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-VIA ECF AND EMAIL

May 21, 2022

The Honorable Analisa Torres
United States District Judge
Daniel Patrick Moynihan Courthouse
500 Pearl Street
New York, NY 10007

Re: Amici curiae in *SEC v. Ripple Labs Inc.*, et al., No. 1:20-cv-10832-AT-SN (SDNY)

Dear Judge Torres:

Your Honor previously granted amici status to six individual XRP holders.¹ Amici respectfully request leave to file an Amicus Brief regarding the opinions of Plaintiff's expert, Patrick B. Doody. *Daubert* concerns related to Mr. Doody's opinions represent the precise nature of the difficult issues envisioned by the Court when it granted amici status and held:

[Amici] will provide the Court with a meaningful perspective and will help ensure complete and plenary presentation of difficult issues so that the Court may reach a proper decision.

ECF No. 372 at 10. Counsel for amici recently became aware of Mr. Doody's report regarding the conduct of individual XRP holders, such as amici. Candidly, there may not exist a more singular and relevant issue necessitating amici's meaningful participation than the legal issues surrounding the opinions and testimony of Mr. Doody.²

Pursuant to the Court's order: "[amici] shall be allowed to assist the Court by briefing legal issues relevant to the case as **approved in advance** by the Court." ECF No. 372 at 11 (emphasis added). On April 28, 2022, Your Honor issued an order establishing a deadline for *Daubert* Challenges on July 12, 2022, with replies due August 30, 2022. ECF No. 472 at 1.

¹ ECF No. 372. On April 19, 2021, six XRP holders filed a motion to intervene (ECF No. 122) representing a putative class of users, investors, holders, developers, content providers and small businesses utilizing the digital asset XRP and the XRP Ledger. At that time, proposed intervenors had been contacted by more than 12,600 XRP holders respectfully requesting to be named co-Defendants and wishing to join the proposed intervention. ECF No. 122 at n. 1. Today, the putative class has astonishingly grown to more than 67,300 XRP holders. Because all parties opposed class certification and due to concerns over delay, the Court granted amici status to the XRP holders in their individual capacities. ECF No. 372 *9 at n.1. Although the public interest in this case, embodied by the 67,300 holders of XRP, cannot be overstated, amici continues to seek leave acting in their individual capacities.

² Considering that the *Daubert* case itself reached the Supreme Court with 22 amicus briefs in tow, challenges related to expert opinions are not uncommon for participation by amici. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

On April 27, 2022, undersigned counsel sent a letter to all counsel of record in a good faith attempt to acquire information regarding the legal issues appropriate for amici's participation. *See Exhibit 1*. Because amici are not privy to non-public disclosures, the purpose behind Exhibit 1 was to outline legal issues *potentially* relevant and germane for amici's participation. Exhibit 1 is admittedly broad but was primarily designed to cause the parties to help narrow the focus for amici's participation and avoid disturbing the Court. Amici became aware of Mr. Doody's opinions after receiving a reply letter from Defense Counsel. Prior to receiving the Defendant's reply, the SEC responded that without Court approval the SEC would not share any discovery material not yet filed on the public docket. *See Exhibit 2*. Defense Counsel's reply, however, indicated that the Defendants were willing to share Mr. Doody's report, noting:

[T]he SEC did not designate Mr. Doody's report (Dated October 4, 2021) as Confidential [and thus] there is no restriction on the parties sharing it with [amici] and no court approval [is] required[.]

See Exhibit 3. After receiving Defense Counsel's letter, counsel for amici replied, copying the SEC, affirming that Mr. Doody's report would be utilized solely for litigation purposes. *See Exhibit 4*. Considering the SEC had not designated Mr. Doody's report as Confidential and based on Defense Counsel's determination that Court approval was not required, amici was optimistic Court intervention would be unnecessary. Counsel for amici could review Mr. Doody's report in a timely manner and submit a request for leave to file a non-duplicative *Daubert* Amicus Brief at a later date.

On May 10, 2022, undersigned counsel sent a letter to all counsel inquiring whether amici would receive Mr. Doody's report. *See Exhibit 5*. On May 11, 2022, counsel for the SEC sent an email to Defense Counsel, copying amici, indicating that the SEC was in fact:

[D]esignating all expert reports submitted on behalf of the SEC as 'Confidential' except for the opening, supplemental and rebuttal expert reports of Dr. Metz, which were filed on the Court's public docket (Dkt 439).

See Exhibit 6. The SEC also sent a letter to counsel indicating that because amici had "not obtained the Court's permission to submit an amicus brief" nor "obtained such permission to participate in *Daubert* motion practice" the SEC would not agree to share Mr. Doody's report. *See Exhibit 7*. The SEC also made clear that it will oppose:

[Amici's] request to participate in *Daubert* motion practice and reserves its rights to seek an extension of time for *Daubert* briefing should [amici's] proposed participation require additional time to respond. *Id.*

Thus, amici respectfully request leave to submit a brief related to the opinions of Patrick B. Doody. Additionally, amici respectfully request the Court grant access to Mr. Doody's report and deposition testimony solely related to his opinions regarding XRP holders and users who acquired XRP in the secondary market. Amici intends to limit participation to matters **solely** related to XRP holders who have acquired XRP in the secondary market. Amici will offer no

position regarding Mr. Doody's opinions, if any, related to Ripple investors, customers, partners, or any purchasers of XRP who acquired XRP directly from Ripple or its executives. But when considering opinions related to the users or purchasers of XRP in the secondary market independent of the Defendants, it is quite difficult to imagine a more relevant and pertinent issue justifying amici's participation.

According to Defense Counsel, Mr. Doody "has offered views on the conduct of reasonable XRP purchasers." **Exhibit 3**. Hence, Mr. Doody's opinions, if accepted by the Court, could prove critical in the Court's ultimate analysis of whether XRP acquired in the secondary market constitutes an investment contract under *Howey*. *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). In the *Telegram* case, Mr. Doody offered opinions regarding purchasers who acquired Gram tokens. *See* Expert Report of Patrick B. Doody, *SEC v. Telegram Group Inc.*, No. 1:19-cv-09439-PKC (S.D.N.Y. Dec. 20, 2019), ECF No. 81-10 at 4. **Exhibit 8**. Although *Telegram* involved an Initial Coin Offering (ICO), with very dissimilar facts, Mr. Doody's report was cited seven times in the Court's decision granting summary judgment in favor of the SEC. Hence, Mr. Doody's opinions, if accepted by the Court, could have a devastating impact on the present and future interests of amici and the public at large. Amici strongly believe they will provide the Court with a "meaningful perspective" unique from Defendants. Apparently, Defendants agree:

[Amici] may be able to offer the unique perspective of users and holders of XRP who purchased XRP in the secondary market.

Exhibit 3. Defense Counsel's above assertion is consistent with the very reason the Court granted amici status. The Court astutely acknowledged: "[amici] may view XRP differently from Defendants and thus may stress different arguments." ECF No. 372 at 9.³

Amici and the public's interests in this case cannot be overstated because the SEC's position on XRP is not limited in scope to the Defendants' offer and sale of XRP. The SEC has broadly asserted that today's XRP, including XRP traded in the secondary market, independent of Ripple, also represent investment contracts with Ripple. In the SEC's own words:

The XRP traded, even in the secondary market, is the embodiment of those facts, circumstances, promises, and expectations and today represents that investment contract.

ECF No. 153 at 24. The SEC is endeavoring to brand all XRP, including XRP traded today, in the secondary market, independent of the Defendants, as investment contracts with Ripple. The "promises" and "expectations" referenced in the SEC's sweeping statement above includes sales of XRP sold by XRP holders, including amici, who acquired XRP in the secondary market with no connection to Ripple. The Court itself has recognized and commented on the SEC's extraordinary claim that **all** XRP constitute securities. During the first hearing, Magistrate Judge

³ The Court's perception is accurate. For example, the Amended Complaint alleges Defendant Garlinghouse stated he doesn't consider Bitcoin or XRP as currencies because he doesn't "go down to Starbucks and buy a coffee with Bitcoin [or XRP]". AC ¶ 386. Amici, however, use XRP as currency to purchase coffee - including at Starbucks.

Hon. Sarah Netburn addressed the SEC's sweeping across-the-board theory regarding XRP:

THE COURT: Presumably, under this theory then, every individual in the world who is selling XRP would be committing a Section 5 violation based on what you just said.

Hr'g. Tr. 44:7-9 (Mar. 19, 2021). It appears Mr. Doody is being offered in an effort to support the SEC's far-reaching and all-inclusive theory that XRP itself is a security *per se*. Amici are the reasonable users, holders, developers, purchasers and acquirers that Mr. Doody opines about. Mr. Doody's opinions and the litigation surrounding those opinions are precisely the type of difficult legal issues Your Honor envisioned when the Court determined amici's participation desirable.⁴

Amici respectfully request the Court grant access to Mr. Doody's report and deposition testimony. Amici respectfully propose an Amicus Brief be submitted by August 15, 2022. The SEC indicated it may "seek an extension of time for *Daubert* briefing should [amici's] participation require additional time to respond." **Exhibit 7**. An Amicus Brief filed by August 15, 2022, will allow the parties time to reply without impacting the current schedule. No prejudice to the parties will result by permitting amici to review Mr. Doody's report and deposition testimony or to participate by filing an Amicus Brief on the matter. The SEC did not originally designate Mr. Doody's report as Confidential. The report and deposition testimony will ultimately be filed on the Court's public docket. There is no prejudice because the parties are aware of the matters framing the basis underlying amici's perspective. Pursuant to the Court's order, amici cannot "offer evidence or present witnesses." ECF No. 372 at 10. Yet, the Court reasoned that "there are no legal or practical constraints preventing Defendants from asserting the arguments [amici] put forth regarding XRP and obtaining the relevant facts." *Id* at 7. Knowing amici is excluded from presenting facts and evidence to the Court, counsel for amici provided the parties with the relevant facts and evidence amici would present, if allowed.⁵ Considering the parties are in possession of the facts providing the framework and foundation that forms amici's perspective, there is no prejudice or a need to alter the timeline.

Allowing amici to brief legal issues surrounding the opinions of Mr. Doody epitomizes the type of assistance the Court contemplated when it granted amici status and stated: "such assistance will be most beneficial during briefing on dispositive motions, but may exercise its discretion to request or deny further applications as appropriate." ECF no. 372 at 11. Motions related to Mr. Doody's opinions could prove dispositive when applied to the SEC's sweeping allegations regarding the XRP acquired in today's secondary market. Amici's participation will help ensure the complete and plenary presentation of these difficult issues and will aid the Court in its gatekeeping function.

⁴ ECF 372 at 10. (citation omitted) ("The Court views the amicus briefs as **desirable** because they represent third parties whose particular interests are echoed in broader public interests.") (emphasis added).

⁵ The parties have been provided with 3,252 affidavits from XRP holders from the United States and abroad attesting to matters including but not limited to: acquiring XRP for non-investment purposes; acquiring XRP without knowledge or awareness of Defendants; use of XRP and the XRP Ledger; use of the XRP Ledger's decentralized exchange (DEX); and the ability of XRP holders to utilize XRP for financial benefit independent of the efforts of Defendants.

Respectfully submitted,

/s/ John E. Deaton

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EXHIBIT 1

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

Dear Counsel,

I am writing this letter on behalf of amicus curiae and seeking from the parties limited access to non-public documents which are relevant to amici, and which will assist my preparation of the Amicus Brief to the court.

The parties recently filed a joint, proposed scheduling order (ECF No. 471) regarding motions for summary judgment and *Daubert* challenges. The proposed scheduling order seeks a waiver of Judge Torres's normal procedure. In short, the parties seek to waive the requirement of

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pre-motion letters and Rule 56.1 Statements (“pre-motion materials”) outlined in Rule III(A) of Judge Torres’s Individual Rules of Practice. Without pre-motion materials, amici are significantly disadvantaged. Most often, pre-motion materials and Rule 56.1 Statements provide important information for non-parties. Pre-motion materials reference deposition testimony, facts, exhibits, and supporting case law. This information provides important insight for amici to discern materials to ask permission to review, in order to submit a meaningful, non-duplicative Amicus Brief.

In the absence of pre-motion materials, coupled with being privy to only what is available in the public record, amici are disadvantaged in knowing the precise materials to seek permission to review. Amici need not be privy to the entire record and are not seeking to review the entire record. Before seeking permission from the Court, it is appropriate that amici first inquire what information each party agrees is relevant for amici to review. Although not entitled to review the entire non-public record, it is clear that in order to comply with Judge Torres’ Order, amici are entitled to review certain materials not within the public domain and Judge Torres contemplated this conclusion. *See generally* ECF No. 372.

Judge Torres acknowledged the fact that amicus curiae “may view XRP differently from Defendants and thus may stress different arguments . . .” *Id.* at 9. It is near impossible to “provide the Court with a meaningful perspective” without reviewing specific relevant information. *Id.* at 10. Most significant, Judge Torres ruled: “the Court will not permit Movants, as amici, to offer evidence or present witnesses.” *Id.* (citation omitted). Judge Torres also ruled, however, that “[d]efendants [had] the opportunity and motive to acquire the evidence Movants would offer . . .” *Id.*

From the clear language of her Order, Judge Torres indicated Amici would be privy to the evidence it could present, if allowed. It would be unreasonable, therefore, for any party to adopt a position that amici are not entitled to *any* evidence or information not included in the public record.

There is a Stipulation and Protective Order, see ECF 53, that governs the handling of confidential material and of course counsel for amici and amici individually would sign and abide by that Order.

Clearly, there exists non-public, relevant evidence necessary for amici to review. All parties are moving for summary judgment and will rely on facts, testimony, and exhibits almost all of which is not in the public record. Certainly, any evidence involving retail holders of XRP and secondary market sales of XRP is relevant and necessary for amici to review. Amici believe it prudent, and undoubtedly appreciated by the Court, if we Meet and Confer to discuss the information the SEC and the Defendants agree Amicus must be allowed to review.

In order to have a potentially substantive and meaningful Meet and Confer, amici have highlighted some specific non-public documents which are relevant to the Amicus Brief and which amici should have access.

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I. EXPERT TESTIMONY

Amici believe that they should be allowed to review the following expert testimony and reports and be involved in relevant expert witness challenges as follows:

According to the joint-proposed Scheduling Order, there is a deadline for *Daubert* challenges. ECF No. 471 at 1. Challenges to expert testimony are a process in which amici should participate. For example, if there is an expert providing testimony regarding retail XRP holders (holders of XRP who did not acquire XRP from the Defendants), amici believes this to be an area amici can “provide the court with a meaningful perspective, and [it] will help ensure ‘complete and plenary presentation of difficult issues so that the court may reach a proper decision.’” ECF No. 372 at 10 (citations omitted).

The *SEC v. Telegram* case provides an excellent example. In *Telegram*, the SEC offered expert testimony to “opine on the perspective of a reasonable purchaser of the digital tokens called Grams.” See Expert Report of Patrick B. Doody, *SEC v. Telegram Group Inc.*, No. 1:19-cv-09439-PKC (S.D.N.Y. Dec. 20, 2019), ECF No. 81-10 at 4. If the SEC is relying on a similar expert to opine on the perspective of a reasonable purchaser of the digital token XRP, amici should certainly be allowed to review the expert reports, deposition testimony, and any exhibits attached thereto.

Likewise, if there is expert testimony regarding an alleged common enterprise between Ripple and retail XRP holders, amici should be allowed to review that expert’s report, deposition testimony, and any exhibits attached thereto.

If there is expert testimony regarding what a reasonable XRP holder would rely on when acquiring XRP, amici should be privy to that that expert’s testimony, report, and exhibits attached thereto.

Any expert testimony, reports or exhibits attached thereto, being offered related to the case or opining on the complexity for retail holders to access and utilize the XRP Ledger (XRPL), is information amici should have access to.

Another relevant area of potential expert information is that related to the non-investment uses of XRP. In some instances, today’s XRP is being utilized in the United States and abroad as a substitute for fiat currency. Some XRP holders utilize XRP as a payroll currency. XRP also is being used to pay for goods and services. Retail holders utilize the XRPL to transfer value from one place to another, using XRP in the transaction. Retail holders utilize the decentralized exchange (DEX), built on the XRPL, to acquire other digital assets such as Bitcoin, CSC, LOX, or fiat currencies. Some vendors and businesses (e.g., Time Magazine) accept XRP as a form of payment. In other words, any expert, offered by the SEC, opining that retail XRP holders lack any consumptive intent when acquiring XRP, or any expert, offered by the Defendants, providing testimony related to non-investment reasons to acquire XRP, should be made available to amici.

Any expert offering testimony that XRP holders must rely on the efforts of Ripple to obtain profits or a financial benefit is testimony amici should review. It is well established that retail XRP

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holders can “stake” (loan) their XRP with digital asset trading platforms, independent of Ripple, thereby obtaining a financial benefit or profit from their XRP (usually earning 4-12% interest). Likewise, retail XRP holders can collateralize their XRP by securing a fiat loan. Hence, any expert testimony, offered by either side, related to the reliance or non-reliance of XRP holders on the efforts of Ripple, is relevant and must be made available to amici.

Obviously, any expert testimony regarding the utility of XRP is also relevant for amici. In fact, during the discovery phase of this case, the SEC served interrogatories on Defendant Ripple Labs, Inc., regarding the “current actual ‘use[s]’ or ‘functions’ of XRP” known to the defendant. ECF 165-4 at 5. Defendant Ripple Labs, Inc., responded, in part, by referencing a letter authored by counsel for amici. ECF 165-4 at 7.¹

Any expert testimony opining that the very nature of XRP itself makes XRP an investment contract with Ripple is relevant and should be made available to amici.

Any expert testimony claiming XRP sold in the secondary market, independent of Ripple, constitutes an investment contract with Ripple, is relevant and should be made available to amici.

According to previous case filings, sixteen experts have been disclosed and deposed. There could be other areas of expert testimony relevant to a meaningful Amicus Brief. It is very difficult to surmise which experts are relevant without knowing the specific designations and areas of testimony, and that information must be made available to amici prior to briefing, as it will eventually be made public in any event

II. ***EVIDENCE RELATED TO THE XRP TOKEN ITSELF AND SECONDARY MARKET SALES***

A. *Relevant Allegations Contained in the Complaint*

Amici should be allowed to review evidence the SEC intends to offer in support of the allegations contained in the following paragraphs within the Plaintiff’s First Amended Complaint (ECF No. 46):

1. From 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 U.S. Dollars (“USD”), to fund Ripple’s operations and enrich Larsen and

¹ Ripple Labs, Inc.’s Response, in part, reads: “See, e.g., Letter from John Deaton on behalf of XRP Holders to Judge Analisa Torres re: Intention to file Motion to Intervene (Mar. 19, 2021) (D.E. 75) at 4 (Noting “literally hundreds of developers using XRP and the XRPL[, where] the vast majority of these developers have never had any contact with Ripple or its executives” among a list of eight uses for XRP, a “few examples of how XRP Holders utilize XRP without Ripple’s knowledge or input”) (emphasis omitted).”

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Garlinghouse. Defendants undertook this distribution without registering their offers and sales of XRP with the SEC as required by the federal securities laws, and no exemption from this requirement applied. (emphasis added).

Any evidence suggesting the token itself is a security or investment contract is evidence amici should be privy to in order to prepare a meaningful brief to assist the Court.

238. Consistent with its privately-stated understanding, Ripple publicly offered and sold XRP as an investment into a common enterprise that included **Ripple's promises to undertake significant entrepreneurial and managerial efforts, including to create a liquid market for XRP**, which would in turn increase demand for XRP and therefore its price. (emphasis added).

Any evidence of Ripple making promises that allegedly induced retail holders in the secondary market, not in privity with Ripple, to acquire XRP is evidence amici should be allowed to review.

241. Based on these representations, Ripple's actions, and the economic reality, XRP investors in the Offering had a reasonable expectation of profiting from Ripple's efforts to deploy investor funds to create a use for XRP and bring demand and value to **their common enterprise**. (emphasis added).

Any evidence supporting a claim that retail XRP holders in the secondary market had a reasonable expectation of profit from Ripple's efforts, or entered into a common enterprise with Ripple, is evidence amici should be allowed to review.

244. Defendants also persistently stated publicly that—partly to achieve the goal of widespread XRP trading—they would take steps to create, promote, and protect the market for trading in XRP, such as managing the manner in which Ripple bought and sold XRP, and by persuading digital asset trading platforms to permit investors to buy and sell XRP. **These statements led reasonable investors to expect to profit from Ripple's efforts on behalf of XRP**. (emphasis added).

Any evidence supporting the claim retail XRP holders in the secondary market were led by Defendants to have a reasonable expectation of profit from Ripple's efforts is evidence amici should be allowed to review.

245. From the outset of the Offering, **Defendants publicly promised significant, meaningful entrepreneurial efforts with respect to XRP**. (emphasis added).

Any evidence supporting the claim that retail XRP holders in the secondary market were promised or led by Defendants to have a reasonable expectation of profit from Ripple's efforts is evidence amici should be allowed to review.

251. **On June 3, 2016**, Cryptographer-1 explained in the XRP Chat, in response to the question **"if Ripple Failed, XRP died?"**, that he didn't "think it's likely XRP would

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succeed without us, though it's possible." But, he continued, while "there are significant technical obstacles to using XRP as a bridge or vehicle currency[,] . . . [o]ur XRP strategy is based on promoting it as a bridging currency . . . through various strategies including paying traders an incentive." (emphasis added).

Any evidence supporting the claim that today, in 2022, if Ripple fails or ceases to exist, XRP would die or become worthless, or any evidence contradicting that statement from 2016, is evidence amici should be allowed to review.

263. **Starting in at least 2014**, Ripple also promised that it would undertake efforts to create, maintain, and **protect secondary resale markets for XRP**. (emphasis added).

Any evidence supporting or contradicting the claim today, in 2022, that retail XRP holders in the secondary market rely on the efforts of Ripple to protect secondary resale markets for XRP, is evidence amici should be allowed to review.

285. In contrast to Ripple, investors in XRP cannot take most or any of the steps that Ripple has taken to grow the XRP ecosystem and increase demand for XRP. **Most, if not all, XRP investors simply lack the technical expertise and the resources to do so.** (emphasis added).

Any evidence supporting or contradicting the emphasized sentence above or evidence regarding the ease or complexity for retail holders or non-Ripple Developers to access and utilize the XRPL is evidence amici should be allowed to review.

286. XRP investors are not in any position to, for example, undertake various, complex, expensive, and all-encompassing strategies about when or how to sell XRP into the markets to protect XRP's price, volume, and liquidity – as Ripple has done in a purported attempt to foster adoption of XRP. Nor are XRP investors in any position to increase significantly "demand" or "value" for XRP **by developing a "use" for the token through entrepreneurial efforts – at least not without Ripple's support**. In other words, not only are Ripple's touted efforts with respect to XRP significant, they are essential to the success or failure of the enterprise. (emphasis added).

Any evidence supporting or contradicting the emphasized sentence above or evidence regarding the ease or complexity for retail holders or non-Ripple Developers to access and utilize the XRPL is evidence amici should review. Any evidence demonstrating the level of developer activity, independent of Ripple, related to the XRP Ledger, is evidence amici should be allowed to review.

290. Investors who purchased XRP in the Offering **invested into a common enterprise with other XRP purchasers, as well as with Ripple**. (emphasis added).

Any evidence demonstrating the existence or non-existence of a common enterprise between retail XRP holders in the secondary market and Ripple is evidence amici should be allowed to review.

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293. Moreover, Ripple pooled the funds it raised in the Offering and used them to fund its operations, including to finance building out potential “use” cases for XRP, paying others to assist it in developing a “use” case, constructing the digital platform it promoted, and compensating executives recruited for these purposes. Ripple did not segregate or separately manage proceeds from different XRP purchasers in the Offering, which Garlinghouse and Larsen knew or recklessly disregarded at all relevant times. **The nature of XRP itself made it the common thread among Ripple, its management, and all other XRP holders.** (emphasis added).

Any evidence supporting or contradicting the emphasized sentence above is evidence amici should be allowed to review.

353. **The very nature of XRP in the market**—as constructed and promoted by Ripple—compels reasonable XRP purchasers to view XRP as an investment. (emphasis added).

Any evidence supporting or contradicting the emphasized sentence above is evidence amici should be allowed to review.

367. Specifically, from 2019 through June 2020, Ripple paid the Money Transmitter 200 million XRP, **which the Money Transmitter immediately monetized by selling XRP into the public market, typically on the very days it received XRP from Ripple.** The Money Transmitter publicly disclosed earning over \$52 million in fees and incentives from Ripple. (emphasis added).

Any evidence supporting or contradicting the claim that the XRP sold by the Money Transmitter into the secondary public market also constituted the transfer of unregistered securities, is evidence amici should be allowed to review.

373. From May through mid-August 2020, Ripple sold XRP to two other money transmitters for use in ODL for total proceeds of approximately \$70 million dollars. In order to effectuate the ODL transaction, **the money transmitters then immediately resold those XRP into the public markets, to individuals and entities that had no “use” for XRP.** (emphasis added).

Any evidence supporting or contradicting the claim that the XRP sold by the money transmitters into the secondary public market also constituted the transfer of unregistered securities, is evidence amici should review. Additionally, any evidence the SEC is relying on that supports its claim that the individuals and entities acquiring XRP from the money transmitters had no use for XRP, as well as any evidence contradicting that claim, is evidence amici should be allowed to review.

384. Instead, Ripple and its executives repeatedly publicly disclaimed that XRP was “currency” **and tried to dissuade investors from thinking about XRP as “currency.”** (emphasis added).

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Any evidence the SEC is relying upon demonstrating Ripple and its executives were successful in dissuading secondary market holders of XRP from using it as a form of currency, or any evidence that contradicts that assertion, is evidence amici should be allowed to review. Any evidence Ripple is relying on demonstrating XRP's use as a form of currency, is evidence amici should be allowed to review.

385. **For example, in June 2016**, Cryptographer-1 explained in a public XRP Chat post: “We do not plan to encourage use of XRP as an alternative to Bitcoin or as a direct payment method at this time.” (emphasis added).

Any evidence by either party showing the use of XRP today, in 2022, being used as a direct payment method, is evidence amici should be allowed to review.

386. Two years later, in a press conference on **March 14, 2018**, Garlinghouse stated: I almost never use the expression cryptocurrency. And the reason is today, these aren't currencies. I can't go down to Starbucks and buy a coffee with Bitcoin. I can't buy . . . coffee with XRP.... Currencies, traditionally, are something you can use to transact efficiently and broadly. **Very few people, even in the crypto community have used the, you know, Bitcoin or XRP to buy something.** (emphasis added).

Any evidence by any party showing the use of Bitcoin or XRP today, in 2022, or at any time since that statement was made on March 14, 2018, to purchase items is evidence amici should be allowed to review.

Page 63 of the Amended Complaint, subsection A, reads, in part: “**No Significant Non-Investment Use for XRP Exists.**”

Any evidence being offered to support or refute the claim that today, in 2022, no significant non-investment use for XRP exists, is evidence amici should be allowed to review.

B. Howey Factors and “...The XRP traded, even in the secondary market, is the embodiment of those facts, circumstances, promises, and expectations, and today represents that investment contract.”²

In order to “provide the Court with a meaningful perspective, and help ensure “complete and plenary presentation of difficult issues so that the Court may reach a proper decision”³ in regard to the *Howey* test and the above statement related to current sales of XRP, amici should be granted access to the following:

² ECF No. 153 at 24.

³ ECF No. 372 at 10.

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Any evidence, documents, testimony, analysis, or opinions supporting, or contradicting or refuting, the claim “XRP traded, even in the secondary market, is the embodiment of those facts, circumstances, promises, and expectations, and today represents that investment contract.” ECF No. 153 at 24.

Any evidence, documents, testimony, analysis, or opinions regarding the perspectives of reasonable purchasers of XRP acquired in the secondary market.

Any evidence, documents, testimony, analysis or opinions regarding the expectation of profits of reasonable purchasers derived from the efforts of Ripple.

Any evidence, documents, testimony, analysis, or opinions regarding the expectations of profits by a reasonable purchaser from the sale of XRP in the secondary market.

Any evidence, documents, testimony, analysis, or opinions regarding the existence of a common enterprise between Ripple and retail XRP holders who acquired XRP in the secondary market.

Any identifiable uses of XRP at the time XRP was sold in secondary markets.

Any identifiable abilities of XRP holders to facilitate transactions using XRP with commercial counterparties.

Any evidence of agreements between Ripple and any other entity or XRP holder related to any alleged efforts to affect the price of XRP in the secondary market.

Any evidence of price guarantees regarding the price of XRP causing reasonable purchasers of XRP to actually acquire XRP in the secondary market.

Any evidence of agreements between Ripple and any other entity or XRP holder related to Ripple selling XRP at any kind of discount.

Any agreement that Ripple would offer to buy back XRP from XRP holders.

Any evidence of promises of XRP buybacks made by Ripple or its executives.

Any evidence of marketing materials demonstrating that Ripple would undertake efforts on behalf of XRP holders to produce profits from the sale of XRP in the secondary market.

Any evidence of XRP holders' abilities to use XRP for the purchase of goods and services.

Any evidence or communications between XRP holders and the SEC or any other federal regulatory or state or foreign regulator requesting guidance regarding the SEC's or any other regulator's position on XRP's status and any answers provided, including but not limited to, the

April 26, 2022
Page 10 of 12

SEC OIEA and any evidence derived through foreign requests for assistance and Mutual Legal Assistance Treaties (MLATs) or even informal sharing agreements.

Any fundraising materials that were provided to potential XRP holders.

Any evidence that Ripple provided XRP holders with information regarding Ripple's management team and any information or communications indicating XRP holders considered Ripple's management team and that team's experience or expertise before acquiring XRP in the secondary market.

Any evidence regarding efforts by Ripple to promote XRP for purchase in secondary markets as opposed to just commercial use.

Any evidence of fundraising efforts directed at purchasers of XRP in secondary markets.

Any evidence of press efforts directed at XRP holders who purchased XRP or who Ripple wanted to entice to purchase XRP in secondary markets.

Any evidence that Ripple touted or communicated XRP price appreciation to purchasers of XRP in secondary markets.

Any evidence that XRP holders who purchased XRP in secondary markets would have any specific rights in Ripple profits, Ripple ownership or that XRP holders were described as being part of any particular or different classes of XRP holders.

Any evidence that a certain amount of XRP was being set aside specifically for purchase in secondary markets.

Any guarantees of a floor price of XRP or quantity of XRP set-aside for either commercial use or for purchase in secondary markets.

Any evidence that Ripple would undertake any efforts to protect retail XRP holders in any fashion.

Any evidence of price-supports made by Ripple or its executives offered to show Ripple's intent to send a signal to purchasers of XRP in secondary markets causing an expectation in price appreciation.

Any evidence that there were limitations or vesting requirements or exit terms on the sale of XRP in secondary markets.

Any evidence demonstrating whether XRP holders in the secondary market who did not purchase XRP from Ripple were aware or not aware of the existence of the company Ripple.

April 26, 2022
Page 11 of 12

Any evidence relied upon by the SEC demonstrating a purchaser of XRP can enter into a common enterprise absent awareness of Ripple or its executives.

Any evidence of statements, promises, or inducements made by Ripple that Ripple intended to be relied upon by XRP holders in the secondary market when acquiring XRP.

Any evidence of any specific efforts made by Ripple that Ripple intended to be relied upon by secondary market XRP holders unaware of the company Ripple and its executives.

III. *UTILITY OF XRP*

The amici believe that they should have access to non-public documents related to the following evidence as pertains to the “utility” of XRP:

Any evidence being relied upon by the SEC to support its argument that no utility for XRP exists.⁴

Any evidence being relied upon by the Defendants to refute a claim of a lack of utility.

Any evidence demonstrating XRP holders do not need to rely on the efforts of Ripple or its management team to generate a profit or financial benefit, such as utilizing XRP as collateral when obtaining financing, or staking (loaning) XRP on digital trading platforms, independent of Ripple, such as, Nexo, Celcius, Bittrue or any centralized or decentralized platforms.

Any evidence related to users of the XRP Ledger (XRPL), who acquired XRP in order to utilize the XRPL because of its transaction speed, low costs, or minimal energy consumption.

Any evidence related to non-investment uses of XRP such as using it to transfer value from one location to another or use as a bridge asset between other digital tokens including but not limited to Bitcoin and Ether.

Any evidence related to users of the XRPL’s DEX allowing the user to acquire or trade multiple assets.

Any evidence related to acquiring XRP for non-investment reasons, such as a form of currency for payment for goods and services, or as a substitute for fiat currency, utilized as a store of value, and to purchase everyday items such as food, clothing, and other retail purchases.

⁴ See Hr’g Tr. at 51, Mar. 19, 2021 (Attorney Jorge Tenreiro stating “Now, the [C]ourt referenced a utility for XRP. We dispute whether that utility actually exists, your Honor.”).

April 26, 2022
Page 12 of 12

Any evidence demonstrating XRP being used by non-Ripple affiliated entities for use in payment or debit cards, such as the Global ID debit card, or the UpHold debit card, or any other card.

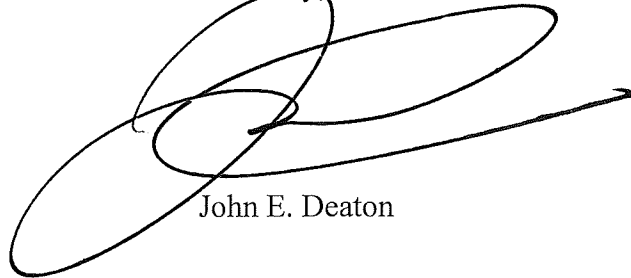
Any evidence demonstrating XRP being accepted as payment by vendors and merchants within and outside of the United States.

Any evidence of Developers or companies, independent of Ripple, utilizing the XRPL, along with its native token, XRP.

As stated at the beginning of this letter, amici believe it would be appropriate to discuss these matters prior to amici formally requesting permission from the Court. If any party believes amici isn't entitled to review any of the non-public materials, amici respectfully request a written reply indicating briefly the basis of that belief. If any party agrees that a conference is appropriate, please let me know what availability you have during the week of May 2, 2022. If I do not hear from either side by May 2, 2022, I will assume no party wishes to confer and that amici should file for redress from the Court.

Thank you in advance and I look forward to working with you in this regard.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

John E. Deaton

EXHIBIT 2



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 PEARL STREET, SUITE 20-100
NEW YORK, NY 10004-2616

May 2, 2022

Via Email

John E. Deaton, Esq.
Deaton Law Firm
450 North Broadway
East Providence, RI 02914

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

Dear Counsel:

I write in response to your letter of April 27, 2022 requesting “limited” access to certain non-public documents to assist in the preparation of an Amicus Brief to the court.

Pursuant to her October 4, 2021 Order, Judge Torres stated that she may allow amicus curiae to assist the Court “by briefing legal issues relevant to the case *as approved in advance by the court.*” (D.E. 372 at p. 11 (emphasis added)). Given that you have not received approval in advance by the Court, we respectfully decline your request to meet and confer or to produce any of the documents described in your letter. Moreover, we note that the Court has limited amici participation to “legal as opposed to factual issues” (D.E. 371 at p. 11), and see no reason to share discovery material for this discrete purpose. *See, e.g., United States v. Smith*, 985 F. Supp. 2d 506, 545 (S.D.N.Y. 2013) (“Defendants have not explained the need to share discovery materials with amicus counsel, who presumably would be seeking leave to file memoranda on discrete legal issues that would not require them to be in the weeds of discovery.”) Accordingly, we will oppose any efforts to go beyond the Court’s Order.

Sincerely,

/s/ Pascale Guerrier
Pascale Guerrier

cc: All counsel (via email)

EXHIBIT 3



Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
+1 212 909 6000

Lisa Zornberg
Partner
lzornberg@debevoise.com
Tel +1 212 909 6945

May 5, 2022

BY E-MAIL

John Deaton
Deaton Law Firm
450 North Broadway
East Providence, RI 02914
Email: all-deaton@deatonlawfirm.com

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

Dear Mr. Deaton:

This letter is to confirm that Defendants are willing to meet and confer with you and the SEC about the access requests made in your letter dated April 27, 2022. Defendants also have no objection to you having access to the expert report of Patrick Doody that has been offered in this case by the SEC. We note that the SEC did not designate Mr. Doody's report (dated October 4, 2021) as Confidential, such that there is no restriction on the parties sharing it with you and no court approval would be required. We would, however, expect you to agree to use the report for litigation purposes only. Judge Torres's Order dated October 4, 2021 acknowledged that, as *amicus curiae*, you may be able to offer the unique perspective of users and holders of XRP who purchased XRP in the secondary market. We believe the opinions offered by Mr. Doody in this case could be relevant for your consideration in that he has offered views on the conduct of reasonable XRP purchasers. Defendants take no position on your remaining access requests at this time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Zornberg".

Lisa Zornberg

cc: Counsel of Record

EXHIBIT 4

John E. Deaton ^Δ
Garrett L. Boatright [◦]

DEATONLAWFIRM, LLC

450 North Broadway, East Providence, Rhode Island 02914

^Δ Admitted in RI, MA, CT & IA

[◦] Admitted in RI

- VIA EMAIL -

May 5, 2022

Lisa Zornberg
Debevoise & Plimpton LLP
919 Third Avenue
New York, NY 10022
+1 (212) 909-6945
lzornberg@debevoise.com

Re: Amicus Curiae in *SEC v. Ripple Labs Inc., et al.*, No. 1:20-cv-10832-AT-SN (S.D.N.Y.)

Dear Attorney Zornberg:

This letter is to confirm that I am in receipt of your May 5, 2022 letter in response to my April 27, 2022 letter requesting a Meet and Confer amongst the parties of record in preparation for filing my Amicus Brief to the court. Please be advised that I agree and stipulate to utilize the expert report of Patrick B. Doody (“Doody Report”) **solely** for litigation purposes.

Thank you for your response.

Sincerely,



John E. Deaton, Esq.
Deaton Law Firm LLC
450 North Broadway
East Providence, RI 02914
Tel: (401) 351-6400
Fax: (401) 351-6401
all-deaton@deatonlawfirm.com

Cc: All Counsel of Record

EXHIBIT 5

John E. Deaton ^Δ
Garrett L. Boatright [○]

DEATONLAWFIRM, LLC

450 North Broadway, East Providence, Rhode Island 02914

^Δ Admitted in RI, MA, CT & IA [○] Admitted in RI

VIA EMAIL

May 10, 2022

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Ladan Stewart
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2112 Pennsylvania Avenue NW
Washington, DC 20037

*Attorney for Defendant Bradley
Garlinghouse*

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

Dear Counsel,

On May 5, 2022, Attorney Zornberg responded to my April 27, 2022 letter indicating that Ripple does not object to providing amici with Patrick Doody's expert report, with the proviso that it be used for litigation purposes only. As expressed in my letter response to Attorney Zornberg and counsel of record shortly thereafter, I have agreed to that condition. Attorney Zornberg indicated:

May 10, 2022

Page 2 of 2

“[T]he SEC did not designate Mr. Doody’s report (dated October 4, 2021) as Confidential, such that there is no restriction on the parties sharing it with [amici] and no court approval would be required.”

Despite not designating the report confidential, it is unclear whether the SEC objects to amici being provided with a copy of the report and testimony. According to Attorney Zornberg’s letter, Mr. Doody “has offered views on the conduct of reasonable XRP purchasers.” Accordingly, Mr. Doody’s opinions and testimony directly relate to the interests, motives, and conduct of amicus curiae.

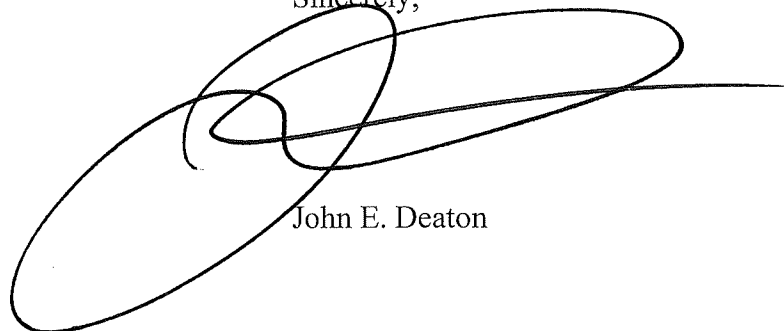
Mr. Doody’s opinions and testimony epitomize the very issue contemplated by Judge Torres when she granted amicus status. The Court acknowledged that amici “may view XRP differently from Defendants and thus may stress different arguments and so . . . will provide the Court with a meaningful perspective.” ECF 372 at 9-10.

Although I requested additional information in my April 27, 2022 letter and one could argue that it was overly broad, it is difficult to imagine a more singular and relevant issue for amici’s meaningful participation than the opinions and testimony of Mr. Doody. The relevance and need for amici’s participation in this case is even more significant when considering the SEC is not relying on similar expert testimony in other digital asset token cases, such as SEC v. LBRY (*U.S. Sec. & Exch. Comm’n v. LBRY, Inc.*, 21-cv-260-PB (D.N.H. Feb. 7, 2022)).

The deadline for *Daubert* challenges is fast approaching. Without being privy to Mr. Doody’s opinions and testimony, it is difficult for amici to provide the Court with the meaningful perspective it requested. Before making a decision on whether to seek permission from the Court, I respectfully request that the parties simply indicate whether amici will be provided access to Mr. Doody’s report and testimony.

It is my hope that the parties can agree to the sharing of this information without Court intervention. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke extending to the right.

John E. Deaton

EXHIBIT 6

Subject: RE: SEC v Ripple - Amicus Curiae Ltr.,

Date: Wednesday, May 11, 2022 at 12:24:55 PM Eastern Daylight Time

From: Guerrier, Pascale

To: Zornberg, Lisa, Rachel Bourk, Ceresney, Andrew J., mkellogg@kellogghansen.com, Reid Figel, msolomon@cgsh.com, mflumenbaum@paulweiss.com, mgertzman@paulweiss.com, All-Deaton

CC: Sylvester, Mark, Moye, Robert M., Tenreiro, Jorge, Hanauer, Benjamin J., Goody, Elizabeth, Daniels, Jon, Stewart, Ladan F, Waxman, Daphna A., Augustini, Hope Hall, Gulay, Erol, 'Dearborn, Meredith', Bamberger, Nowell D., 'Bunting, Kristina'

Lisa,

We are designating all expert reports submitted on behalf of the SEC as "Confidential" except for the opening, supplemental and rebuttal expert reports of Dr. Metz which were filed on the Court's public docket (Dkt. 439).

Regards,

Pascale Guerrier
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004-2616
(212) 336-5473
GuerrierP@sec.gov

From: Zornberg, Lisa <lzornberg@debevoise.com>

Sent: Thursday, May 5, 2022 12:55 PM

To: Guerrier, Pascale <guerrierp@SEC.GOV>; rbourk@deatonlawfirm.com; Ceresney, Andrew J. <aceresney@debevoise.com>; mkellogg@kellogghansen.com; Reid Figel <rfigel@kellogghansen.com>; msolomon@cgsh.com; mflumenbaum@paulweiss.com; mgertzman@paulweiss.com; All-Deaton@deatonlawfirm.com

Cc: Sylvester, Mark <sylvesterm@SEC.GOV>; Moye, Robert M. <MoyeR@sec.gov>; Tenreiro, Jorge <tenreiroj@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Goody, Elizabeth <GoodyE@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Augustini, Hope Hall <AugustiniH@SEC.GOV>; Gulay, Erol <egulay@debevoise.com>; 'Dearborn, Meredith' <mdearborn@paulweiss.com>; Bamberger, Nowell D. <nbamberger@cgsh.com>; 'Bunting, Kristina' <kbunting@paulweiss.com>

Subject: RE: SEC v Ripple - Amicus Curiae Ltr.,

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Counsel, please see the attached correspondence on behalf of Defendants.

Lisa Zornberg

Lisa Zornberg | Partner | Debevoise & Plimpton LLP | lzornberg@debevoise.com | +1 212 909 6945 | www.debevoise.com

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The latest version of our Privacy Policy, which includes information about how we collect, use and protect personal data, is at www.debevoise.com.

From: Guerrier, Pascale <guerrierp@SEC.GOV>

Sent: Monday, May 2, 2022 7:41 PM

To: rbourk@deatonlawfirm.com; Zornberg, Lisa <lzornberg@debevoise.com>; Ceresney, Andrew J. <aceresney@debevoise.com>; mkellogg@kellogghansen.com; Reid Figel <rfigel@kellogghansen.com>; msolomon@cgsh.com; mflumenbaum@paulweiss.com; mgertzman@paulweiss.com; All-Deaton@deatonlawfirm.com

Cc: Sylvester, Mark <sylvesterm@SEC.GOV>; Moye, Robert M. <MoyeR@sec.gov>; Tenreiro, Jorge <tenreiroj@SEC.GOV>; Hanauer, Benjamin J. <HanauerB@sec.gov>; Goody, Elizabeth <GoodyE@SEC.GOV>; Daniels, Jon <danielsj@SEC.GOV>; Stewart, Ladan F <stewartla@SEC.GOV>; Waxman, Daphna A. <WaxmanD@SEC.GOV>; Augustini, Hope Hall <AugustiniH@SEC.GOV>

Subject: SEC v Ripple - Amicus Curiae Ltr.,

Counsel-

Please see attached correspondence.

Sincerely,

Pascale Guerrier
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
100 Pearl Street, Suite 20-100
New York, NY 10004-2616
(212) 336-5473
GuerrierP@sec.gov

EXHIBIT 7



DIVISION OF
ENFORCEMENT

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 PEARL STREET, SUITE 20-100
NEW YORK, NY 10004-2616

May 11, 2022

Via Email

John E. Deaton, Esq.
Deaton Law Firm
450 North Broadway
East Providence, RI 02914

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

Dear Counsel:

As noted previously in our letter dated May 2, 2022, you have not obtained the Court's permission to submit an amicus brief, as required by the Court's Order denying your motion to intervene. (D.E. 372). Nor have you obtained such permission to participate in *Daubert* motion practice. Accordingly, we decline to produce discovery materials at this time. The SEC will oppose a request to participate in *Daubert* motion practice and reserves its rights to seek an extension of time for *Daubert* briefing should your proposed participation require additional time to respond.

Sincerely,

/s/ Pascale Guerrier
Pascale Guerrier

cc: All counsel (via email)

EXHIBIT 8

PX10

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

EXPERT REPORT OF PATRICK B. DOODY

December 20, 2019

*Securities and Exchange Commission v. Telegram Group, Inc. and TON
Issuer, Inc.*

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1. Introduction

1.1 Assignment

1. I have been engaged by the Securities and Exchange Commission (“SEC”) to provide expert testimony in the matter of *Securities and Exchange Commission v. Telegram Group Inc. and Ton Issuer Inc.*, pending in the United States District Court for the Southern District of New York. The SEC has retained me to independently analyze and opine on the perspective of a reasonable purchaser of the digital tokens called Grams that were offered for sale by Telegram in two rounds, the first round ending in or about February 2018 (“Round One”) and the second round ending in or about March 2018 (“Round Two”), as well as the perspective of a reasonable purchaser of Grams at the time of network launch.

1.2 Qualifications

2. I am a blockchain data scientist at Integra FEC LLC (“Integra”), a forensic data analytics and economic consulting firm. My work with Integra has included assisting various government agencies to investigate financial fraud in the blockchain and digital assets space. I am also the founder and managing director of an investment partnership, Lily Pad Capital LLC. Lily Pad Capital was founded in 2016 to make investments in the digital asset space, and as Managing Director I profitably allocated capital to many digital asset investments. In addition to analyzing hundreds of companies, projects and tokens in the digital asset space, I developed and executed a successful cryptocurrency arbitrage strategy. This arbitrage operation has given me an intimate familiarity with many different participants in the digital assets ecosystem, including retail traders, institutional investors, cryptocurrency miners, software developers, entrepreneurs, and venture capital investors. In addition to my experience in digital asset investments, I have 17 years of experience evaluating and investing in companies, public equities, commodities, bonds, currencies, and derivatives of those asset classes. I received a B.S. in Electrical Engineering from Rice University, and a M.S. in Electrical Engineering from The University of Texas at Austin.

3. Appendix A to this report contains my curriculum vitae with more details about my professional background. I am a salaried employee of Integra. Integra will be compensated by the SEC at a rate of \$420 per hour for the time I spent on this matter. I have been assisted by additional staff members of Integra to analyze data and documents related to this matter. Integra will be compensated by the SEC at a rate of \$500 per hour (Engagement Director) and \$220 per hour (Data Analyst) for their work.¹

1.3 Documents Relied Upon

4. Appendix B to this report contains a complete list of documents and data sources I relied upon in completing the analysis in this report. These include offering documents issued by Telegram to potential investors, the Telegram Open Network whitepapers, and public trading data for a variety of digital assets.

2. Summary of Findings

5. Through my professional experience closely analyzing and investing in the digital assets space, after carefully reviewing the Telegram Open Network (“TON”) whitepapers and other documents provided by Telegram to potential purchasers of Grams, I conclude that it was reasonable for a purchaser to buy Grams in Round One and Round Two with the expectation of profit derived from the work of Telegram in developing the TON Blockchain ecosystem. Specifically, the purchasers would have a reasonable expectation of profit through the resale of their Grams in the secondary market after Telegram developed and launched the TON Blockchain ecosystem using the money raised from the Round One and Round Two purchasers (the “Initial Purchasers”). I also conclude that it was unlikely that a reasonable purchaser of Grams in Round One and Round Two would acquire Grams in order to purchase goods and services, because, among other reasons, there were no identifiable uses for Grams at that time. It would

¹ Integra is currently contracted to assist the SEC in connection with one additional expert report being prepared for this case, and in four other matters, and provides services to other federal and state-level enforcement and regulatory agencies.

not make sense from a business perspective to tie up substantial capital for approximately one year or more just to purchase a potential currency that might not be widely accepted in the future. In addition, there was significant uncertainty about the future price of Grams and therefore uncertainty about how many Grams a consumer or business needed to purchase to facilitate transactions with their commercial counterparties. Furthermore, a number of the financial mechanisms and ideas Telegram marketed to potential purchasers appear to be specifically designed to increase the potential for a profitable investment return on their purchase of Grams and to reduce risk of loss for the Initial Purchasers, rather than to promote Grams as a realistic currency option to buy goods and services.

6. One important component of the Gram offering that would appeal to the mindset of a purchaser buying Grams for profit is the novel and deterministic Reference Price formula that results in an exponential increase in the price of Grams as they are issued. By prohibiting the TON Foundation from selling new Grams below this increasing Reference Price, Telegram assured potential purchasers that it would not flood the market with a new supply of Grams at prices below what the Initial Purchasers paid for the Grams, irrespective of the company's present financial conditions or need to raise more capital. Moreover, Telegram told potential purchasers that they would sell them Grams at substantial discounts to the expected Reference Price at the launch of the TON Blockchain. Telegram took this price support a step further by telling potential purchasers through its offering documents and the TON Whitepapers that it would establish a procedure for the TON Foundation to repurchase Grams directly if the market price dropped below half the Reference Price. While Telegram stated that it reserved the right but not the obligation to buy back Grams, this was nevertheless a strong, and in my experience a highly unusual, signal to potential purchasers that Telegram would protect their investment from losses. Indeed, Telegram explicitly stated: "This may help prevent sudden falls of the Gram exchange rate."²

7. The product plans, total addressable market, and team details described in Telegram's Whitepaper and promotional materials appeal to investors who seek a business model that provides a high

² Telegram Open Network Whitepaper, TG-001-00000080—211, p. 131.

potential profit upside. The Telegram and TON product roadmaps tout the large built-in potential market for Grams represented by over 200 million users of Telegram Messenger and highlighted plans to expand that market to over 675 million Telegram Messenger users by 2021, thereby expanding the potential demand for Grams. Telegram's stated ambition to disrupt the payments space and become an alternative to Visa and Mastercard create a stratospheric upper bound on the total potential market for Grams targeted by this project. And Telegram's emphasis on its leadership team's history of building valuable companies increased the likelihood that potential investors would consider a purchase of Grams to be an investment that would yield high profits when they resold the Grams to the public to satisfy the anticipated heavy demand for Grams that Telegram was working to develop.

8. In contrast, in my opinion, a reasonable person or entity considering the purchase of Grams to purchase goods and services would look to a number of different factors that received little or no attention in Telegram's promotional material, including fraud prevention, theft, integration with their existing banking relationships, and compliance with financial regulations. Providing price support would be an important feature of the project for such potential commercial users. However, instead of promoting an exponentially increasing price support, it would have been far more assuring to potential consumptive users of Grams to peg the price of Grams to a stable fiat currency underpinning a major economy such as the U.S. Dollar or Euro. As described in this report, several aspects of the Gram design choices, promotion of the Gram offering, and policies governing further sales and buybacks either do not address or would heighten rather than answer the concerns of a potential non-investment purchaser.

9. Finally, I conclude that reasonable purchasers of Grams at launch of the TON Blockchain ("Launch Purchasers") are also likely to still be purchasing Grams as an investment with the intent to profit from the efforts of Telegram, rather than purchasing Grams to buy goods and services. There appear to be only minimal commercial uses for Grams anticipated at launch. For example, no major vendor to my knowledge has agreed to accept Grams as a form of payment. The current state of the TON Blockchain ecosystem still appears to be in its infancy compared to its possibilities as marketed by Telegram. Thus, a reasonable Launch Purchaser would likely purchase Grams with the expectation of

investment profits based on the TON Blockchain's future evolution rather than to use the Grams now for the limited goods and services they may buy.

3. Background

3.1 Digital Assets

10. Digital assets, such as Bitcoin and Ether, are recorded systems of value and exchange that are maintained on decentralized and publicly accessible ledgers. Cryptographically-signed transactions denominated in these digital assets are validated and grouped together into "blocks." A "blockchain" comprises a chronological collection of successive blocks that have been accepted by a software-defined consensus mechanism. This blockchain data is stored for the collective use of anybody who wishes to interact with that data or transaction history for a given digital asset. The primary digital asset, or "token," that is recorded on a given blockchain is referred to as that blockchain's "native token." For example, the native token of the Ethereum blockchain is Ether. Grams are the native tokens for the TON Blockchain.

11. Some blockchains provide computational features beyond just the record-keeping function of maintaining a currency ledger. Such blockchains include "smart contracts," which are software-defined applications with code stored directly on the blockchain. Smart contracts contain instructions for a wide range of tasks, including automating transactions between parties, storing data on the blockchain, and defining new digital assets hosted on an existing blockchain.

12. New transactions recorded on a blockchain ledger may be validated using a proof-of-work mechanism ("POW"), in which significant computational effort must be expended in order to create a new block. New blocks may also be created by stakeholders who can prove that they hold a specified significant stockpile of the digital asset, in what is called a proof-of-stake mechanism ("POS"). The validators who participate in the TON Blockchain POS system are to be rewarded for their work by payments in Grams.

3.2 Trading Platforms

13. Digital assets, like traditional financial assets, are often traded in public marketplaces, or “trading platforms.” Some popular examples of digital asset trading platforms are Coinbase, Binance, and Kraken. On these platforms, digital assets may be traded for fiat currencies or other digital assets. “Centralized exchanges” carry out this task on a private server, without recording trades directly on the blockchain. “Decentralized exchanges” do record all trades on the blockchains of the digital assets involved in a trade, making every trade publicly viewable. Both types of trading platforms, along with alternate trading venues such as futures and derivatives markets, are important components of the overall ecosystem of digital assets. These platforms facilitate the fundraising, hedging, speculating, and price discovery activities that are necessary to the proper functioning of a financial system.

3.3 Fundraising

14. A new digital asset is typically offered to outside investors and sold in an initial coin offering (“ICO”), similar in concept to a stock sale made in an initial public offering (“IPO”). An ICO may offer the new digital asset in exchange for fiat currencies or other digital assets. Sometimes they are offered to anybody who sends acceptable digital tokens to a particular blockchain address, and sometimes the sale is restricted to a set of investors who have been vetted and approved by the issuing organization.

4. Telegram Open Network Description

15. The TON Blockchain is to be built by Telegram. Telegram told potential investors that substantial functions in furtherance of the success of the TON Blockchain would be carried out by the TON Foundation through the TON Reserve (collectively referred to herein as the “TON Reserve”), including potentially buying and selling Grams in accordance with the Reference Price formula. The TON Blockchain has several distinguishing design characteristics and product features which are described in the TON whitepaper.

4.1 Grams

16. The Gram is intended to be the native token of the TON Blockchain. The TON whitepaper states that Grams are intended to be used to pay for blockchain fees, products and services provided on the TON Blockchain, and for payments between users of the TON Blockchain.

4.2 Proof-of-Stake Validators

17. The TON Blockchain uses a proof-of-stake system to validate transactions. Gram holders may volunteer to be selected to provide validation services to the blockchain in exchange for additional Grams. Providing these services is not a passive activity but rather amounts to running a business, requiring significant technical expertise along with computational resources such as processing power, network bandwidth, hard disk space.³ Acting as a validator also requires locking up the Grams one has staked for at least one month every time one is chosen for that role.⁴ Failing to fulfill all the obligations of a validator (e.g. by signing an invalid block) will result in the forfeiture of part or all of the validator's staked Grams.⁵ The commitment of time, capital, and expertise makes this a role that is likely to be filled by dedicated businesses rather than by typical venture capital firms or wealthy individual investors or consumers.

4.3 Smart Contract Platform

18. Telegram proposes to implement a scalable smart contract platform in order to support an ecosystem of third party decentralized applications (“dapps”).⁶ These dapps are intended to provide digital services hosted on the TON Blockchain such as games, maps, gambling, or peer-to-peer financial services. Interacting with a smart contract typically requires a payment to cover the network's costs of

³ Telegram Open Network Whitepaper, TG-001-00000080—211, p. 45.

⁴ Telegram Open Network Whitepaper, TG-001-00000080—211, p. 47-48.

⁵ Telegram Open Network Whitepaper, TG-001-00000080—211, p. 64.

⁶ Telegram Open Network Primer, TLGRM-010-00000513—535, p. 14.

processing the result or transaction. This is referred to as a “gas” payment and is denominated in the blockchain’s native digital asset. In the case of TON, units of gas are intended to be paid in Grams.

4.4 Blockchain of Blockchains

19. Telegram proposes to facilitate the creation of entirely new blockchains on the TON platform.⁷ This multi-blockchain functionality is intended to allow third-parties to create specialized blockchains with their own digital assets, all hosted and maintained on the master TON Blockchain.

4.5 Native TON Products

20. The TON whitepaper describes various products that are proposed to be developed by Telegram and built directly into the TON Blockchain, including: TON Storage, TON Proxy, TON Services, TON DNS, and TON Payments.⁸ These products are intended to attract a large user base to the TON Blockchain and create a higher demand for Grams.⁹

4.6 Telegram Integration

21. In order to provide an initial critical mass of users to the TON Blockchain and to support the use of Grams, Telegram has proposed several ways that they will integrate the Ton Blockchain into Telegram Messenger, further increasing the demand for Grams, including TON wallets, External ID (a universal identity verification service), advertising on Telegram Messenger, and an app store for TON and Telegram applications.

5. Considerations of a Potential Gram Purchaser

22. Based on my extensive experience making investments in both the digital assets market as well as in companies, public equities and other asset classes, I believe that a reasonable purchaser of

⁷ Telegram Open Network Whitepaper, TG-001-00000080—211, p. 5.

⁸ Telegram Open Network Whitepaper, TG-001-00000080—211, pp. 100-103.

⁹ Telegram Open Network Primer, TLGRM-010-00000513—535, pp. 13-14.

Grams would consider the following factors when purchasing Grams: company and staff credentials, addressable market, product, market dynamics, and investor terms and investment exit.¹⁰

5.1 Company and Staff Credentials

23. The background and credentials of a team that launches a new token or digital asset is very important to improve the chances that the token increases in value over time. The promotional materials produced for Gram went to great lengths to highlight the impressive backgrounds of the Telegram team. These promotional materials especially focused on the Telegram founders' previous success in building "billion dollar companies used by hundreds of millions of people."¹¹ From my professional experience in the digital assets space, this information was likely to strongly appeal to investors looking for profitable investment opportunities.

24. In contrast, the background information outlined in the promotional materials did not describe the type of professional experience in finance or banking that would be necessary to address the concerns of vendors or customers who were considering a long-term usage of the Grams as part of their business operations.

25. Telegram itself is firmly associated with the digital asset investment space. According to a Telegram promotional document, Telegram Messenger was the most popular forum for discussing digital asset investments during the period of intense speculation and appreciation in the digital asset space in 2017.¹² Telegram had a well-known brand name associated with digital asset investing, and also owned the primary channel of discourse around digital asset investing. Due to this strong brand recognition, Telegram's association with the TON project itself was an extremely positive signal to investors looking to make a good return on their investment.

¹⁰ These factors, or variations thereof, are consistent with stated factors used by venture capitalists to evaluate investments. As an example refer to: Roberts, M. J., & Barley, L., *How venture capitalists evaluate potential venture opportunities*, Harvard Business School Research and Ideas, May 2005.

¹¹ Telegram Open Network Four Page Teaser, TLGRM-006-00000101—104, p. 4.

¹² Telegram Open Network Primer, TLGRM-010-00000513—535, p. 12.

26. In contrast, Telegram’s position as a popular forum for promoting digital asset investments would not particularly matter to somebody deciding whether to buy and hold Grams as a personal or business decision to fulfill a functional need regarding cash management or payments solutions.

5.2 Addressable Market

27. A major point of focus of the TON whitepaper and promotional materials was the size of the potential total addressable market related to the TON Blockchain ecosystem, in addition to the large existing user base of Telegram Messenger users. This is a key consideration for investors generally, and especially for venture capital investors looking to tap into a very large potential investment opportunity that can scale very quickly and provide extraordinary returns. These investors would hope to sell their digital tokens to meet the anticipated high and growing demand for such digital tokens from either additional speculative investors or potential future users of the token. The TON whitepaper breaks down the size of the market opportunity for the TON Blockchain into two main categories: the potential market related to the Telegram Messenger social media platform, and the size of the market related to Grams as a potentially disruptive player in the payments industry.

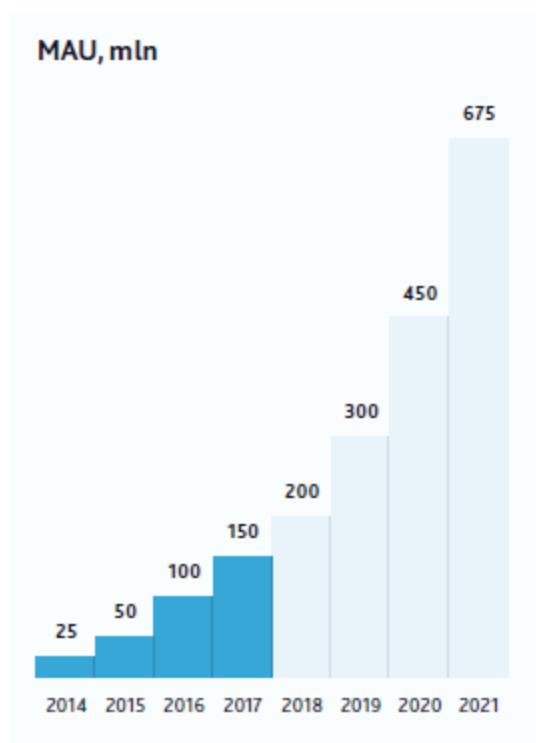
5.2.1 Telegram Messenger

28. The Telegram Messenger platform reached over 200 million monthly active users (“MAU”) in early 2018. According to the TON promotional materials, and as shown in Figure 1, Telegram projects that figure to more than triple to 675 million MAU by 2021. This amounts to an impressive 50% annualized growth rate in the number of active users on the Telegram platform. Indeed, Telegram advised the Initial Purchasers that it would use proceeds from their investment to further support and develop Telegram Messenger.¹³ As described in the background section of this report, Telegram informed the Initial Purchasers that it intended to directly integrate Telegram Messenger with

¹³ Telegram Open Network Primer, TLGRM-010-00000513—535, p. 18.

the TON Blockchain ecosystem and the Gram token in several significant ways. This integration provides avenues for Gram holders to profit from the growth of Telegram Messenger through their investment in Grams. In my opinion, a reasonable purchaser of Grams in January through March 2018 would consider this as a reason to invest in Grams with the expectation of making a profitable investment, based on Telegram's stated intention to develop and grow Telegram Messenger and integrate it with the TON Blockchain ecosystem.

Figure 1. Realized and Projected Telegram Messenger MAU in Promotional Materials



Source: Telegram Open Network Primer

5.2.2 Gram Payments

29. Telegram's stated intention to disrupt the payments space presents a second large market for Grams. The TON whitepaper and promotional materials describe the ultimate goal of Grams achieving mass-adoption as a payment solution, competing with and potentially becoming an alternative to companies like Visa, Mastercard, and Paypal as the most common forms of payment for everyday

transactions. The global payments industry in 2018 reached \$1.9 trillion,¹⁴ which presents a massive opportunity for an entity that could successfully disrupt this space and gain significant market share. If the TON Blockchain and the Gram eventually gained widespread usage as a payments solution, the fixed initial supply of Gram tokens and low inflation rate necessarily results in a price per Gram that is orders of magnitude higher than the price paid by investors in the initial fundraising rounds. In my opinion, a reasonable purchaser of Grams would consider the large scale of this potential market and the potential for the TON Blockchain to achieve mass-market adoption as a reason to purchase Grams with the expectation of profits derived from the efforts of the Telegram team to develop the TON Blockchain.

5.3 Products

30. The product development roadmap describes several ways in which potential economic activity may take place on the TON Blockchain. These future use cases could increase the speculative market capitalization of Grams. In addition, future usage of the TON Blockchain products—contingent on their successful development and implementation by Telegram—would increase the demand for Grams as gas payments and transaction fees.

31. First, the Telegram development plan includes the intended creation of a variety of products that will be native to the TON Blockchain: TON Storage, TON Proxy, TON Services, TON DNS, and TON Payments. Second, the Telegram development plan includes a variety of products that are part of Telegram Messenger but integrate closely with the TON Blockchain: TON wallets, External ID, paid bots, groups and channels advertisements, purchasing digital content and physical goods, and an app store with a registry for TON dapps. Third, the smart contract platform built into the TON Blockchain will allow third party developers to make software hosted directly on the TON Blockchain. All three types of products require significant investment by Telegram developers. Specifically, it is worth noting that the second set of products, which require integration with Telegram Messenger, would need

¹⁴ McKinsey and Company, *Global Payments Report 2019*, p. 3.

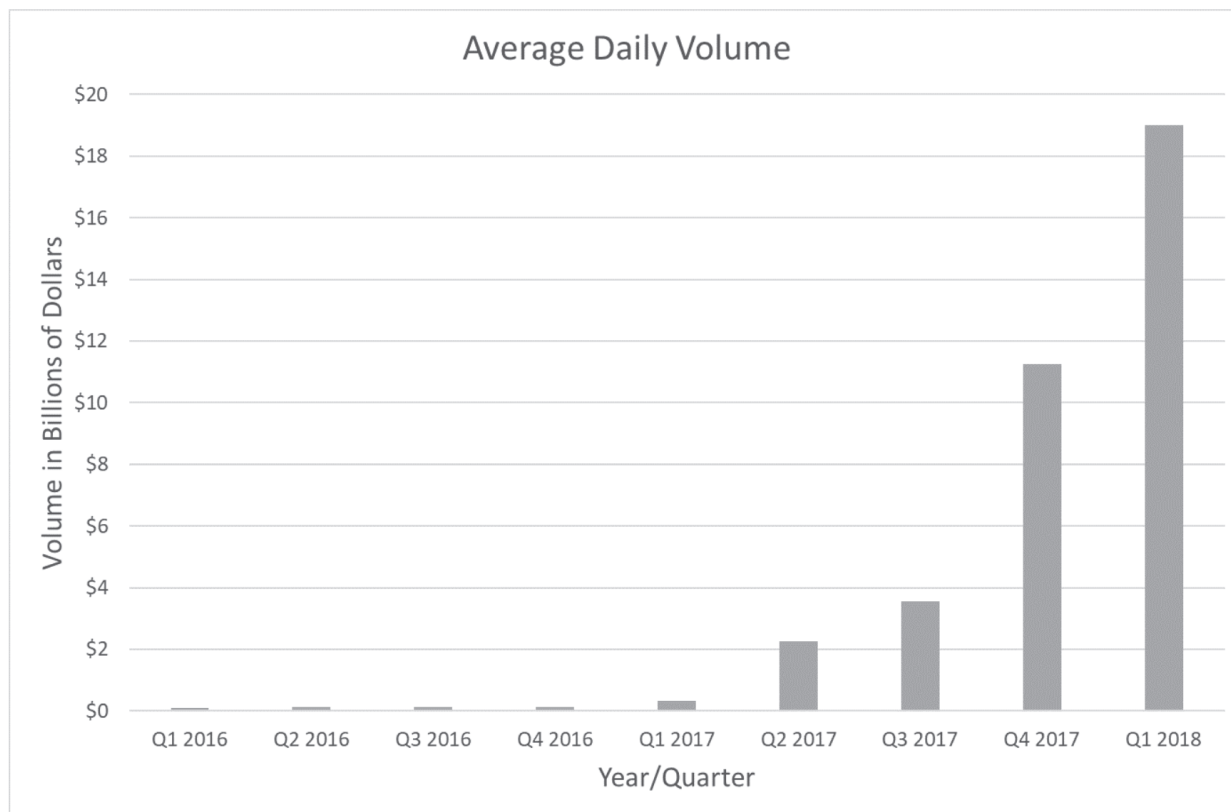
significant development and maintenance efforts by Telegram Messenger to ensure i) proper usage and engagement by Telegram Messenger users and ii) the subsequent usage and engagement of the TON Blockchain by those users. Such development and maintenance efforts by Telegram would need to continue after the launch of the TON Blockchain.

32. The story Telegram promoted by highlighting these three sources of users and activity related to the TON Blockchain would, in my experience and opinion, heighten interest in the purchase of Grams as an investment with the expectation of a profit. A reasonable investor in a digital asset would consider the different potential sources of users, transactions, and value on a new blockchain. A narrative that includes many large sources of potential usage is more likely to garner press coverage, support from digital token trading platforms exchanges, and backing by key investors and influencers in the digital assets space and therefore increase the likelihood that a purchaser would buy Grams with the expectation of profit once Telegram develops and launches the TON Blockchain.

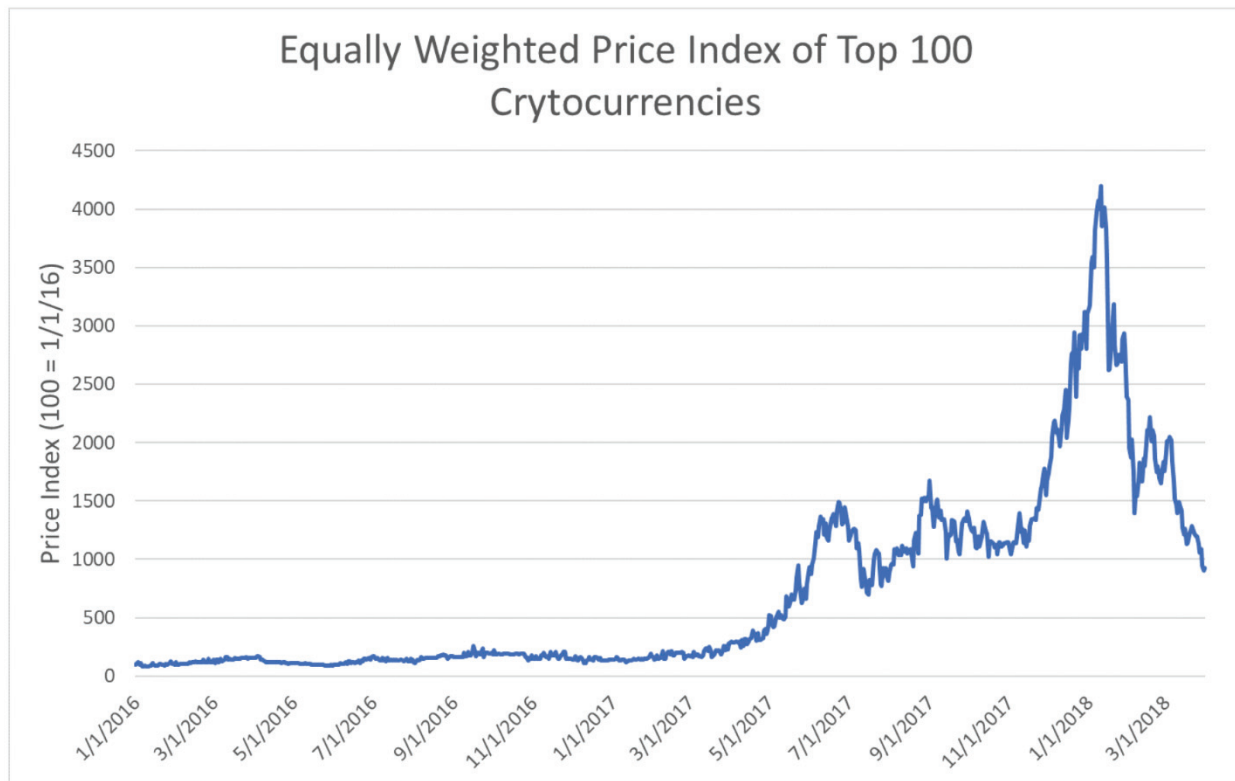
5.4 Market Dynamics

33. The overall digital assets market was in the midst of a speculative fervor throughout 2017 and leading up to the Round 1 and Round 2 sale of Grams in the first quarter of 2018. The high trading activity and investment returns of this asset class in general helped to support the price of digital assets and led investors to treat new digital assets as potential investment opportunities.

34. The U.S. dollar denominated trading volumes for digital assets grew consistently during this time period. Figure 2 shows the growth in trading volumes for the 100 digital assets with the highest market capitalization in 2018 that also had trading data going back to 2016. The total trading volume for this collection of digital assets grew from \$90 million per day in the first quarter of 2016 to \$19 billion per day in the first quarter of 2018, an increase of over 200 times.

Figure 2. Average Daily Trading Volume for Top 100 Digital Assets

35. The price performance of digital assets during this period was strong as well. For the same group of 100 largest tokens by market capitalization that was used in the preceding paragraph, the daily equal-weighted price index was calculated starting at the beginning of Q1 2016 and ending with the close of Q1 2018. Figure 3 shows the price chart of this digital asset price index. Even with a severe downturn in this asset class at the end of the measured period, the annualized return of that basket of digital assets was 1,984%. The high investment returns of many digital assets during this time period would give a reasonable investor confidence that the rising tide of digital assets would provide some downside protection for their investments in this space.

Figure 3. Price Index Chart of Top 100 Digital Assets

36. Due to the strong correlation between digital assets and high returns across the entire digital asset space, a reasonable purchaser of Grams familiar with the digital asset space would consider this robust market for digital tokens as an added reason to purchase Grams with the intent to profit. Indeed, the correlation between the daily market returns of individual digital assets and the daily market return of Bitcoin was positive for the vast majority of digital assets in 2017.¹⁵

5.5 Investment Terms and Investor Exit

37. According to the Telegram offering documents and the TON whitepaper, the total potential supply of five billion Grams would be allocated to five broad categories, with different rights,

¹⁵ Hu, A., Parlour, C. A., & Rajan, U., *Cryptocurrencies: Stylized Facts on a New Investible Instrument*.

restrictions, and uses associated with each category.¹⁶ Approximately 2.25 billion Grams are allocated for the First Round investors. These investors are subject to a lock-up period that restricts the sale of Grams, with 25% of their Grams available for sale 3, 6, 12, and 18 months after network launch. Approximately 639 million Grams are allocated to the second round of investors. 500 million Grams are allocated to the incentives pool for customers and companies participating in the TON ecosystem. 200 million Grams are allocated to the developer pool for Telegram employees. The Grams in the developer pool are to be subject to a vesting period and therefore will not be immediately available for sale. Finally, at the time of network launch the TON Reserve is planned to have control of the remaining 1.4 billion Grams.

38. In a typical securities offering, the issuing organization has the power to dilute current security holders or suppress the price of the asset through additional sales at low prices. Telegram created a price formula that sets the minimum price at which Gram sales may occur by the TON Reserve. This price is well above the price at which the Initial Purchasers bought their Grams. The existence of the price floor substantially assuages concerns by the Initial Purchasers that their potential for profit will be negatively impacted when the Ton Reserve sells Grams. The Gram Reference Price formula guarantees that the sale price of the Grams increases exponentially as a function of the number of Grams that have been put into circulation. The reference price formula is given by:

$$p(n) = 0.1 \cdot e^{10^{-9}n}$$

where n is the number of Grams in circulation. This formula dictates that the first Gram is sold for a price of \$0.10, and the final Gram under the total initial supply cap is sold for a price of \$14.84, a total increase of more than 14,700% from the first Gram in circulation to the last Gram in circulation. Based on the \$850 million in Grams expected to be sold to the First Round and the \$1.7 billion in Grams Telegram told the Initial Purchasers it expected to raise in subsequent rounds, the anticipated Reference Price at launch would have been \$2.65.¹⁷ This price was substantially, indeed enormously, higher than what the Initial

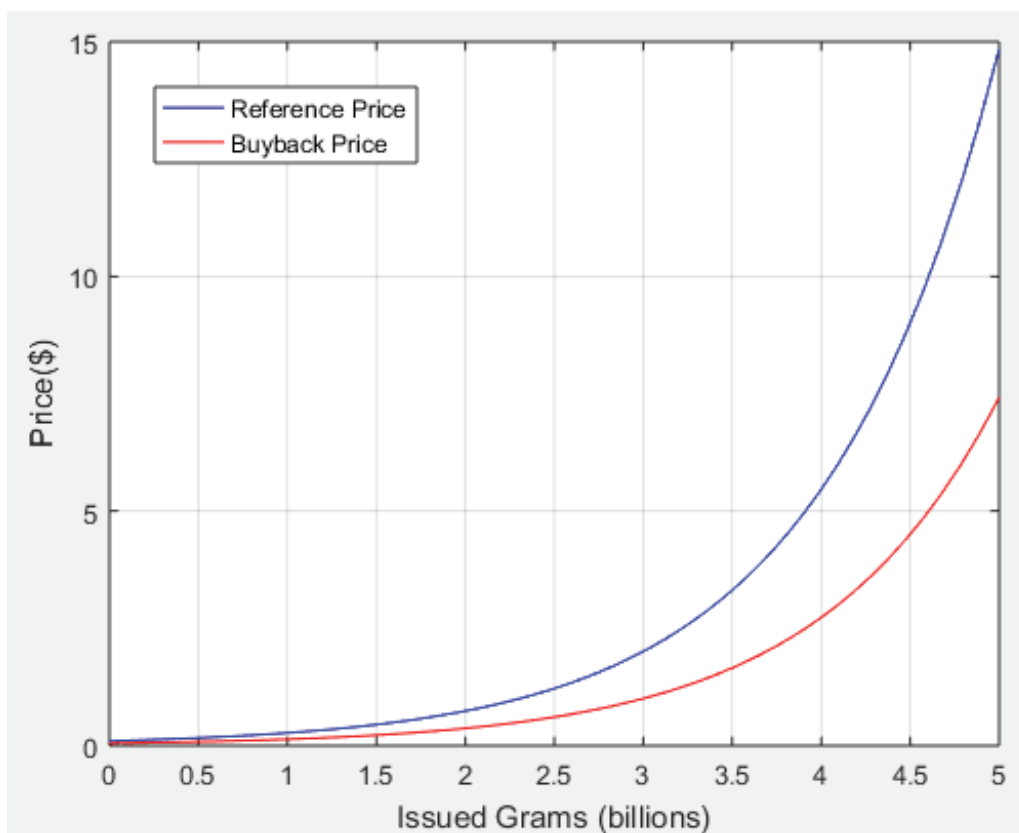
¹⁶ Second Supplemental Memorandum to the Staff of the Securities and Exchange Commission, p. 4.

¹⁷ This calculation excludes an additional 700 million Grams that Telegram at some point deemed issued for purposes of calculating the Reference Price. Including these additional 700 million Grams would raise the

Purchasers paid for their Grams, thereby assuring them that Telegram would not reduce their chance to profit from their investment by selling Grams into the market at prices below their purchase price or even anywhere remotely near that price.

39. In addition to a guaranteed minimum sale price received by the TON Reserve as it sells Grams, the TON Reserve also told potential purchasers that it was setting up a mechanism to engage in Gram buybacks in order to boost the price of Grams directly by increasing demand for Grams and reducing the remaining supply of Grams in circulation.¹⁸ According to the TON whitepaper, these buybacks “may help prevent sudden falls” in the price of a Gram. The buyback price occurs at or below a value of one half of the Reference Price shown in the preceding paragraph. Figure 4 shows the minimum sale price and the buyback price of Grams as they are put into circulation.

Figure 4. Gram Price vs Grams in Circulation



hypothetical Reference Price in this calculation from \$2.65 to \$5.34. This topic is discussed in greater detail in Paragraph 47.

¹⁸ Telegram Open Network Whitepaper, TG-001-00000080—211, p. 131.

40. The unique buyback mechanism described in the TON whitepaper is significant in that Telegram is sending the signal to potential purchasers that it may actively protect investors from losing all, or indeed, any of their money. Although Telegram makes clear that they are not legally obligated to complete such a buyback, the very existence of this buyback program sends a strong signal to investors that Telegram will act to reduce their risk of loss on their purchase of Grams. In my experience and opinion, a reasonable purchaser would read this section of the whitepaper and receive the clear message that Telegram intends to spend its own capital, if necessary, to lower the risk and increase the expectation of profit from the purchase of its Grams.

41. In essence, Telegram communicated to potential Gram purchasers that it will refrain from selling Grams in a manner that would adversely impact the Gram holders' profit potential and that it stands ready to provide price support by purchasing Grams if the market price significantly decreases. Furthermore, since there is an initial cap of five billion Grams that may be put into circulation, Telegram will reach a point at which it can no longer sell new Grams at all. After that point, the price of a Gram would be able to freely appreciate while Telegram would still be able to provide price support if the Grams decrease in value.

42. My opinion as an observer and participant in digital asset markets is that Telegram's unique price support mechanisms would lead a reasonable purchaser of Grams to believe that Telegram is strongly supporting profit generation by the Initial Purchasers when they resell their Grams. This provides a strong incentive for potential purchasers to buy Grams with the expectation of achieving a profit through the efforts and protections of Telegram.

43. In addition, the Reference Price formula works in such a way that it ensures that both the First and Second Round Initial Purchasers will be guaranteed a profit if the market price of Grams tanks after launch and the TON Reserve implements its buyback program at the buyback price dictated by the Reference Price formula.

44. Approximately 3.59 billion Grams are deemed to be in circulation at the TON network launch. This includes the Grams sold to the Initial Purchasers plus two pools of Grams allocated towards incentive payments for developers and other parties participating in the TON ecosystem. Given this number of circulating Grams, the Reference Price at network launch is approximately \$3.62 per Gram. The corresponding buyback price therefore starts at \$1.81 per Gram. The initial round of investors purchased at an average price of just under \$0.38 per Gram, and the second round of investors purchased at an average price of just over \$1.33 per Gram.

45. When Telegram purchases Grams according to the Reference Price formula, the number of issued Grams will shrink and the buyback price will decrease accordingly. Accounting for this decrease, the total amount of money distributed to investors during a buyback is given by:

$$M(n, \Delta n) = 0.5 \cdot 10^9 \cdot p(n - \Delta n) \cdot (e^{10^{-9} \cdot \Delta n} - 1)$$

where n is the number of Grams in circulation before the buyback and Δn is the number of Grams purchased by Telegram during the buyback. Using these formulas, one can calculate the amount of money that would be returned to each category of investor if Telegram executed a buyback starting at the Reference Price at network launch. Since the Round One investors have sale restrictions at the time of network launch, Round Two investors will be able to sell back their entire supply of tokens first, after which Round One investors can sell back their tokens after the sale restrictions are lifted. Table 1 shows the original investments, average buyback price, and amount received from buybacks for each of the initial rounds of investors under the scenario where the entire round of investors sell their Grams back to Telegram in a buyback.

Table 1. Initial Investment and Buyback Amounts For Each Investment Round

Investor Group	Round One Investors	Round Two Investors
Grams Owned	2.25 Billion Grams	639 Million Grams
Average Purchase Price	\$0.378	\$1.330
Average Buyback Price	\$0.380	\$1.339
Investment Amount	\$850 Million	\$850 Million
Buyback Amount	\$856 Million	\$856 Million

46. These results demonstrate that the buyback policy will return all of the purchasers' initial investments in the case of a falling Gram price right after network launch, plus a small profit. If the price of Grams stays high after the network launch and more Grams are sold from the TON Reserve, then the reference price and buyback price will increase further to provide an even greater margin of safety for the Initial Purchasers.

47. There is one additional feature of the Reference Price formula that is significant for this analysis. At the time of network launch, none of the 700 million Grams allocated collectively to the incentive pool and developer pool will have vested and/or otherwise be available for use or resale on exchanges. Despite this, Telegram considers all 700 million of those Grams as already issued for the purpose of calculating the Reference Price. This policy decision is significant in that it increases the Reference Price at launch from \$1.80 to \$3.62 and therefore also increases the buyback price at the network launch (half the Reference Price) from \$0.90 to \$1.81, thereby doubling the buyback price. This 100% increase in the Reference Price is arbitrary, improves the risk profile of the Round 1 and Round 2 investments substantially, and gives an even greater assurance that investors will get their original investments back in the worst case.

48. Furthermore, the Reference Price formula is inherently flawed if it is intended to be a mechanism to promote price stability in order to encourage purchases of Grams for use as currency or to buy goods and services, as opposed to as an investment opportunity. Mass-adoption of a token as a

medium of exchange and an alternative to cash and credit cards requires a token that maintains a steady value over time. For this reason, many other digital assets that are attempting to gain widespread adoption as a payment solution have put mechanisms in place to peg their value to a fiat currency such as the U.S. Dollar. So-called “stablecoins,” such as Tether, DAI, and USDC also attempt to influence the price of their tokens over time, but stablecoins use a very narrow band of allowable prices rather than encouraging a 100-fold or greater price appreciation like Grams. An asset that can rapidly and/or substantially increase in value encourages investment, speculation, and hoarding. Such potential for rapid and/or substantial price appreciation, with the attendant risks of rapid and/or substantial price decreases, does not encourage consumers to purchase such a digital token to buy everyday goods and services. Neither does it encourage businesses to agree to accept such tokens as payment, given the high risk of rapid and wide price changes from day to day. Businesses prefer not to constantly recalculate and change the posted price for their goods or services when a currency’s value changes dramatically.

6. Conclusion

49. My professional experience as an investor and analyst of the digital asset space leads me to conclude that a reasonable purchaser of Grams during Rounds One and Two would consider that purchase to be an investment with the expectation of earning profits. Those investment profits would reasonably be expected to be realized by selling the Grams to other public investors later at a higher price, with the profitability of this activity dependent on the future work of Telegram to build a successful TON Blockchain ecosystem and a Gram that was in high demand on or after the launch of the TON Blockchain.

50. A standard framework of investment analysis provides the basis for this conclusion. Team, product strategy, total addressable market, market dynamics, and investor exit including deal terms are the primary factors considered to determine the viability of an early stage investment. Those factors were all thoroughly addressed by the TON whitepaper and other promotional materials in order to convince a potential purchaser that Grams would make a good investment. The team credentials

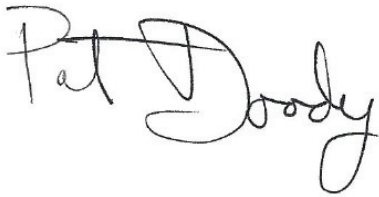
highlighted the Telegram leadership's previous success in building valuable companies. The product strategy was described as a plan to develop appealing technology and attract hundreds of millions of users onto the platform. A massive potential total addressable market, including the trillion-dollar commercial global payments space, makes for an investment opportunity that is sufficiently large to provide high upside for early investors. The deal terms and investor exit support offered by Telegram to the Initial Purchasers include a purchase price for Grams that is a steep discount to the anticipated Reference Price at launch. The Reference Price policy strongly supports the profitability of an investment in Grams through company sale restrictions and direct buybacks if necessary.

51. In contrast, significant aspects of Telegram's anticipated TON Blockchain would not motivate a reasonable person looking to purchase a digital token to buy or sell goods and services to buy Grams during Rounds One and Two for that purpose. The exponential rise in the reference price as Grams are issued is actually counterproductive to that goal, as consumers and businesses do not prefer to transact with strongly appreciating assets to buy everyday goods and services. A pegged digital asset would have been much more attractive for that use-case. Furthermore, it would not make sense for a business or customer to tie up substantial capital (\$1 million minimum for natural persons and \$10 million for entities) and endure price swings for a year or more just to buy a currency that can be purchased as it is needed in the future. Basically, a reasonable purchaser at the time of the Gram offering would decide to buy Grams based on the investment potential for profit and not for the potential future consumptive use possibilities for Grams.

52. Furthermore, my professional experience leads me to believe that a reasonable purchaser of Grams at the time of the network launch is likely to make that purchase as an investment with the expectation of profit based on the further development of the TON Blockchain ecosystem. Most of the investment factors discussed in this report apply equally to the Initial Purchasers and to the Launch Purchasers. To the extent that some applications and software features of the TON Blockchain may be functional at the time of launch, some of the Launch Purchasers may buy Grams to use those features. However, based on my review of Telegram's list of applications and services expected to be available at

launch, as described in Response to the SEC's Interrogatory Number 5, such applications are minimal and the TON Blockchain's offerings are still in their infancy compared to the potential future ecosystem Telegram has promoted in its offering materials. For example, I am not aware that any major vendor has agreed to accept Grams as a form of payment. This limits the number of persons and entities likely to be interested in purchasing Grams at launch for consumptive use, as opposed to purchasing Grams with the expectation of earning an investment profit as Grams increase in value when the TON Blockchain matures and more applications and uses become available.

53. The opinions expressed in this report are based on my review and analysis of the documents that I have reviewed. I reserve the right to supplement my report and analysis based on any new evidence brought to my attention.

A handwritten signature in black ink that reads "Pat Doody". The signature is written in a cursive, stylized font. The "P" is large and loops around the "at". The "Doody" is written in a similar cursive style with a large "D" and a trailing flourish.

Patrick B. Doody



Pat Doody

Blockchain Data Scientist

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KEY QUALIFICATIONS AND EXPERIENCES

- 17 years of experience investing in equities, commodities, bonds, and foreign exchange, including futures and derivatives trading
- 3 years of experience investing in digital assets on spot and futures markets
- 10 years of experience developing algorithmic trading strategies across multiple asset classes, first in traditional financial markets and later in digital assets
- Deep knowledge of digital assets markets, including ICO market and arbitrage strategies
- Led data-driven investigations in digital assets fraud cases involving money laundering, market manipulation, and misappropriation of funds
- Founded two technology companies; experience pitching and raising funds from venture capital investors

EDUCATION

University of Texas at Austin, Austin, TX
M.S., Electrical Engineering, May 2010

Rice University, Houston, TX
B.S., Electrical Engineering, May 2006
Honors: magna cum laude

PROFESSIONAL EXPERIENCE

Lily Pad Capital, LLC, Austin, TX
Founder and CEO

2016 – *Present*

- Founded a quantitative investment partnership originally focused on investments in the digital assets space, and later on long-term equity investments as well as derivatives strategies in equity, commodities, and currency markets
- Developed, executed and optimized cryptocurrency arbitrage strategies, focusing on arbitrage opportunities between spot and futures markets
- Analyzed and valued investment opportunities in digital assets markets
- Led the design software and processes to automate execution of multiple investment strategies, identify arbitrage opportunities, manage counterparty risk, and securely store digital assets
- Developed derivatives trading strategies utilizing machine learning and statistical signal processing techniques

Integra FEC, Austin, TX
Blockchain Data Scientist

2019 – Present

- Led data-driven investigations in digital assets fraud cases involving money laundering, market manipulation, and misappropriation of funds
- Built statistical tools to analyze trading data and algorithmically identify manipulative trading activity
- Developed custom software and data analysis solutions to trace, cluster, and deanonymize cryptocurrency transactions
- Analyzed activity patterns in smart contracts, ERC-20 tokens, and fund transfers on the Ethereum blockchain to identify fraudulent financial activity

Goco Sensors, Inc, Burlington, MA
Founder and CEO

2015 – 2016

- Founded a technology company that developed automotive radar for autonomous vehicles
- Designed radar hardware and signal processing algorithms to enable automated detection of objects in a vehicle's environment
- Managed the company's engineering, fundraising, and recruiting efforts

MITRE Corporation, Bedford, MA
Senior Engineer

2013 – 2015

- Designed, modeled, tested, and defined requirements for multiple large radar projects

MIT Lincoln Laboratory, Lexington, MA
Associate Technical Staff

2010 – 2012

- Developed signal processing algorithms for airborne radar systems

Ercot, Taylor, TX
Research Assistant

2007 – 2009

- Implemented market rules for electricity spot and derivatives trading and tested software for ERCOT's real-time and day-ahead nodal market clearing engine

Documents I relied upon to complete my analysis

SEC vs. Telegram Group Inc. Protective Order

Telegram Group Inc. Purchase Agreement for Grams (TG-001-00000014—53)

Telegram Group Inc. Purchase Agreement for Grams, Stage A of the Subsequent Sale (TG-003-00000223—251)

Telegram Group Inc. Indication of Interest, Stage A of the Subsequent Sale

Telegram Group Inc. Indication of Interest, Round 1 (BC000323)

Telegram Open Network – Four Page Teaser (SC-00000002—5)

Telegram Open Network Whitepaper (TG-001-00000080—211)

Telegram Open Network Whitepaper (RIB_TG_00014740-14871)

Telegram Open Network Pre-sale Primer (RIB_TG_00014872—97)

Telegram Open Network Stage A Primer (TLGRM-008-00005149)

Email to Potential Second Round Investors from John Hyman (TG-005-00011292)

Telegram Open Network Primer

Process Memorandum for Entering into a Purchase Agreement for Grams (RIB_TG_00014907—53)

Email Regarding Private Placement Update from John Hyman (RIB_TG_00014739)

Risk Disclosure Regarding Purchase, Sale, and Use of Grams (RIB_TG_00014898—906)

Supplemental Notices to Residents of Certain Areas (TG-003-00000223—51)

Second Supplemental Memorandum to the Staff of the Securities and Exchange Commission

Defendants' Responses and Objections to Plaintiff's First Set of Interrogatories

Outside reference materials cited in the report

Roberts, M. J., & Barley, L., How venture capitalists evaluate potential venture opportunities, Harvard Business School Research and Ideas, May 2005.

Hu, A., Parlour, C. A., & Rajan, U., Cryptocurrencies: Stylized Facts on a New Investible Instrument.

McKinsey and Company, Global Payments Report 2019.

Data sources

Digital asset volume and price data from coinmarketcap.com