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VIA ECF

February 10, 2022

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:

Exactly one week after the Court issued its ruling on the application of the deliberative process privilege ("DPP") to documents in this case, following months of negotiation, letters, briefing, and argument, the SEC produced yet another privilege log listing just two documents, and asserting the DPP over both. *See* Exhibit A, SEC Privilege Log, dated January 20, 2022. Defendant Bradley Garlinghouse writes to request a Local Rule 37.2 conference regarding the SEC's refusal to produce one of those documents.[1]

The document in question is a set of "[a]ttorney notes reflecting meeting with Commissioner Roisman and Bradley Garlinghouse" on November 9, 2018 taken by then-counsel to Commissioner Roisman, Matthew Estabrook (the "Estabrook Notes"). *See* Exhibit A. In the letter accompanying the belated production of this privilege log, the SEC explained that it had learned of the Estabrook Notes only on January 11, 2022 when Mr. Estabrook cleaned out his desk as he prepared to leave his position at the SEC. *See* Exhibit B, Letter from M. Sylvester to Defendants, dated January 20, 2022.

On January 21, 2022, the parties promptly met and conferred via video conference call about the basis for the SEC's position regarding the Estabrook Notes, but no resolution was reached. On January 28, 2022, Defendants wrote to the SEC urging the SEC to reconsider its assertion that the Estabrook Notes are privileged. *See* Exhibit C, Letter from M. Solomon to M. Sylvester, dated January 28, 2022. On February 2, 2022, the SEC informed Defendants that it declined to reconsider its position as to the Estabrook Notes. *See* Exhibit D at 2, Letter from M. Sylvester to M. Solomon, dated February 2, 2022.

[1] Based on the Court's January 13, 2022 order, ECF No. 413 at 8, Mr. Garlinghouse does not presently challenge but reserves his rights with respect to the SEC's assertion of DPP over the second set of notes.

Under this Court's January 13, 2022 ruling, the Estabrook Notes are not privileged and should be disclosed. Notes taken by SEC staff in the context of fact-gathering with third parties (i.e., not the SEC itself) do not fall within the scope of the DPP, even if the information gathered may later be relied on for future policymaking. ECF No. 413 at 8. As with the other notes this Court ordered the SEC to produce, there is no evidence that in the Estabrook Notes "certain facts were recorded while others were purposely omitted as an exercise of judgment or deliberation" or that such a decision was made to assist with agency decision-making. ECF No. 413 at 8. The SEC's stated position, that the Estabrook Notes were taken for purposes of ultimately advising the Commission on policy, is exactly the same justification that the SEC gave for withholding notes of other meetings, and that the Court has already rejected. ECF No. 413 at 7. The fact that the SEC relies on information it learns when it makes policy does not make all of the information the SEC learned privileged.

The SEC's privilege log refers to these as "attorney notes," but conspicuously does not—and plainly cannot—claim either the attorney/client privilege or attorney work product over them. The meeting was between the SEC and Mr. Garlinghouse, a third party who would break any attorney/client privilege. And the SEC has conceded—as it must—that *this* meeting was not about any potential investigation of Ripple. The SEC must concede this because it would not have been appropriate for Commissioner Roisman, a sitting member of the Commission and one of five members to vote on whether to bring an enforcement action, to be discussing matters related to an ongoing Enforcement Division investigation of Ripple with Ripple's own CEO—and that plainly was not what the meeting was about. The meeting, the discussion during the meeting, and the notes taken of that discussion were therefore naturally not in anticipation of litigation.

For the same reasons, *these* notes do not fall within the exception that this Court set out in its January 13, 2022 decision for notes of meetings between Commission staff and Ripple and its lawyers. *Those* notes concerned meetings that involved Ripple's counsel, were arguably related to (or at least conceivably could have borne on) the SEC's investigation, and the Court therefore expressed concern that disclosing the notes might "reveal to Defendants the SEC's internal thought processes" regarding potential "deliberations" about how to proceed with respect to the investigation of Ripple. ECF No. 413 at 8; *see SEC v. Collins & Aikman Corp.*, 256 F.R.D. 403, 416 (S.D.N.Y. 2009) (the SEC must show "whether the document . . . formed an essential link in a specified consultative process"). But Mr. Estabrook and Commissioner Roisman were not involved in the investigation, and there is no danger therefore of the meeting notes revealing the SEC's thought processes about the investigation. That concern is inapposite to *these* notes.

The SEC has suggested that because this meeting involved Mr. Garlinghouse, his need for the notes of it is diminished. On the contrary. In this case, the SEC is *suing* Mr. Garlinghouse and accusing him of *knowingly or recklessly* facilitating a years-long unlawful securities offering. Contemporaneous records of this very meeting that have been produced to the SEC show that Mr. Garlinghouse left the meeting with the impression that the SEC understood the legal "purgatory" created by the lack of regulatory clarity. *See* Ex. E, Nov. 14, 2018 Email from B. Garlinghouse to G. Hutchins [RPLI_SEC0766853] ("Commissioner Roisman's staff [were] particularly engaged and seeking to be helpful in the current purgatory in which we find ourselves."). Mr. Garlinghouse also testified in his deposition about the favorable impressions he took away from this meeting. *See* Ex. F, B. Garlinghouse Dep. Tr. 56:11-15 ("I recall Commissioner Roisman very specifically saying 'I'm sorry you've even had to come here.' I think that the confusion about the status of XRP he viewed as not healthy for the market.").

Reasonably enough, Mr. Garlinghouse anticipates that at trial the SEC may seek to undermine these recollections or suggest they are self-serving. The SEC's *own* records of what happened in that meeting is accordingly *directly* relevant to a core issue in the litigation, and the SEC's refusal to produce such records risks allowing the SEC to paint a misimpression of what actually happened in discussions between a Commissioner and Mr. Garlinghouse in 2018. The Court has already recognized that the SEC's own thinking about the regulatory ambiguity in this space is relevant to its claims against individual defendants. *See* ECF No. 413 at 19 ("the SEC's internal deliberations in the digital asset space could potentially be relevant to demonstrating ambiguity or uncertainty as to XRP's status, which could bear on the recklessness of the individual Defendants' actions.").[2]

For this particular document, even if the Court were to find it subject to the DPP, the balance of factors weighs so heavily in favor of disclosure that the privilege should be overcome. As the Court has recognized, the DPP is "qualified, and it must yield to higher interests, where appropriate." ECF No. 413 at 18. In determining whether "disclosure is appropriate notwithstanding the applicability of the privilege," courts consider several factors including (1) the relevance of the evidence sought to be protected, (2) the availability of alternative evidence, (3) the seriousness of the litigation and the issues involved, (4) the role of the government in the litigation, and (5) the "possibility of future timidity by government employees who will be forced to recognize that their secrets are violable." ECF No. 413 at 18 (quoting *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 101 (S.D.N.Y. 2003)).

This document plainly satisfies each factor. It is highly relevant, likely corroborative—and therefore potentially exculpatory—evidence concerning a meeting between a member of the SEC itself and Mr. Garlinghouse in which a core issue to this litigation (lack of regulatory clarity) was discussed. The information is also available from no other source: there were only two participants in the meeting, the SEC and Mr. Garlinghouse, and Mr. Garlinghouse is the defendant in this case; no other source of information can corroborate his statements. The matter could not be more serious, as the SEC's case threatens Mr. Garlinghouse's professional reputation and livelihood. And the SEC's role as the plaintiff who chose to bring this case strongly diminishes the SEC's interest in claiming DPP as to a meeting between a Commissioner and Mr. Garlinghouse—a named defendant, not merely an interested citizen.

As to the final factor, requiring disclosure of *these* notes would not conceivably chill anything. Sitting members of the Commission and their staffs are plainly on notice that when they meet with third parties to discuss matters of public importance their discussions may become the subject of discovery or public inquiry. These are not free-wheeling, informal, internal discussions where a shield is necessary to promote candor in policy-making. This is a highly-formal context in which all participants would have been mindful of the need to act and speak with care.

Indeed, when it suits the SEC, the Commission's staff generates records of such meetings precisely *because* it knows that they may be subject to scrutiny—and does not claim those records to be privileged. For example, the SEC has itself put forward and relied on a memorandum-to-file of an August 2018 meeting between Mr. Garlinghouse, another Ripple executive, and then-SEC Chair Jay Clayton, then-Director of the Division of Corporation

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[2] At a minimum, the SEC must segregate non-privileged, factual information from the Estabrook Notes and disclose that information. *See Nat'l Day Laborer Org. Network v. ICE*, 486 F.Supp.3d 669, 689 (S.D.N.Y. 2020).

Finance William Hinman, and SEC staffers. *See* Ex. G, ECF No. 289-8. Incidentally, that memorandum recounts a conversation between Chair Clayton and Mr. Garlinghouse similar to the conversation Mr. Garlinghouse recalls having with Commissioner Roisman—in which he discussed the fact that Ripple was "in purgatory due to uncertainty as to whether XRP, the cryptocurrency with which Ripple is associated, is or is not a security," and Chair Clayton asked him to "back up from that issue" and encouraged the Ripple executives to "continue its [sic] ongoing discussions with the staff of the Division of Corporation Finance." *See id.* Like the Estabrook Notes, this memorandum was written by Commission staff and memorialized a meeting between a Commissioner and Mr. Garlinghouse, and yet the SEC produced it and never asserted it was privileged. The only difference seems to be that the SEC believes the memorandum-to-file of the Chair Clayton meeting is self-serving, while the notes of the Commissioner Roisman meeting may be helpful to Mr. Garlinghouse. But that is no basis for withholding from Mr. Garlinghouse evidence that is critical to defending himself against the SEC's wildly unjust accusations.

For these reasons, Defendant Garlinghouse requests that the Court order the SEC to produce the Estabrook Notes or, alternatively, order the SEC to provide the document to the Court for *in camera* inspection.

Respectfully submitted,

/s/ *Matthew C. Solomon*

Matthew C. Solomon

Counsel for Defendant Bradley Garlinghouse

cc: All Counsel of Record (via ECF)

Exhibit A

SEC v. Ripple Labs, Inc. et al., No. 20 Civ. 10832 (AT) (SN) (S.D.N.Y.)
SEC Privilege Log - January 20, 2022

Confidential

Document Date	Author	Description	Privilege(s)
~10/23/18	Matthew Estabrook	Attorney notes reflecting telephonic conversation with Andrew Ceresney, counsel to Ripple Labs, Inc.	Deliberative Process
11/9/18	Matthew Estabrook	Attorney notes reflecting meeting with Commissioner Roisman and Bradley Garlinghouse.	Deliberative Process

Exhibit B

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

NEW YORK
REGIONAL OFFICE

January 20, 2022

VIA EMAIL ONLY
Andrew Ceresney, Esq.
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022

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

Dear Andrew:

Enclosed please find a privilege log relating to the meeting between Commissioner Roisman and Defendant Bradley Garlinghouse that took place in November 2018 (the "Meeting").

As reflected in the enclosed privilege log, Matthew Estabrook, then-counsel to Commissioner Roisman, attended the Meeting and took notes. Mr. Estabrook previously had searched for any notes of the Meeting but inadvertently did not locate them until recently preparing his files for his departure from the SEC. Mr. Estabrook's last day at the SEC was January 14, 2022.

Without waiving any applicable privilege or protections, we advise that the SEC's litigation team learned that these notes existed on January 11, 2022 and received a copy of the notes on January 14, 2022.

As reflected in the enclosed log, and consistent with the Court's January 13, 2022 Order (D.E. 413 at 8), we are withholding the notes based upon our assertion of the deliberative process privilege.

Sincerely,

/s/ Mark R. Sylvester
Mark R. Sylvester

cc: Counsel for Defendants (via email)

Exhibit C

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VIA EMAIL

January 28, 2022

Mark R. Sylvester, Esq.
U.S. Securities and Exchange Commission
200 Vesey Street, Suite 400
New York, NY 10281
SylvesterM@sec.gov

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

Dear Mr. Sylvester:

We write on behalf of defendants Bradley Garlinghouse, Christian A. Larsen and Ripple Labs Inc. ("Defendants") in response to your January 20, 2022 letter to Andrew Ceresney and latest privilege log of the same date listing two additional documents logged almost 5 months after the close of fact discovery in this case, and nearly 10 months after the Court first ordered the SEC to produce or log them.

As we indicated during our January 21 meet and confer, the timing and circumstances surrounding this belated identification and logging of highly relevant and potentially exculpatory documents calls into question the reasonableness and diligence of the SEC's search for documents responsive to the Court's orders and Defendants' discovery requests. This is particularly troubling in light of our many discussions in which we urged the SEC to conduct a comprehensive search for such materials. You rebuffed our questions concerning the adequacy of your search and instead assured us that your search was diligently being conducted and that you were employing "reasonable, good faith, and extensive efforts" to locate responsive documents. Letter from M. Sylvester, dated June 2, 2021. After all of that, and following months of litigation around Defendants' need for these documents, we understand from your representations that the SEC learned – only on January 11, 2022 – of "[a]ttorney notes reflecting meeting with Commissioner Roisman and Bradley Garlinghouse" taken by Matthew Estabrook because Mr. Estabrook was only now reviewing his files in connection with his departure from the Commission. That he identified these materials now, but not in connection with a search responsive to Defendants' document requests, strongly suggests that the SEC's document collection efforts have been inadequate and reinforces our concern that other materials may likewise have been missed in the SEC's document collection. We will assume, unless you tell us otherwise, that Mr. Estabrook never before searched his SEC office for responsive documents.

As we noted in our January 21 email to you, in light of the belated disclosure of these notes, we request that the SEC redouble its efforts to ensure that nothing else was missed. Specifically:

- We ask that you reconfirm from all potentially relevant custodians that there are no additional notes in existence of the meeting that also occurred on November 9, 2018 between Mr. Garlinghouse and Commissioner Hester Peirce.

- For each of the current and former SEC employees from whom you sought to collect documents in response to Defendants' document requests, we ask that you reconfirm that each has conducted a complete review of his or her files for responsive materials, including specifically a review of files that exist both in their SEC and home offices (if applicable).

With respect to the documents that are logged on the SEC's January 20, 2022 Privilege Log, we write today to ask the SEC to reconsider its position with respect to the notes of the November 9, 2018 meeting between Commissioner Roisman and Mr. Garlinghouse. Those notes fall squarely within the scope of what Judge Netburn has ordered be produced, and outside the scope of what her January 13, 2022 Order, ECF No. 413 (the "DPP Order"), permits the SEC to withhold. Moreover, insofar as the notes reflect the SEC's own record of a meeting that bears directly on the SEC's allegations that Mr. Garlinghouse knew or recklessly disregarded that XRP sales were a securities offering, the notes are highly relevant and potentially exculpatory.

We do not agree with your position as articulated on the meet and confer call that these notes are privileged for the following reasons:

First, notes taken by SEC staff in the context of fact-gathering do not fall within the scope of the DPP, even if the information gathered may later be relied on for future policymaking. Judge Netburn's DPP Order is clear that such "[f]act-gathering from third parties is not an inherently privileged activity." DPP Order at 8. The position that Mr. Estabrook's notes were taken for purposes of ultimately advising the Commission on policy is both unsupported and, ultimately, irrelevant.

Second, the November 9, 2018 notes – in contrast to certain others Judge Netburn addressed in her DPP Order – are not privileged merely because a Ripple executive was present at the meeting. As you conceded during our January 21, 2022 call, neither Mr. Roisman nor Mr. Estabrook participated in this meeting in connection with the investigation of Ripple or Mr. Garlinghouse, nor would it have been appropriate for them to have done so. Accordingly, there is no risk that disclosure of these notes would "reveal to Defendants the SEC's internal thought processes" regarding potential "deliberations" about how to proceed with respect to the investigation of Ripple. DPP Order at 8. *Cf. S.E.C. v. Collins & Aikman Corp.*, 256 F.R.D. 403, 416 (S.D.N.Y. 2009) (the SEC must show "whether the document . . . formed an essential link in a specified consultative process"). Nor can the SEC demonstrate that these notes bear on any

deliberation about Ripple, as distinguished from fact gathering and discussions with a third party about crypto regulation generally. The notes likely do, however, bear directly on what Mr. Garlinghouse said and was told, and thus took away, from a meeting directly with an SEC Commissioner – facts that go to the heart of the SEC's allegations that, among other things, Defendants failed to contact the SEC to "obtain clarity about the legal status of XRP" before engaging in sales. *See e.g.*, Am. Compl. ¶ 59.

Third, the SEC does not claim that these notes are subject to any additional privilege, such as the attorney/client privilege or work product doctrine, and for good reason. *Cf*. DPP Order at 13 (distinguishing a presentation from Valerie Szczepanik in her capacity as attorney to then-Commissioner Piwowar on "regulatory issues in the digital asset market" as protected by the attorney-client privilege). These notes relate to a meeting with Mr. Garlinghouse, a third party, and as you acknowledged during our call on January 21, were not taken in anticipation of litigation.

Finally, the SEC's selective use of its notes of certain meetings *involving Mr. Garlinghouse* while withholding others fatally undermines any privilege that could conceivably attach to these notes. As you know, the SEC *affirmatively* used internal notes of a meeting between Mr. Garlinghouse and former Chairman Clayton and Director of the Division of Corporation Finance Bill Hinman during the deposition of Mr. Hinman. *See* Hinman Depo. Exh. 41. The SEC cannot selectively disclose only those materials that it believes support its claims, while claiming privilege over like materials that may defeat them. We doubt a neutral fact-finder will endorse this litigation tactic.

Please provide us with your position on our document collection confirmation request and on the November 9, 2018 notes by January 31, 2022, so that we may seek relief from the Court, if needed.

Sincerely,

/s/ Matthew C. Solomon
Matthew C. Solomon

Cc: All counsel of record

Exhibit D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
BROOKFIELD PLACE, 200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

NEW YORK
REGIONAL OFFICE

February 2, 2022

VIA EMAIL ONLY
Matthew Solomon, Esq.
Cleary, Gottlieb, Steen & Hamilton LLP
212 Pennsylvania Ave. NW
Washington, DC 20037

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

Dear Matt:

Thank you for your letter of January 28, 2022, concerning the SEC's recent discovery of internal notes taken by Commissioner Roisman's then-counsel, Matthew Estabrook, at a November 9, 2018 meeting between Commissioner Roisman and Defendant Bradley Garlinghouse, and our production of a privilege log asserting the deliberative process privilege over these meeting notes and notes of a related call between Mr. Estabrook and Ripple's counsel, Andrew Ceresney.

As set forth in my January 20, 2022 letter enclosing the privilege log: the SEC's litigation team discovered the existence of these notes on Tuesday, January 11, 2022, received a copy of the notes on Friday, January 14, and produced a related privilege log on Thursday, January 20.

First, as stated in my January 20 letter and during our January 21 meet and confer, and contrary to your puzzling suggestion otherwise, Mr. Estabrook previously had searched for notes of Commissioner Roisman's meeting with Mr. Garlinghouse. He had inadvertently overlooked them when conducting his previous search, but notified the litigation team of their existence when he discovered them in preparing his files for departure from the SEC.

We reiterate our previous statement that we have undertaken "reasonable, good faith, and extensive efforts" to locate responsive documents. That a single employee located responsive documents he had previously inadvertently overlooked provides no basis to conclude that the SEC's search for responsive documents was generally ineffective. Accordingly, there is no need to undertake the time-consuming and burdensome effort to "reconfirm" our search for documents with each document custodian, nor is any such confirmation required under the Federal Rules of Civil Procedure or the Local Rules of the Court. Although Mr. Estabrook's recent discovery has no bearing on the merits of our entire search process, we are willing to undertake the task of "reconfirming" that the SEC has not identified any notes of a November 9, 2018 meeting between Commissioner Peirce and Mr. Garlinghouse and will advise you when that process is complete.

We also note that Defendants' own discovery efforts have fallen far short of perfection. To provide one example, Defendants claimed their production of Slack documents was complete until, after repeated inquiry from the SEC, Defendants discovered a "vendor error" in the collection process

that ultimately resulted in the production of thousands of additional relevant documents. In addition, Defendants have never provided any explanation as to why their search utterly missed an entire category of responsive documents—recordings of Ripple meetings, including many of Mr. Garlinghouse speaking on topics relevant to this case—until the deposition testimony of a former Ripple employee during the last month of fact discovery. Ripple has since produced hundreds of responsive recordings.[1]

Second, we decline to reconsider our position with respect to the two documents listed on our January 20, 2022 privilege log.

Both documents fall squarely within Judge Netburn's January 13, 2022 Opinion and Order (D.E. 413, the "Order") denying in relevant part Defendants' motion to compel production of notes of a meeting between SEC staff and Ripple (Entry 1, Part O) and notes of a meeting between Commissioner Peirce and Ripple's shareholder, SBI Holdings (Entry 1, Part Q). Notwithstanding the Court's observation that "[f]act-gathering from third parties is not an *inherently* privileged activity," D.E. 413 at 8 (emphasis added), Judge Netburn nevertheless held that the privilege did apply as to two sets of notes reflecting SEC meetings with Ripple and its business partner (collectively, the "Ripple Meeting Notes").

In the Order, the Court articulated two reasons for concluding that the deliberative process privilege protected the Ripple Meeting Notes: (1) Defendants' need for notes as to meetings at which they were present is "significantly reduced" and (2) the SEC's "notes could reveal to Defendants the SEC's internal thought processes during the meetings" and the privilege applies "to avoid the risk of revealing any such deliberations." D.E. 413 at 8.

Both of the bases underlying Judge Netburn's denial of Defendants' motion to compel production of the Ripple Meeting Notes apply with equal force to the two documents on the SEC's January 20 privilege log. Because Ripple or its counsel was present at the meetings to which the notes pertain, Defendants' need for these meeting notes is "significantly reduced." D.E. 413 at 8. And Judge Netburn did not limit her ruling that the "notes could reveal to Defendants the SEC's internal thought processes during the meetings" to meetings pertaining only to the Enforcement Division's investigation of Ripple. *See* D.E. 413 at 8. To the extent the existence of the investigation is relevant, there is no dispute that there was an open Enforcement investigation of Ripple at the time of Mr. Garlinghouse's meeting with Commissioner Roisman.

You suggest that the SEC should disregard its privilege assertion because Mr. Estabrook's notes of the meeting between Commissioner Roisman and Mr. Garlinghouse "bear directly on what Mr. Garlinghouse said and was told, and thus took away" from the meeting. But Defendants do not need the notes to discover any of these things—Mr. Garlinghouse was at the meeting. *See* D.E. 413 at 8. Indeed, Mr. Garlinghouse testified at length during his deposition about the contents of this

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[1] We note that in both cases, the SEC was forced to move to compel production of these relevant, responsive documents, and production of the latter category (recordings) is not yet complete despite the SEC's request for these documents approximately a year ago.

meeting.[2] *See* Transcript of Deposition of Bradley Garlinghouse at 53-54, 56-62, 68-69, 72-73, 77-80, 89, 92-93.

Finally, as noted on our January 21 meet and confer, you have again mischaracterized Hinman Deposition Exhibit 41, which is not "notes," but rather a memorandum prepared and signed by then-Chairman Clayton's staff regarding his meeting with Mr. Garlinghouse and Ripple's Chief Technology Officer. As we have previously explained and as is evident from reviewing the document, these are not meeting notes reflecting the author's selection of facts pertinent to a decision or decision-making process. Rather, the memorandum recounts in relevant part Mr. Garlinghouse's attempt to raise with Chairman Clayton the topic of the open Enforcement investigation into Ripple, and Chairman Clayton's repudiation of Mr. Garlinghouse's efforts.

Regards,

/s/ Mark R. Sylvester
Mark R. Sylvester

cc: Counsel for Defendants (via email)

[2] To the extent your letter suggests that Mr. Garlinghouse intends to assert that he somehow "obtain[ed] clarity about the legal status of XRP" during his meeting with Commissioner Roisman, this argument puts at issue what Mr. Garlinghouse was told by his counsel regarding the reasonableness of relying on any single Commissioner's views to obtain any such "clarity" during the pendency of an open Enforcement investigation.

Exhibit E

Message

From: Brad Garlinghouse [brad@ripple.com]
on behalf of Brad Garlinghouse <brad@ripple.com> [brad@ripple.com]
Sent: 11/14/2018 4:24:31 PM
To: Glenn Hutchins [Glenn Hutchins <glenn@northisland.net>]
Subject: quick update

Hey Glenn,

I had very positive meetings with SEC Commissioners Roisman and Peirce last Friday in Washington DC. They were separate meetings - and Comm Roisman's staff was particularly engaged and seeking to be helpful in the current purgatory in which we find ourselves.

If at all valuable as you prep for your time on 11/27 - I'd be happy to jump on the phone and discuss further.

Best,
Brad

Exhibit F

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. RIPPLE LABS, INC., BRADLEY GARLINGHOUSE, and CHRISTIAN LARSEN, Defendants.	)	Case No. 20-Civ-10832(AT)(SN)

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

VIDEOTAPED DEPOSITION OF

BRADLEY KENT GARLINGHOUSE, JR.

Monday, September 20, 2021

Reported by:
BRIDGET LOMBARDOZZI,
CSR, RMR, CRR, CLR
Job No. 210920BLO

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	)	
v.	)	Case No. 20-Civ-10832(AT)(SN)
RIPPLE LABS, INC., BRADLEY GARLINGHOUSE, and CHRISTIAN LARSEN, Defendants.	)	

Videotaped deposition of BRADLEY KENT GARLINGHOUSE, JR. taken on behalf of Plaintiff, held at the offices of Cleary Gottlieb Steen & Hamilton LLP, 1 Liberty Plaza, New York, New York, commencing at 8:20 a.m. and ending at 8:01 p.m., on Monday, September 20, 2021, before Bridget Lombardozzi, CCR, RMR, CRR, CLR, and a Notary Public of the States of New York and New Jersey, pursuant to notice.

ever had meetings with sitting -- sitting SEC commissioners?

A. Not to my knowledge.

Q. Other than the meetings with Chair Clayton, Commissioners Roisman and Pierce, other than those three meetings -- sorry.

Did you meet with any of them more than once?

MR. SOLOMON: Objection to form.

A. Sorry. One recollection I just had is I did -- I don't remember when Commissioner Jackson left his tenure. I think I may have met with him immediately before, within like the week before he exited his commissioner status.

Q. Okay. For what purpose did you meet with him?

A. I mean, similar to talk about what's going on in crypto, to talk about with what's going on with Ripple. Evangelizing, you know, what Ripple's up to and our views of, you know, U.S. regulatory dynamics.

Q. Did you meet with him at the SEC?

A. No.

Q. Where did you meet with him?

A. Here in New York.

Q. Where in New York?

A. I don't recall the name of the place, to be honest with you. It was a coffee shop, I think.

Q. In these meetings with the Commissioners, did any of the commissioners tell you that they did not believe that XRP is a security?

A. Yes.

Q. Who?

A. I recall Commissioner Roisman very specifically saying "I'm sorry you've even had to come here." I think that the confusion about the status of XRP he viewed as not healthy for the market. I -- I don't -- I recall less about the meeting with Commissioner Pierce.

Q. Okay. Did the Chair tell you he did not believe XRP was a security?

A. No.

Q. Okay. And Commissioner Roisman, you -- you referenced he said he was sorry you had to come here, but did he tell you that he did not view XRP as a security?

MR. SOLOMON: If you recall.

A. Yeah. I don't recall the exact words

that were used. I -- I think -- I mean, understandably, you're asking me did I have clarity -- you're asking about each of these meetings and did someone make an affirmative statement they didn't view XRP as a security. In none of these meetings did everyone -- anyone ever say they viewed that XRP was a security.

Q. Okay. So you recall that -- you recall that at none of these meetings anyone said that they viewed that XRP was a security? You recall that, is that fair?

A. I think I would certainly recall if a -- if a -- and as I testified earlier in this deposition, if a SEC member, commissioner or otherwise, had said they viewed XRP was a security, I would remember that.

Q. And would you remember if one of them had said they viewed it as not a security?

A. Well, I -- I recall Commissioner Roisman, without knowing exactly the words that were said, making statements that in the -- you know, there may be contemporaneous emails, although those may have been internal with counsel, but said that, you know, having had these meetings, I -- I think it's worth pointing out,

Exhibit G

MEMORANDUM

To: File

From: Sean Memon, Deputy Chief of Staff; Brian C. Rabbitt, Senior Policy Advisor

Date: August 20, 2018

Re: Meeting with Ripple Executives

On Monday, August 20, 2018, representatives from Ripple met with representatives from the Chairman's Office at the SEC's Washington, D.C. offices. Attendees for the Chairman's Office were Chairman Clayton, Bill Hinman (Director of the Division of Corporation Finance), Sean Memon, and Brian Rabbitt. Attendees for Ripple were Brad Garlinghouse (CEO) and David Schwartz (CTO).

The meeting began around 11 AM and lasted approximately 50 minutes. Garlinghouse and Schwartz spent the meeting discussing Ripple's business and technology. Representatives from the Chairman's Office occasionally interjected with questions. Towards the end of the meeting, Garlinghouse briefly noted that Ripple was in "purgatory" due to uncertainty as to whether XRP, the cryptocurrency with which Ripple is associated, is or is not a security. In response, Chairman Clayton immediately stated that the meeting was not the proper forum for a discussion about that topic. He then asked Garlinghouse to "back up" from that issue and steered the meeting back to a discussion about Ripple's business and technology. Following further discussion of those issues, the meeting concluded with Chairman Clayton encouraging the Ripple executives to continue its ongoing discussions with the staff of the Division of Corporation Finance.