; 'Levander, Samuel' <slevander@cgsh.com>; Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; mflumenbaum@paulweiss.com; 'aceresney@debevoise.com' <aceresney@debevoise.com>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander <ajanghorbani@cgsh.com>; mgertzman@paulweiss.com; Tatz, Nicole <ntatz@cgsh.com>; Dearborn, Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Cc: Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>
Subject: RE: SEC v. Ripple Labs, Inc.

Dear Rob,

Thank you for your email. We will confer with our client about your proposal. In the meantime, however, we wish to note that our proposal during our last meet and confer was not for the SEC "to take another look at Defendants' 6th set of RFAs and determine whether there were any of the repeated sets of questions about documents that [the SEC] would be willing to answer." The SEC is obligated to answer all of the RFAs, absent an agreement by the parties to the contrary.

Rather, we asked whether the SEC will inform Defendants which contractual provisions, if any, the SEC intends to rely on when claiming that Defendants' sales or offers of XRP constituted investment contracts pursuant to the federal securities laws. We explained that if the SEC is willing to identify such provisions, Defendants will consider a stipulation that may obviate the need for many, or perhaps even all, of the RFAs in Defendants' Sixth Set.

Will the SEC identify the contractual provisions it intends to rely upon so that we may pursue this option?

Regards,
Brad

From: Moye, Robert M. <MoyeR@sec.gov>
Sent: Tuesday, September 21, 2021 5:17 PM
To: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>; 'Levander, Samuel' <slevander@cgsh.com>; Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>;

mflumenbaum@paulweiss.com; 'aceresney@debevoise.com' <aceresney@debevoise.com>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander <ajanghorbani@cgsh.com>; mgertzman@paulweiss.com; Tatz, Nicole <ntatz@cgsh.com>; Dearborn, Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Cc: Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>
Subject: [EXTERNAL] RE: SEC v. Ripple Labs, Inc.

Counsel:

As you know, during last week's M&C the SEC declined to accept your proposed compromise(s) about the pending 4th, 5th, and 6th sets of Requests for Admissions ("RFAs"). However, you also asked us to take another look at Defendants' 6th set of RFAs and determine whether there were any of the repeated sets of questions about documents that we would be willing to answer.

Having done so, without an agreement to withdraw any of defendants' other RFAs there is no subset of the 6th set of requests that the SEC is willing to answer. Even the requests about the authenticity of XRP agreements (which may never be used as evidence), would require the SEC to review and prepare responses to approximately 1,700 separate requests. Given the time that would be required to respond, and the minimal benefit to the parties, the burden of defendants' requests are disproportionate in the context of this case.

However, in the interests of resolving this dispute the SEC would be willing to respond to 500 RFAs, selected by defendants from the 4th 5th and 6th sets of RFAs, within 90 days of an agreement by the parties. Please let us know by Friday if this is acceptable. If the parties cannot reach an agreement, the SEC intends to file a motion for a protective order with the Court.

Thank you.

Rob Moye

From: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>
Sent: Wednesday, September 15, 2021 5:15 PM
To: 'Levander, Samuel' <slevander@cgsh.com>; Moye, Robert M. <MoyeR@sec.gov>
Cc: Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; 'aceresney@debevoise.com' <aceresney@debevoise.com>; mflumenbaum@paulweiss.com; Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon

<danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander <ajanghorbani@cgsh.com>; Tatz, Nicole <ntatz@cgsh.com>; mgertzman@paulweiss.com; Dearborn, Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Subject: RE: SEC v. Ripple Labs, Inc.

Counsel,

We write to offer a proposal in advance of our meet and confer on Friday. Defendants served these three sets of RFAs on August 31, 2021. The SEC has objected to the RFAs based on volume. In light of our discussion last week, we propose that the parties proceed as follows:

First, to address the concerns raised by the SEC about the 30-day deadlines for the RFAs not being feasible given their breadth, Defendants will agree to extend the SEC's time to respond to the RFAs and to prioritize them as follows: 30 days to respond to the Fifth Set; 60 days to respond to the Fourth Set; and 75 days to respond to the Sixth Set.

Second, as to the Fourth set and as we expressed last week, if the SEC agrees to our proposed stipulation of authenticity, we can withdraw the RFAs in this set that go to authenticity issues.

Third, for the avoidance of doubt, Defendants' proposal does not involve the withdrawal or reissuance of any of the RFAs in the Sixth Set. As the SEC acknowledged during our discussion last week, the SEC may rely on contractual terms to support its claims that Defendants offered or sold investment contracts. Defendants are entitled to establish undisputed facts about the contents of those contracts in support of their defenses.

Best regards,
Brad

From: Levander, Samuel <slevander@cgsh.com>
Sent: Wednesday, September 8, 2021 5:10 PM
To: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>; 'MoyeR@sec.gov' <MoyeR@sec.gov>
Cc: Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com' <egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; 'aceresney@debevoise.com' <aceresney@debevoise.com>; mflumenbaum@paulweiss.com; 'Tenreiro, Jorge' <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; 'HanauerB@sec.gov' <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; 'guerrierp@sec.gov' <guerrierp@sec.gov>; Daniels, Jon <danielsj@SEC.GOV>; 'GoodyE@sec.gov' <GoodyE@sec.gov>; 'ChanR@sec.gov' <ChanR@sec.gov>; Bamberger, Nowell D. <nbamberger@cgsh.com>; Janghorbani, Alexander

<ajanghorbani@cgsh.com>; Tatz, Nicole <ntatz@cgsh.com>; mgertzman@paulweiss.com; Dearborn, Meredith <mdearborn@paulweiss.com>; Bunting, Kristina <kbunting@paulweiss.com>
Subject: [EXTERNAL] RE: SEC v. Ripple Labs, Inc.

Dear Rob,

We write separately to address Defendants' fifth set of RFAs, which are neither unreasonable, burdensome, nor disproportionate.

Defendants' fifth set of RFAs are plainly relevant to the SEC's burden under *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010), of showing that Defendants' sales or offers occurred in the United States. The U.S. securities laws do not apply to sales or offers on foreign exchanges. *Id.* at 267-68 ("We know of no one who thought that the Act was intended to 'regulat[e]' *foreign* securities exchanges.") (emphasis in original); *see In re Vivendi Universal, S.A. Sec. Litig.*, 765 F. Supp. 2d 512, 532-33 (S.D.N.Y. 2011) (dismissing claims of American shareholders who purchased shares on a foreign exchange, reasoning that *Morrison* "clearly sought to bar claims based on purchases and sales of foreign securities on foreign exchanges").

Defendants' fifth set of RFAs call for the SEC to admit whether it will assert that certain digital asset trading platforms are located in the United States and the basis for any such assertion. These 309 RFAs consist of nine requests each related to the 34 digital asset trading platforms on which Defendants sold XRP, as well as three requests confirming that the SEC does not assert the Defendants sold XRP on any other digital asset trading platforms. These RFAs are designed to narrow the issues in this case, focus the parties' briefing on summary judgment, and reduce trial time. By clarifying which of these digital asset trading platforms the SEC does not assert are located within the United States, these RFAs will reduce the number of contested facts related to the Defendants' *Morrison* defenses. In turn, such narrowing would relieve the parties from the costs and burden from seeking document discovery abroad and the depositions of foreign nationals located outside the United States.

We are available to meet and confer regarding this set of RFAs on Friday.

Best regards,
Sam

Samuel Levander
Cleary Gottlieb Steen & Hamilton LLP
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One Liberty Plaza, New York NY 10006
[redacted]
slevander@cgsh.com | clearygottlieb.com

From: Oppenheimer, Bradley E. <boppenheimer@kellogghansen.com>
Sent: Wednesday, September 8, 2021 1:26 PM
To: 'MoyeR@sec.gov' <MoyeR@sec.gov>
Cc: Zornberg, Lisa <lzornberg@debevoise.com>; 'egulay@debevoise.com'

<egulay@debevoise.com>; Solomon, Matthew <msolomon@cgsh.com>; Figel, Reid M. <rfigel@kellogghansen.com>; Ford, Christopher S. <csford@debevoise.com>; 'aceresney@debevoise.com' <aceresney@debevoise.com>; mflumenbaum@paulweiss.com; 'Tenreiro, Jorge' <tenreiroj@SEC.GOV>; Sylvester, Mark <sylvesterm@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; 'HanauerB@sec.gov' <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; 'guerrierp@sec.gov' <guerrierp@sec.gov>; Daniels, Jon <danielsj@SEC.GOV>; 'GoodyE@sec.gov' <GoodyE@sec.gov>; 'ChanR@sec.gov' <ChanR@sec.gov>
Subject: RE: SEC v. Ripple Labs, Inc.

Dear Rob:

Thank you for your email. Defendants disagree with your contention that their Fourth, Fifth, and Sixth Sets of RFAs are unreasonable and unduly burdensome. We will address the Fourth and Sixth Sets below, and understand that counsel for the individual defendants will write separately regarding the Fifth Set.

Defendants' Fourth Set of RFAs include approximately 775 requests focused primarily on the SEC's communications and meetings with third parties. This set also includes RFAs relating to public statements by SEC staff about digital assets, SEC trading policies relating to digital assets, and public statements by market participants and other federal agencies concerning the regulation of digital assets and the lack of clarity. Approximately 50 of the 775 RFAs in this set relate to authenticating documents and oral statements; if Defendants and the SEC can agree within the next week to an authenticity stipulation covering that material, then the SEC need not respond to those 50 or so RFAs, which will reduce the volume of RFAs in this set to be answered to approximately 675.

This fourth set is appropriate under Rules 1, 26, and 36 and proportionate to the needs of the case. These RFAs are highly relevant to the SEC's claims and Defendants' defenses – including the market's understanding of the treatment of XRP under *Howey*, defenses to the SEC's allegations of recklessness by the individual defendants, and Ripple's lack of fair notice defense. The RFAs are also efficient. They will confirm and put to bed basic facts relevant to the SEC's external communications that Defendants believe are genuinely undisputed but that cannot be established from the SEC's document production relating to its meetings and communications with third parties.

To the extent the SEC takes issue with the number or scope of these RFAs, that is an issue of the SEC's own making in bringing a case covering eight years of conduct to which the SEC's external communications with third parties are important, as is evidence establishing the SEC's own conduct, knowledge and awareness of substantial uncertainty regarding whether or how US securities laws applied to digital assets including XRP, ether and Bitcoin. We also dispute that the SEC will be burdened in responding to these RFAs, most of which implicate the SEC's own statements and conduct, and thus should not be difficult to answer.

As to the Sixth Set of RFAs, assuming the SEC is familiar with the evidence related to the sweeping allegations in its own Complaint, any burden on the SEC is minimal. In particular, and as previously noted in our cover email, we direct your attention to Instructions 8 and 9, and to the first 13 RFAs in the Sixth Set (numbered 1,340 to 1,352). Even a cursory review of the written contracts associated

with Ripple's distributions of XRP to third parties demonstrates that these contracts do not themselves contain any provisions that impose *any* obligations on Defendants with respect to critical factors in the *Howey* test. Instructions 8 and 9, and RFAs 1,340 to 1,352, are carefully crafted to enable the SEC to admit to what we believe are undisputed facts obvious from the text of the written contracts, such that the admissions sought in RFAs 1,340 to 1,352 as to the provisions (or absence of provisions) in the relevant agreements will substantially narrow the legal issues, and factual disputes, at trial – and will obviate the need for the SEC to respond to the remainder of the RFAs in this set once it admits these first 13 RFAs. Similarly, Instructions 8 and 9 permit the SEC to identify specific contracts as exceptions to admissions on RFAs 1,340 to 1,352, and then to provide responses only to those RFAs that relate to those specific contracts. Thus, your suggestion that the Sixth Set of RFAs imposes unreasonable burdens on the SEC is unfounded.

Moreover, the burden, if any, in answering Defendants' Sixth Set of RFAs results from the SEC's own litigation tactics in this case. The SEC could have pursued this litigation on a far narrower basis – by relying on a limited number of transactions that purportedly resulted in the offering of an "investment contract" by Ripple. Instead, the SEC elected, as it admits in response to Ripple's Interrogatory No. 1, to allege that "every offer, sale and distribution of XRP by Ripple, Larsen, and Garlinghouse" constituted an investment contract. SEC's Resps. & Objs. to Ripple's First Set of Interrogs. at 6. Yet despite Defendants' repeated requests, the SEC has never stated with specificity whether evidence relevant to the *Howey* test is found in specific provisions of the written agreements – including but not limited to whether Ripple's written contracts created duties on Ripple to increase the price of XRP, and the identity of the common enterprise to which Ripple would apply its managerial and entrepreneurial efforts from which a purchaser of XRP could expect to receive future profits. *See*, *e.g.*, Ripple Interrogatories Nos. 1 and 2 (asking the SEC to "[i]dentify each contract" and to "[i]dentify all terms of the contract that you contend created an 'expectation of profit' (as that term is used in *SEC v. Howey*)"); Letter from B. Hanauer to R. Figel at 3 (Aug. 27, 2021) ("Our contention remains that Ripple's sales of XRP were a series of 'transactions, schemes, *or* contracts' under *Howey*." (emphasis added)).

Even at this late date, when almost all fact discovery has been completed, the SEC still refuses to state whether some, all, or none of the contracts pursuant to which Ripple offered or sold XRP include specific provisions relevant to the application of *Howey* to this litigation. If the SEC *is willing to admit* in RFA Nos. 1,340 to 1,352, as we believe it must, that none of these contracts include terms and provisions supporting the particular *Howey* issues identified in the RFAs, then separate responses to RFA Nos. 1,353 to 29,574 would be unnecessary. If the SEC *is unwilling to admit* RFA Nos. 1,340 to 1,352, and thereby continues to assert that some unspecified number of Ripple's contracts include provisions supporting those *Howey* issues, the SEC cannot fairly complain that complying with its obligations under Rules 26 and 36 is unduly burdensome or unreasonable. This is particularly true because, as noted above, the SEC has made clear that it contends that "every offer, sale and distribution of XRP" constitutes an investment contract, and that SEC will seek disgorgement and damages based on each such transaction. *See* First Am. Compl. 78-79, ECF No. 46 (seeking a judgment ordering Defendants "to disgorge all ill-gotten gains obtained within the statute of limitations" and "to pay civil money penalties"). The identification of the specific contracts, and the specific provisions of each such contract, that create rights and expectations of an XRP purchaser, or duties on Ripple, are clearly "relevant" "matters" within the scope of those rules;

indeed, they are some of the most relevant matters in this case. Responses to these RFAs are therefore essential to promote the "just, speedy, and inexpensive determination of [this] action" under Rule 1, and will eliminate litigation over undisputed facts, or identify disputed facts, thereby clarifying and narrowing the issues at trial.

Whatever burden would be imposed on the SEC in responding to these RFAs is vastly outweighed by reducing the burdens on the Court, jurors, and Defendants of deciding, on a contract-by-contract basis, the relevance of the more than 1,700 contracts at issue in this case. *See Pasternak v. Dow Kim*, 2011 WL 4552389, at *5 (S.D.N.Y. Sept. 28, 2011) (holding that although "the RFAs [propounded were] extensive and cover[ed] a significant range of issues presented in the case, that [was] entirely appropriate, since the purpose of Requests for Admissions is not necessarily to obtain information but to narrow issues for trial" (internal quotation marks and citation omitted)); *Best Med. Int'l, Inc. v. Accuray, Inc.*, 2013 WL 3305478, at *3 (W.D. Pa. July 1, 2013) ("The sheer number of requests does not violate the Rules of Civil Procedure, because requests for admissions are designed to narrow the issues for trial, and thereby advance the just, speedy and inexpensive determination of the case."). As the Advisory Committee notes to Rule 36 explain, "a reasonable burden may be imposed on the parties when its discharge will facilitate preparation for trial and ease the trial process.....In most instances, the investigation will be necessary either to his own case or to preparation for rebuttal." Fed R. Civ. P. 36, Advisory Committee Notes to 1970 Amendment.

Absent an admission to Defendants' Sixth Set of RFAs, Defendants must assume that the SEC intends to rely on various provisions in each of the contacts related to Defendants' sales or distribution of XRP from 2013 through the present. Indeed, Defendants propounded these RFAs because many of your prior statements suggest that the SEC believes that the terms of these contracts support its *Howey* theory. For instance, you have never identified how many units of XRP you allege Defendants have sold or distributed in violation of the registration requirements of Section 5, nor the value in U.S. dollars that Defendants allegedly received in exchange for those transfers – issues that are clearly relevant to the defense of this case. *See*, *e.g.,* First Am. Compl. ¶ 1, ECF No. 46 (alleging that "[f]rom at least 2013 through the present, Defendants sold *over* 14.6 billion units of a digital asset security called 'XRP,' in return for cash or other consideration worth *over* $1.38 billion" (emphases added)); *id.* ¶ 5 ("Ripple was able to raise *at least* $1.38 billion by selling XRP" without filing a registration statement (emphasis added)); *see also* Letter from B. Hanauer to R. Figel at 3 (Aug. 27, 2021). Without responses to Defendants' RFAs that clarify which of the specific contracts, and which provisions of those contracts, support your theory of Defendants' alleged violation of the federal securities laws, Defendants must take your prior statements at face value, and assume that you intend to prove that every sale or distribution of XRP violated Section 5, and thus that every document under which such a transaction occurred contains evidence that would be relevant at trial.

We disagree with your hyperbolic suggestion that it would take an SEC attorney 104 days to respond the Sixth Set of RFAs. To begin with, you offer no basis for your estimate that it would take five minutes to respond to each RFA. The SEC is undoubtedly familiar with the terms of the contracts that allegedly support its claimed violation, and each set of RFAs relate to a specifically-identified contract that has been produced in discovery. Many of these are form contracts with identical provisions, which the SEC presumably does not believe differ in legal or economic substance. As

stated in Instruction 9, the SEC is also permitted to identify each of the contracts for which you believe a denial is appropriate for RFAs 1,340 to 1,352, and only to respond specifically to the RFAs associated with that particular contract, so long as you admit that Ripple did not make such a promise in other contracts. *See Gen. Elec. Co. v. Prince*, 2007 WL 86940, at *2 (S.D.N.Y. Jan. 10, 2007) (although defendant had propounded hundreds of RFAs regarding documents related to customer orders, "that figure [was] very misleading" where "it [was] obvious that plaintiff [could] readily answer all 573 requests in a summary fashion, and the burden [would] be minimal"). The RFAs are extensive mainly because – given the vagueness of your allegations – Defendants may be forced to prepare defenses as to more than 1,700 contracts. *See Sequa Corp. v. Gelmin*, 1993 WL 350029, at *1 (S.D.N.Y. Sept. 7, 1993) ("Although it is true that the requests encompass many separate items, this is a function of the fact that the issues in this case encompass a large number of discrete financial transactions."); *Gen. Elec. Co.*, 2007 WL 86940, at *2 (holding that "the actual substance of the requests demonstrate[d] that they [were] reasonable in light of the issues posed [in the case], which cover[ed] a very large number of orders for which plaintiff's contractual performance [was] at least in question").

Your complaint that service of these RFAs on the last day of fact discovery is inappropriate and "disappoint[ing]" is unfounded. It is exactly *because* fact discovery was largely complete that it was necessary for Defendants to serve these RFAs. At no point during fact discovery – not in your interrogatory responses, nor in prior RFA responses, nor in your many depositions of current and former Ripple employees – have you clearly articulated which of Ripple's contracts, if any, are investment contracts, or which of those contracts include provisions that support the particular *Howey* factors to which the RFAs are addressed. *See Pasternak*, 2011 WL 4552389, at *5 (stating that RFAs "are extremely useful tools, particularly at the conclusion of discovery, because their sole purpose is to streamline the presentation of evidence at trial" (internal quotation marks and citation omitted)).

Defendants are available to meet and confer on Friday as you have requested.

Regards,
Brad

From: "Moye, Robert M." <MoyeR@sec.gov>
Date: September 7, 2021 at 4:08:38 PM PDT
To: "Zornberg, Lisa" <lzornberg@debevoise.com>, "Gulay, Erol" <egulay@debevoise.com>, msolomon@cgsh.com, rfigel@kellogghansen.com, "Ford, Christopher S." <csford@debevoise.com>, "Ceresney, Andrew J." <aceresney@debevoise.com>, mflumenbaum@paulweiss.com
Cc: "Tenreiro, Jorge" <tenreiroj@sec.gov>, "Sylvester, Mark" <sylvesterm@sec.gov>, "Stewart, Ladan F" <stewartla@sec.gov>, "Hanauer, Benjamin J." <HanauerB@sec.gov>, "Waxman, Daphna A." <WaxmanD@sec.gov>, "Guerrier, Pascale" <guerrierp@sec.gov>, "Daniels, Jon" <danielsj@sec.gov>, "Goody, Elizabeth" <GoodyE@sec.gov>, "Chan, Raymond R." <ChanR@sec.gov>
Subject: RE: SEC v. Ripple Labs, Inc.

Counsel:

I know there has been a lot going on. But we would still appreciate a response to this email.

Since our meet and confer has moved to Friday, we will also plan to discuss this issue then.

Thanks. Rob

From: Moye, Robert M.
Sent: Thursday, September 02, 2021 5:50 PM
To: Zornberg, Lisa <lzornberg@debevoise.com>; Gulay, Erol <egulay@debevoise.com>; Guo, Joy <jguo@debevoise.com>; 'msolomon@cgsh.com' <msolomon@cgsh.com>; 'rfigel@kellogghansen.com' <rfigel@kellogghansen.com>
Cc: Tenreiro, Jorge <tenreiroj@SEC.GOV>; Sylvester, Mark <SylvesterM@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Guerrier, Pascale <guerrierp@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Goody, Elizabeth <GoodyE@SEC.GOV>; Chan, Raymond R. <ChanR@SEC.GOV>
Subject: SEC v. Ripple Labs, Inc.

Lisa, Matt and Reid:

We were disappointed to receive, on the very last day of fact discovery, an enormous number of RFAs served on behalf of all defendants, which pursuant to Rule 36 require responses within 30 days. These include:

Defendants' Fourth Set of RFAs – 775 requests (100 pages)
Defendants' Fifth Set of RFAs – 308 requests (33 pages)
Defendants' Sixth Set of RFAs – 28,861 requests (4,922 pages, plus a 40 page appendix)
Totals: 29,944 requests (5,095 pages)

Defendants' service of these interrogatories is inappropriate under Rules 1, 26, and 36. Requiring the SEC to review, let alone respond to, nearly 30,000 requests for admission is patently unreasonable, burdensome, and disproportionate. Even if it were proper for Defendants to have served the SEC with so many requests for admission, given the resources available to the SEC on this case, it is far too burdensome to respond to these interrogatories – let alone to do so within the time permitted under the FRCP.

By way of example, if it took only an SEC attorney only 5 minutes to read, consider, verify and answer or object to each request, without breaks or sleep, it would require nearly 104 days to respond to these requests. And if 3 SEC attorneys worked on these requests, and nothing else, at the same pace for 8 hours every day – it would still take nearly 104 days to respond to these requests.

Moreover, if the SEC admitted every request, which is unlikely, we do not expect that Defendants would ever attempt to offer into evidence, or burden the court's docket, with more than 5,000 pages of responses in order to prove all of the admissions requested yesterday.

Under the circumstances, Defendants' requests for admission appear to be unreasonable, disproportionate and an abuse of Rule 36. Accordingly, we are asking that you withdraw all but a reasonable number of these requests, limited to topics of current relevance and value to this litigation, and that you propose a reasonable schedule within which the SEC can serve its answers and objections.

We would like to meet and confer with you all, early next week, about all three sets of RFAs. Please let us know if you are available to do so.

Thank you. Rob

Robert M. Moye
Senior Trial Counsel
U.S. Securities and Exchange Commission
Chicago Regional Office
175 W. Jackson Blvd., Suite 1450
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[redacted]

Exhibit A-1

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September 23, 2021

Via Electronic Mail

Robert Moye
U.S. Securities and Exchange Commission
Division of Enforcement
New York Regional Office
200 Vesey Street, Suite 400
New York, NY 10281

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

Dear Mr. Moye:

We write regarding the parties' ongoing discussions regarding Defendants' Fourth and Fifth Sets of Requests for Admissions ("RFAs").

The SEC has raised concerns about the number of RFAs at issue and argued that they are unduly burdensome. We previously offered to extend the SEC's deadline to respond to the Fourth Set of RFAs, but the SEC declined and stated that it would not consider an extension of any length unless Defendants also withdraw a majority of the RFAs. Considering the scope and complexity of this case — in which the SEC alleges an unlawful offering of securities spanning eight years despite the lack of any clear regulatory guidance throughout that period — the RFAs are not only reasonable, but admissible and central to the defenses we intend to present at trial. We explain below why these RFAs are relevant and admissible, and set forth a compromise proposal.

The Fourth Set currently includes 776 requests focused primarily on the SEC's communications and meetings with third parties, public statements by SEC staff about digital assets, SEC trading policies relating to digital assets, and public statements by market participants and other federal agencies concerning the regulation of digital assets and the lack of clarity. These RFAs will provide evidence supporting Defendants' fair notice and scienter defenses, as well as evidence that is directly relevant to the *Howey* test. We view many of these RFAs as confirming exculpatory facts and thereby significantly narrowing the issues for trial.

We note that after serving these RFAs, we sent you on September 13th a proposed authenticity stipulation and advised that if the SEC agrees to that stipulation, we can reduce the RFAs in the Fourth Set. To date, the SEC has not provided a response on the proposed stipulation. We believe we can substantially reduce the number of RFAs in the Fourth Set if the SEC agrees to the proposed authenticity stipulation. For example, the first paragraph of the proposed stipulation provides a reciprocal agreement that documents produced to a party to this action by another party, or by a third party in response to compulsory process, is authentic for purposes of this lawsuit absent good cause. The SEC's prompt agreement to the proposed stipulation will resolve the need for many RFAs in the Fourth Set that seek to establish baseline (and, to our knowledge, uncontested) facts about the SEC's receipt of inquiries and submissions from various third parties and the dates of meetings and participants by the SEC and third parties as reflected in those documents. Defendants could withdraw additional RFAs from the Fourth Set if the SEC stipulates to the authenticity of various statements made by SEC Staff and Commissioners found in publicly available YouTube videos, news interviews, videotaped panel presentations, speeches and the like. We set out our compromise proposal in this regard in greater detail below.

The Fifth Set of RFAs is also highly relevant and addresses the SEC's burden of demonstrating that Defendants' sales or offers of XRP occurred in the United States. *See Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247 (2010). The registration requirements of the Securities Act do not apply to offers and sales outside of the United States, and the SEC must prove that Defendants' offers and sales were domestic. Accordingly, the Fifth Set of RFAs seeks nine admissions about each of the 34 platforms on which Defendants traded XRP that would establish that the platforms are located outside of the United States, plus three admissions to establish that Defendants did not trade on any other platforms. These admissions will significantly narrow the case for trial by establishing the undisputed fact that a substantial portion of Defendants' offers and sales occurred outside of the United States, thereby removing those sales and offers from the case and extinguishing Defendants' possible liability as to them. As Defendants indicated in their previous proposals, we believe that the Fifth Set of RFAs should be answered within the ordinary 30-day deadline, and we do not believe that it would be unreasonable or unduly burdensome for the SEC to do so.[1]

Defendants propose to narrow the scope of, and extend the time for the SEC to respond to, the Fourth and Fifth Sets of RFAs as follows. The SEC must provide responses to the 309 RFAs in the Fifth Set by their original deadline of September 30, 2021. If the SEC agrees to Defendants' proposed authenticity stipulation, which we circulated on September 13, 2021, Defendants will agree to re-issue the Fourth Set of RFAs in reduced number of no more than

[1] We do not suggest that the scope of the SEC's discovery dictates what is reasonable or appropriate for Defendants to request. However, we note that, accounting for extensions, the SEC's First and Second Sets of RFAs to Ripple together required Ripple to respond to 613 RFAs within a total of 46 days. Requiring the SEC to respond to these 309 RFAs in 30 days is less burdensome than that.

350. We will also agree that the SEC can respond to the re-issued Fourth Set within 30 days of when you receive them.

Sincerely,

/s/ Bradley E. Oppenheimer

Bradley E. Oppenheimer

Exhibit B

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' SIXTH SET OF REQUESTS FOR ADMISSION

Pursuant to Federal Rule of Civil Procedure 36, Defendants Ripple Labs, Inc., Bradley Garlinghouse, and Christian A. Larsen hereby propound this Sixth Set of Requests for Admission to Plaintiff Securities and Exchange Commission ("SEC"). The Definitions and Instructions that follow are an integral part of these Requests for Admission and must be read in conjunction with them. It is expected that the Definitions and Instructions set forth herein will be followed in responding to these Requests for Admission.

DEFINITIONS

The following definitions shall apply to the Requests that follow:

A. "Complaint" is defined as the First Amended Complaint filed by the SEC at ECF No. 46 on February 18, 2021.

B. "Partial" means containing some, but not all, of the pages of a longer document.

C. "Payment" means a transfer of fiat currency pursuant to a contractual obligation.

D. "Person" is defined according to the definition in Local Civil Rule 26.3 of the Local Rules.

E. "Promised" means that a person has agreed to a legally enforceable duty or obligation.

F. "Ripple" means Ripple Labs, Inc., any of its affiliates or subsidiaries and any predecessors thereof, and any of its present or former directors, officers, employees, affiliates, representatives, advisors, agents, attorneys, associates or any other person acting on its behalf, including, without limitation, XRP II LLC, XRP Markets Inc., XRP Payments Inc., and XRP Services Inc.

G. "Unexecuted" means lacking the signature of one or more parties.

H. "XRP" means the digital asset referenced in Paragraph 1 of the Complaint, previously known as "NewCoin," "Ripple Credits," or "Ripples."

I. "XRP Contract" means each of the contracts listed on Exhibit A hereto.

J. "XRP Ledger" means the cryptographic blockchain technology for which XRP is the native digital asset.

K. The word "you" refers to the plaintiff in this action, as defined according to the definition in Local Civil Rule 26.3 of the Local Rules. For the avoidance of doubt, that definition encompasses each of the Divisions and Offices of the SEC, including the Division of Enforcement, the Division of Corporation Finance, the Office of the Chief Accountant, and the Division of Economic and Risk Analysis, and any current or former SEC Commissioner, staff member, officer, or employee.

L. The term "above-referenced document" means the most immediate previously referenced document, identified in italics with an accompanying range of Bates numbers, that precedes a specific Request for Admission. For the avoidance of doubt, the term "above-referenced document" refers only to the document produced at the aforementioned Bates number, without regard to whether that document modifies or amends another document,

states that it modifies or amends another document, or makes reference to another document.

M. The terms "all," "any," and "each" shall be construed according to the relevant rule of construction in Local Civil Rule 26.3 of the Local Rules.

N. The connectives "and" and "or" shall be construed according to the relevant rule of construction in Local Civil Rule 26.3 of the Local Rules.

O. The past tense shall include the present tense and vice versa.

P. The use of the singular or plural forms of any word shall be construed according to the relevant rule of construction in Local Civil Rule 26.3 of the Local Rules.

INSTRUCTIONS

In addition to the specific instructions enumerated below, the instructions set forth in Rule 36 of the Federal Rules of Civil Procedure are incorporated herein by reference.

1. Each Request shall be admitted or denied in writing, unless you assert that you cannot truthfully admit or deny a Request, in which case you must state in detail why you cannot truthfully admit or deny the Request. If you cannot respond fully to a Request, you must admit or deny the Request to the extent you are able to do so truthfully and state whatever information is available concerning the unanswered portion.

2. If only a part of a Request is admitted, you must specify the part admitted and either qualify or deny the rest. If an objection is made to a Request or to a part of Request, the specific ground for the objection shall be set forth clearly. To the extent you assert that you cannot truthfully admit or deny part of a Request, you must admit or deny the remainder of the Request.

3. Each of these Requests shall be construed independently and shall not be limited by any other Request.

4. These Requests shall be construed to require answers based upon the knowledge of, and information available to, you as well as your agents and representatives.

5. If, in answering these Requests, you claim that any Request, or a Definition or Instruction applicable thereto, is ambiguous, do not use such claim as a basis for refusing to respond, but rather set forth as part of the response the language you claim is ambiguous and the interpretation you have used to respond to the individual Request.

6. For the purposes of these Requests, whenever necessary to ensure completeness or accuracy, words importing the masculine gender include the feminine and neuter, words importing the neuter gender include the masculine and feminine and words importing the singular include the plural, and vice-versa.

7. These Requests shall be deemed continuing in accordance with Rule 26(e) of the Federal Rules of Civil Procedure. If, after responding to the Requests, you obtain or become aware of any further information responsive to these Requests, you are required to supplement your responses.

8. If you admit each and every one of Request for Admission Nos. 1,340 to 1,352 in full and without qualification, you need not provide responses to Request for Admission Nos. 1,353 to 29,574.

9. If you cannot admit one or more of Request for Admission Nos. 1,340 to 1,352 on the ground that the admission does not apply to certain XRP Contracts, admit that specific Request for Admission as to all other XRP Contracts and identify each XRP Contract (by Bates number) to which the admission does not apply. Then respond to the particularized Requests for Admission that pertain to each specifically identified XRP Contract.

REQUESTS FOR ADMISSION

Request for Admission No. 1,340

Admit that no XRP Contract includes any provision in which Ripple promised to engage in any efforts to increase the price of XRP.

Request for Admission No. 1,341

Admit that no XRP Contract includes any provision in which Ripple promised to engage in any efforts, directly or indirectly, to develop the XRP "ecosystem," as that term is used by you in your Response and Objections to Ripple's Interrogatory No. 17.

Request for Admission No. 1,342

Admit that no XRP Contract includes any provision in which Ripple promised to engage in any efforts, directly or indirectly, to improve, support, or enhance the functionality of XRP.

Request for Admission No. 1,343

Admit that no XRP Contract includes any provision in which Ripple promised to engage in any efforts to develop or improve the XRP Ledger.

Request for Admission No. 1,344

Admit that no XRP Contract includes any provision in which Ripple promised to engage in any efforts to develop or improve any payment system or settlement system, including without limitation On-Demand Liquidity ("ODL").

Request for Admission No. 1,345

Admit that no XRP Contract includes any provision in which Ripple promised to engage in any efforts, directly or indirectly, to improve or enhance the liquidity of XRP.

Request for Admission No. 1,346

Admit that no XRP Contract includes any provision in which Ripple promised to engage in any efforts, directly or indirectly, to reduce the volatility of the market price of XRP.

Request for Admission No. 1,347

Admit that no XRP Contract includes any provision that entitles the counterparty or counterparties to such contract to share, directly or indirectly, in Ripple's profits or net income.

Request for Admission No. 1,348

Admit that no XRP Contract includes any provision that entitles the counterparty or counterparties to such contract to share, directly or indirectly, in the future profits or net income of any person or enterprise.

Request for Admission No. 1,349

Admit that no XRP Contract includes any provision stating that a purpose of such contract is to enable the counterparty or counterparties to the contract to secure any increase in the price or value of XRP.

Request for Admission No. 1,350

Admit that no XRP Contract includes any provision in which Ripple promised to compensate the counterparty or counterparties to such contract for any decrease in the price, or diminution in value, of XRP.

Request for Admission No. 1,351

Admit that no XRP Contract includes any provision that imposes on Ripple any fiduciary or agency duty, or any duty of care, to act for the benefit of the counterparty or counterparties to such contract or any other person.

Request for Admission No. 1,352

Admit that no XRP Contract includes any provision creating any agency, partnership, or joint venture relationship between or among Ripple and any other person.