

EXHIBIT 2

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

Civil Action
No.
20-cv-10832
(AT) (SN)

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

Defendants.

November 18, 2021

9:29 a.m.

Videotaped Deposition of [REDACTED],
taken by Defendants, held at the offices of
Debevoise & Plimpton LLP, 919 Third Avenue,
New York, New York, before Joseph R. Danyo, a
Shorthand Reporter and Notary Public within
and for the State of New York.

Job No. 202259

A P P E A R A N C E S :

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Also Present:

LARRY MOSKOWITZ, Videographer

~oOo~

1 [REDACTED] - Confidential Pursuant to Protective Order

2 THE VIDEOGRAPHER: Good morning,
3 this is the start of media label number 1
4 of the video-recorded deposition of [REDACTED]
5 [REDACTED] in the matter of Securities and
6 Exchange Commission versus Ripple Labs,
7 Inc., et al. This deposition is being
8 held at Debevoise & Plimpton, 919 Third
9 Avenue, New York, New York on November 18,
10 2021 at approximately 9:29 a.m.

11 My name is Larry Moskowitz, and I am
12 the legal video specialist with TSG
13 Reporting, Inc., headquartered at 228 East
14 45th Street, New York, New York. The
15 court reporter is Joe Danyo, also in
16 association with TSG Reporting. All
17 counsel appearances will be noted on the
18 stenographic record.

19 Will the reporter please administer
20 the oath.

21 [REDACTED], having been first
22 duly sworn by Joseph R. Danyo, a Notary Public,
23 was examined and testified as follows:

24 EXAMINATION BY MS. GRESSEL:

25 Q. Good morning, Mr. [REDACTED]. My name

1 [REDACTED] - Confidential Pursuant to Protective Order
2 is Anna Gressel and with me is my colleague
3 Andrew Ceresney. We're attorneys at Debevoise &
4 Plimpton, and we represent defendant Ripple Labs
5 in this case. This is an expert witness
6 deposition in the case of SEC versus Ripple Labs
7 pending in the Southern District of New York.

8 Before we go any further, I would
9 like to designate as confidential this transcript
10 pursuant to the protective order in this case.
11 Is there any reason why you cannot testify
12 completely and truthfully today?

13 A. No.

14 Q. Are you taking any medication or
15 suffering from any medical or other physical
16 condition that would prevent you from testifying
17 completely and truthfully?

18 A. No, I'm not.

19 Q. Please state your full name for the
20 record.

21 A. [REDACTED].

22 Q. Do you sometimes go by [REDACTED]?

23 A. Yes, I do.

24 Q. What's your home address?

25 A. 20612 Chestnut Ridge Drive, North

1 [REDACTED] - Confidential Pursuant to Protective Order
2 Fort Myers, Florida.

3 Q. Alright. Mr. [REDACTED], your
4 testimony today is under oath. It may be taken
5 down by a stenographer and videographer, and it
6 may be read or played at trial or used for other
7 purposes related to this lawsuit. Is that
8 understood?

9 A. Yes.

10 Q. Because the court reporter is taking
11 down all of the testimony, it is important your
12 answers be verbalized. Please always give a
13 clear spoken answer rather than nodding or
14 shaking your head. Okay?

15 A. Yes.

16 Q. Great. In addition, it is important
17 that you allow me to finish my questions before
18 you begin your answer, so we don't talk over each
19 other. Okay?

20 A. Yes.

21 Q. If you don't understand my question,
22 ask me to clarify. If you answer a question, I
23 will assume you understood it. Okay?

24 A. Yes.

25 Q. We will take breaks during the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 deposition. If at any time you need one, just
3 let me know. I will just ask that you wait
4 until the question pending has been answered and
5 we can take a momentary pause.

6 A. Thank you so much.

7 Q. Great. Have you ever been deposed
8 before?

9 A. Yes, I have.

10 Q. How many times?

11 A. I believe it was five or six. It is
12 in my resumé which is attached to my report. I
13 didn't add them up before I came, so it's
14 probably right around that number.

15 Q. And all the times you have been
16 deposed have been disclosed in your report?

17 A. Yes, they have. Well, the last ten
18 years. There may have been one or two prior to
19 the last ten years.

20 Q. For the purpose of this deposition, I
21 am going to refer to defendant Ripple Labs as
22 Ripple. Is that okay?

23 A. That's fine.

24 Q. I am also going to refer to the
25 defendants Ripple, Brad Garlinghouse or Chris

1 [REDACTED] - Confidential Pursuant to Protective Order
2 Larsen either individually or collectively as
3 defendant or the defendants. Okay?

4 A. Yes.

5 Q. What did you do to prepare for your
6 deposition today?

7 A. Basically I went through my report in
8 great detail, looked again at whatever cites were
9 footnoted, the attachments to the report, my CV
10 to make sure it was in order. That's basically
11 it.

12 Q. And how long did you prepare?

13 A. Approximately 8 hours, basically one
14 day.

15 Q. Did you meet with counsel?

16 A. Yes, I did.

17 Q. With the counsel present today?

18 A. Yes.

19 Q. Did you speak with anyone else to
20 prepare for your deposition?

21 A. No, I did not.

22 Q. Did you review any documents other
23 than the ones disclosed in the appendix to your
24 report or cited in your report?

25 A. No, I did not.

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2 Q. Okay. Did you make any notes?

3 MR. HANAUER: Objection. At what
4 time did he review documents?

5 Q. During your preparation for the
6 deposition.

7 A. I don't believe so.

8 Q. Did you bring any documents with you
9 today?

10 A. No, I did not.

11 Q. How did you come to be engaged in
12 this case?

13 A. I received a call from the SEC. Mr.
14 Dugan Bliss, who asked if I was interested in
15 helping out on this particular case.

16 MR. HANAUER: [REDACTED], I am just going
17 to instruct you not to get into any
18 specifics of what you and anyone at the
19 SEC talked about.

20 THE WITNESS: Sure.

21 A. We reviewed my qualifications and so
22 on, and they go through a process of selecting
23 experts. I don't know exactly what it is, but,
24 you know, he looked at my credentials, went back,
25 and a couple of days later I got an e-mail back

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2 saying they want to talk to me further, and we
3 did that, and then they retained me.

4 Q. Do you have a written retention
5 agreement?

6 A. I do. I have a contract. Yes.

7 Q. At that point, what did you
8 understand your assignment to be?

9 A. Well, it is in my report, but, to
10 verbalize it, it is basically to ensure that the
11 court, the jury particularly, is educated as to
12 basically what is involved in, A, the securities
13 acts overall and the importance, primarily the
14 importance of disclosures in the securities laws
15 and how over the years those concepts have been
16 applied in various circumstances.

17 Q. Since your initial retention, has the
18 scope of your assignment changed?

19 A. No.

20 Q. Okay. Have you been engaged before
21 by the SEC?

22 A. Yes.

23 Q. How many times before?

24 A. I believe it is 20.

25 Q. Were all of those engagements for

1 [REDACTED] - Confidential Pursuant to Protective Order
2 expert witness work?

3 A. No. Some of it was consultancy.

4 Q. What is the nature of the consulting
5 work you have done for the SEC?

6 MR. HANAUER: Generally.

7 A. Generally, they would send me
8 documents to take a look at, get my opinion as to
9 whether my opinion would jibe with their thinking
10 on possibly bringing a case, for example, so I
11 would consult with them on different -- well,
12 let's take, for example, a trading case or a
13 market manipulation case. I would look at
14 trading data for them and make a recommendation
15 as to whether, you know, they were on the right
16 track or not basically.

17 Q. When you say you would look at
18 trading data for them, what does that usually
19 involve?

20 A. I'm sorry. I have trouble hearing.

21 Q. When you say you look at trading
22 data, what does that normally involve?

23 A. Oh gosh, a lot of data, a lot of
24 trading records, audit trail, quotation
25 information, bids and offers. Sometimes I look

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2 at press releases by issuers. If there is a
3 promotion involved, I will look at that, so it is
4 a wide variety of things.

5 Q. Did they ask you to look at any
6 trading data in this case?

7 A. No.

8 Q. Or any press releases?

9 A. No.

10 Q. Okay. Did they retain you in each
11 of those matters, or do you have a standing
12 retention?

13 A. Well, I believe on some cases they
14 did retain me. In other cases based on, you
15 know, conversations back and forth. I think they
16 elected at least in one case, maybe two, to not
17 move forward with the case, so they dropped it.

18 Q. Okay. What about your expert
19 testimony? In what kinds of cases have you
20 offered expert testimony?

21 A. Well, there are a number of different
22 venues I have offered testimony in. FINRA
23 arbitrations. I have done a number of work for
24 the U.S. Attorney in LA and Tampa. When you say
25 expert, are you saying that I have been

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2 designated and approved as an expert in a court
3 or just generally?

4 Q. I would say retained for the purpose
5 of potentially offering expert testimony in a
6 case.

7 A. Okay. So, you know, I have been
8 retained by law firms to take a look at certain
9 situations. So it is a wide variety of
10 different clients. I have worked for the London
11 stock exchange on an expert case that they had.
12 So it is, I would say the SEC constitutes maybe
13 50 percent of my engagements maybe.

14 Q. And you work with the same SEC
15 attorneys on those matters you do for the SEC?

16 A. There may have been an overlap in one
17 or two cases, but generally it is different
18 attorneys.

19 Q. Did you review any documents from
20 your prior work for the SEC in connection with
21 this matter?

22 A. I don't believe so.

23 Q. Is the majority of your expert
24 witness work on behalf of the government?

25 A. No. Well, it's about 50 percent, I

1 [REDACTED] - Confidential Pursuant to Protective Order
2 would say.

3 Q. 50 percent for the SEC or 50 percent
4 for any government agency?

5 A. Well, the U.S. Attorney was about
6 three cases, so slightly over 50 percent.

7 Q. Okay. So about 50 percent for the
8 SEC, and then just three additional cases for
9 other government agencies?

10 A. Yes.

11 Q. Okay. Did anyone assist you in
12 connection with your work on this case?

13 A. No.

14 Q. Okay. In general with your expert
15 witness work, does anyone ever assist you with
16 your expert witness work?

17 A. You mean in forming an expert opinion
18 or doing clerical work or exactly what do you
19 mean by assistance?

20 Q. Does anyone assist you in your expert
21 work with research?

22 A. No.

23 Q. Does anyone assist you in your expert
24 work with, you said clerical assistance?

25 A. Yes.

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2 Q. Perhaps you could tell me how you
3 define that?

4 A. Well, if you want the explanation,
5 there was a couple of cases where my daughter who
6 is pretty good in Excel would take the massive
7 amounts of trading data that I want to look at
8 and put it in there while I did other things.

9 Q. Okay, and no one assisted you in any
10 manner with your work in this case?

11 A. They did not.

12 Q. Okay. I am going to hand you what
13 has been marked as Defendant's Exhibit [REDACTED] 1.

14 (Defendant Exhibit [REDACTED] 1, Report of
15 [REDACTED] dated October 4, 2021, was
16 so marked for identification, as of this
17 date.)

18 Q. Mr. [REDACTED], is this a copy of the
19 report that you prepared in connection with this
20 case?

21 A. Yes, it appears to be, sure.

22 Q. And that is your signature on page
23 30, right?

24 A. It is electronic. Yes.

25 Q. And your report is dated October 4,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 2021, correct?

3 A. It is.

4 Q. This is the current version of your
5 report, right?

6 A. Yes.

7 Q. So throughout this deposition I may
8 refer to this as Exhibit [REDACTED] 1 or I may just call
9 it your report. Is that okay?

10 A. Sure.

11 Q. Your report lists 19 documents in
12 Exhibit A which is appended to the report at the
13 end. Is that right?

14 A. I didn't count them, but if you say
15 so, yes.

16 Q. You can take a moment to look at it.
17 And you understand you are obligated to disclose
18 any facts or data that you considered in forming
19 your opinions, right?

20 A. Yes.

21 Q. Apart from the information contained
22 in the documents identified in the report or in
23 Exhibit A to the report, did you consider any
24 other facts or data in forming the opinions
25 stated in your report?

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2 A. If I did, they are all documented in
3 footnotes within the report.

4 Q. Okay, so the footnotes including the
5 footnotes and Exhibit A to your report, you
6 disclosed all of the documents and data you
7 considered?

8 A. Yes.

9 Q. Did you do any research that is not
10 reflected in the materials listed in Exhibit A or
11 in the footnotes to your report?

12 A. I did.

13 Q. What additional research did you do?

14 A. Just general perusing of the internet
15 trying to familiarize myself more with the
16 cryptocurrency space in general just for my own
17 edification.

18 Q. What steps did you take to do that
19 research?

20 A. You know, basically do a search and
21 look at articles, look at certain YouTube videos
22 that purport to teach everybody about crypto and
23 so on, so there is a whole variety of things that
24 you can look at.

25 Q. So the nature of -- it would answer

1 [REDACTED] - Confidential Pursuant to Protective Order
2 the nature of questions like what is a block
3 chain?

4 A. Yes.

5 Q. What is a digital asset?

6 A. Sure.

7 Q. Maybe what is Ripple? Did you do
8 any research on what Ripple is?

9 A. Yeah, I did, just so I could
10 familiarize myself with what Ripple does and what
11 their product was and what XRP was. I thought
12 that was important for my understanding of the
13 facts here.

14 Q. Do you recall what sources you
15 consulted?

16 A. For Ripple?

17 Q. Yes.

18 A. Mostly a website.

19 Q. Mostly Ripple's website?

20 A. Yes. You know, there are certain
21 blogs that are on YouTube regarding Ripple and
22 XRP has gone to a thousand, you know, those I
23 kind of look at, but discount, I mean I don't put
24 much faith in those, but basically I would say
25 the Ripple website is the primary one.

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2 Q. So you primarily consulted Ripple's
3 website to learn more about Ripple and other
4 sources you may have looked at but discounted, is
5 that accurate?

6 A. Right. Yeah, I think that is
7 accurate.

8 Q. And what websites do you consult to
9 learn about block chains generally?

10 A. Well, if you look at my resumé, I
11 mean I have an extensive technology background in
12 addition to being a regulator, and I found it
13 interesting that the technology in fact is
14 evolving. I think the jury is out on whether it
15 will be a success or not. It's for the
16 marketplace to figure out, but it was kind of
17 interesting to read, you know, about
18 decentralization, cryptography and so on. So it
19 is all up my alley and my background and so on.

20 Q. When you say the jury is out on
21 whether it will be successful, do you mean block
22 chain technology as a whole?

23 A. Yes.

24 Q. When you said you read about
25 decentralization and cryptography, do you recall

1 [REDACTED] - Confidential Pursuant to Protective Order
2 the sources that you looked at in your research?

3 A. Not specifically, no.

4 Q. Prior to doing the research, were you
5 familiar with block chain technologies?

6 A. You know, just what I read in the
7 Wall Street Journal or, you know, whatever, you
8 know, I would follow with great interest the
9 phenomenon if you would. That's about it.
10 Just curiosity.

11 Q. Prior to your work on this matter,
12 were you familiar with digital assets?

13 A. Somewhat. I wouldn't consider
14 myself an expert in digital assets, but I kind of
15 knew what they were. Sure.

16 Q. Prior to your work on this matter,
17 had you ever heard the term decentralization of a
18 block chain, for example?

19 A. No.

20 Q. Prior to your work on this matter,
21 were you familiar with cryptography?

22 A. Generally, yes.

23 Q. In what sense were you familiar?

24 A. Well, you know, cryptography was
25 important to winning World War II.

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2 Q. Very true. Okay. Great. Prior
3 to your work on this matter, were you familiar
4 with cryptography as it was used in digital
5 assets?

6 A. You know, I don't know what the
7 timing was, but probably either in preparation
8 for them making an offer for me to be an expert
9 because I felt I had to learn about it. I don't
10 know if it was after the engagement, immediately
11 before the engagement, so I'm not sure of the
12 timing, but it was in the context of the
13 engagement.

14 Q. Other than doing research on the
15 Internet or looking at Ripple's website, those
16 were the sources you mentioned, did you speak to
17 anyone about block chain technologies or digital
18 assets to learn further about them?

19 A. No, I did not.

20 Q. Did you ask the SEC to provide you
21 with any further resources on or explanations of
22 those technologies?

23 A. No.

24 Q. Okay. Did you read any of the other
25 expert reports submitted in this matter?

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2 A. I did not.

3 Q. Are you aware that there were other
4 expert reports submitted in this matter?

5 A. No. Just, you know, just because
6 you mentioned them. Not before that.

7 Q. Sitting here today, you wouldn't be
8 able to name any other expert?

9 A. I would not. No.

10 Q. Okay. Did any of the attorneys at
11 SEC provide you with any other documents or
12 information that are not reflected in Exhibit A
13 to your report or in the footnotes?

14 A. No.

15 Q. Did you request any information that
16 was not provided to you?

17 A. No.

18 Q. Okay. Have you reviewed any other
19 documents or information since you signed the
20 report that are relevant to the opinions you
21 expressed since October 4?

22 MR. HANAUER: Other than what?

23 Q. Other than the documents listed in
24 Exhibit A or reflected in the footnotes to your
25 report?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. I don't believe so. No.

3 Q. Okay. Did you create or maintain a
4 file containing your research and search history
5 related to your research?

6 A. No. Just what's reflected in the
7 report, in the footnotes. I put the URL sites
8 and the Internet sites.

9 Q. You put in the Internet sites of some
10 of your research but not other things like
11 YouTube or Ripple's?

12 A. No. You guys have Lexis.

13 Q. Okay, but, just to be clear for the
14 record, you did not include the research that you
15 did on block chain or on Ripple in the footnotes
16 or Exhibit A?

17 A. No.

18 Q. Okay. Mr. [REDACTED], among the
19 documents listed in Exhibit A are the SEC's
20 amended complaint and Ripple's answer to the
21 SEC's amended complaint, correct?

22 A. Yes.

23 Q. Did you review the allegations in the
24 amended complaint?

25 A. I did.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. And did you review Ripple's responses
3 to those allegations and the answer to the
4 amended complaint?

5 A. I did.

6 Q. Have you been instructed by the SEC
7 to rely on the facts as set forth in the amended
8 complaint?

9 A. No.

10 Q. Okay. Have you independently formed
11 a view as to the truth or falsity of the
12 allegations in the amended complaint?

13 A. I have not.

14 Q. Okay. Did counsel for the SEC ask
15 you to make any assumptions in connection with
16 your report?

17 A. Assumptions regarding?

18 Q. Any facts or legal conclusions? Did
19 they ask you to assume as true any facts for the
20 purpose of your analysis?

21 A. No.

22 MR. HANAUER: Objection. Beyond
23 the ones he identifies in his report?

24 Q. Why don't we start with that. What
25 did the SEC ask you to assume -- sorry. Let me

1 [REDACTED] - Confidential Pursuant to Protective Order
2 rephrase that. What facts did the SEC ask you
3 to assume as true for the purpose of your report?

4 A. What facts?

5 Q. Um-hum.

6 A. Facts concerning the complaint
7 itself. Is that what you're saying?

8 Q. Any facts underlying the report.
9 Did they ask you to assume those as true?

10 A. All they asked me to assume was to
11 approach the report as if Ripple would have been
12 required to register. That's basically the
13 assumption that underlies the whole report, and I
14 state that, I believe, right up front, so that
15 was, no further assumptions other than that one.

16 Q. Okay. Did they ask you to assume
17 any other legal conclusions to be true for the
18 purpose of your analysis?

19 A. No.

20 Q. Okay. So you say in your report that
21 the SEC or you said, you testified right now that
22 the SEC asked you to assume that Ripple's sales
23 or offers of XRP would have to be registered as
24 securities. Is that correct?

25 MR. HANAUER: Objection. He states

1 [REDACTED] - Confidential Pursuant to Protective Order
2 the assumptions explicitly in his report.

3 If you want to take them one by one,
4 please do, but it's not a memory test.

5 Q. Other than the attorneys for the SEC,
6 have you communicated with anyone else in
7 connection with your work on this case?

8 A. I have not.

9 Q. Mr. [REDACTED], could you please
10 describe the opinions you are offering in this
11 case?

12 A. Yeah, again, they are in the report,
13 and primarily, as I go back and restate, what the
14 SEC retained me for is primarily to provide the
15 jury with background concerning what the
16 securities acts are, how they form a framework,
17 if you will, for regulation on the industry, how
18 custom and practice and other things that are
19 typically carried out in the industry as they
20 relate, the public offerings, how that gets done,
21 what disclosures are triggered by registration,
22 both initially and ongoing, so it's how the SEC
23 has approached new and unique products over the
24 years and so on. So it's more of a tutorial, I
25 would say, than an opinion.

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2 Q. What do you mean when you say it is
3 more of a tutorial than an opinion?

4 A. Well, as I said before, it is
5 primarily to educate the jury as to what some of
6 these concepts are and the industry practices and
7 regulations in a general state, so that there is
8 a greater understanding by them of the context of
9 what the SEC is talking about with Ripple.

10 Q. So you view a tutorial as educational
11 for the jury, correct?

12 A. Yes.

13 Q. What is an opinion in contrast to
14 that?

15 A. With respect to these particular set
16 of facts?

17 Q. Sure. Why not?

18 A. You know, I mean I guess I could have
19 an opinion about a lot of things. I mean, so,
20 you know, I could offer an opinion as I do in
21 some of the other SEC cases as to whether, you
22 know, violations had occurred or if this set of
23 facts would indicate to a seasoned regulator that
24 violations have occurred, but I did not do that
25 here.

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2 Q. So you are not offering an opinion
3 here about whether any violations of any laws
4 occurred?

5 A. Correct.

6 Q. And you are not offering an opinion
7 as to the specific facts of this case?

8 A. I'm not. No.

9 Q. Mr. [REDACTED], this report contains
10 all of the opinions that you intend to offer in
11 this case, correct?

12 A. It does.

13 Q. I see on page 30 you have reserved
14 the right to supplement your report. As you sit
15 here today, do you have any reason to supplement
16 or revise your report?

17 A. No, I do not.

18 Q. Have you been asked by the SEC to
19 supplement your report in any way?

20 A. No, I have not.

21 Q. Sitting here today, do you intend to
22 further supplement or revise your report?

23 A. Unless asked, no.

24 Q. Have you been asked by the SEC to
25 perform any additional work in connection with

1 [REDACTED] - Confidential Pursuant to Protective Order
2 this case?

3 A. Not at the moment, no.

4 Q. Were you asked to analyze any issues
5 that are not reflected or discussed in your
6 report?

7 A. No.

8 Q. Have you performed any work not
9 reflected in your report other than the
10 background research on block chain and Ripple
11 that you discussed earlier?

12 MR. HANAUER: Related to what?

13 A. No.

14 Q. I can just restate the question. In
15 the course of your engagement for this matter,
16 have you performed any work not reflected in your
17 report?

18 A. I did not.

19 Q. Okay. Your report discloses in
20 Exhibit A that you received several of Ripple's
21 contracts concerning XRP sales as well as two
22 e-mails. Why did you consider these documents
23 in the course of your work on this matter?

24 A. Why did I consider them?

25 Q. Um-hum.

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2 A. They pertain to the disclosure
3 section where in my opinion I listed some of the
4 things if, you know, we are always going under
5 the basic assumption that if Ripple had
6 registered, okay? So these would be some of the
7 disclosures in my opinion that would be mandated
8 by that registration.

9 Q. Your opinion, and we can --

10 A. So that one relates to --

11 MR. HANAUER: Hold on, [REDACTED]. Let
12 her ask a question.

13 THE WITNESS: I'm sorry.

14 Q. Why did you think those contracts
15 were relevant to that part of your opinion?

16 A. Because I think it, as I said before
17 on these, it provides the basis for my comment
18 and the particular disclosure that it relates to.

19 Q. And which comment is that?

20 A. So, for example, the last one, Ripple
21 sales of XRP to institutional investors at
22 substantial discounts to current XRP market
23 price, for example.

24 So that set of e-mails and other
25 disclosures were the ones that would support

1 [REDACTED] - Confidential Pursuant to Protective Order
2 making -- my opinion of making that disclosure.

3 Q. Were you asked to provide any opinion
4 concerning Ripple's over-the-counter sales of
5 XRP?

6 A. I have not, no.

7 Q. Were you asked to provide an opinion
8 concerning the provisions in Ripple's contracts
9 related to sales of XRP?

10 A. No.

11 Q. Were you asked to provide an opinion
12 concerning Ripple's relationships with market
13 makers?

14 A. No.

15 Q. Were you asked to provide any other
16 opinion concerning Ripple's sales or offers of
17 XRP?

18 A. No.

19 Q. Let's turn to page 34 of your report
20 which is entitled Exhibit B, and there is a
21 heading CV and resumé.

22 A. Yes.

23 Q. Is that an accurate and current
24 statement of your resumé?

25 A. It is.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Okay. Let's turn back --

3 MR. HANAUER: Excuse me one second.

4 (Discussion off the record between
5 witness and his counsel.)

6 THE WITNESS: Just to make the
7 record clear, there is an error.

8 Q. Sure.

9 A. In my background in the report
10 actually. It says that from, and this is on
11 page 3 of my report, qualifications. It says
12 from -- bottom of the page, last paragraph, "From
13 1999 to 2004, I was senior vice president of
14 regulation and controls for NASDAQ, but, if you
15 look at the resumé, that is incorrect.

16 My tenure at NASDAQ started in
17 February of 2001 to 2004. From January of '99 to
18 February 2001, and again I'm in the next to last
19 page of my resumé where I talk about professional
20 experiences and selected accomplishments. From
21 1999 to 2001 I was senior vice president of
22 regulatory technology at NASD regulation.

23 Q. Okay. Thank you for the correction.

24 A. Sure.

25 Q. Under page 5 of your report and

1 [REDACTED] - Confidential Pursuant to Protective Order
2 continuing to page 6, you have the heading
3 "Testimony and publications last ten years." Is
4 that a complete and accurate listing of your
5 experiences giving testimony over the past ten
6 years?

7 A. Yes, it is.

8 Q. Have you testified in any other
9 matters since you signed your report?

10 A. No, I have not.

11 Q. You previously testified you have
12 been engaged on numerous occasions by the SEC,
13 correct?

14 A. I'm sorry, would you repeat that.

15 Q. You previously testified that you
16 have been engaged on numerous occasions by the
17 SEC, correct?

18 A. Yes.

19 Q. Okay. How many times have you
20 testified on behalf of defendants charged with
21 violations of the securities laws?

22 A. No testimony, but there was -- there
23 is three engagements. One had a deposition.
24 It is not on here, because it was prior to ten
25 years.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. So how many times have you been
3 engaged on behalf of defendants charged with
4 violations of the securities laws?

5 A. Three.

6 Q. Okay. What percentage roughly would
7 you say that is compared to all the times you
8 have been engaged to work as an expert witness on
9 a case?

10 A. Probably 10 percent.

11 Q. Mr. [REDACTED], how would you describe
12 your areas of expertise as an expert witness?

13 A. Areas of expertise?

14 Q. Um-hum.

15 A. Wow. That is a good question. You
16 know, I've been in the industry a long time. I
17 was at NASDAQ and NASD for approximately 32 years
18 and have been consulting ever since, so the range
19 of my engagements relate, you know, I think it's
20 in my resumé, but, you know, it is a wide
21 spectrum of expertise.

22 I have testified on best execution,
23 market maker compensation, sales credits, insider
24 trading, you know, I can keep going, but it's a
25 wide variety.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Most recently I testified in a court
3 case for the SEC in Tampa this summer where it
4 was rule 15c2-11 which is market-making rules.
5 So it's a wide spectrum of NASD and FINRA
6 regulations.

7 Q. Is it accurate to say that most of
8 your prior testimony in the securities context
9 has involved cases alleging market manipulation
10 or fraud?

11 A. There have been a number of those,
12 yes.

13 Q. What percentage of the total would
14 you say?

15 A. Oh, boy. I didn't count them up.
16 Can I take a quick look?

17 Q. Sure.

18 A. Are you talking the ones where I gave
19 testimony?

20 Q. Yeah, why don't we talk about the
21 ones where you gave testimony.

22 A. Excuse me.

23 (Discussion off the record between
24 witness and his counsel)

25 A. If you want to go one by one, I can,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 because not all of them are trading cases. As I
3 said before, you know, maybe there's some nuances
4 to what you call a trading case, so, you know,
5 there are pump and dumps, there is a portfolio
6 pumping case, there is a corporate identity theft
7 case, so it is generally in the fraud area.

8 Q. Generally in the fraud area?

9 A. Yeah. Um-hum.

10 Q. And you would say what percent of the
11 total of all of your cases where you have
12 testified involved fraud?

13 MR. HANAUER: Over the last ten
14 years or ever?

15 Q. Let's do over the last ten years, and
16 then I will ask you ever.

17 A. Are you including the FINRA
18 arbitrations in that?

19 Q. Sure.

20 A. I would say 80 percent of them,
21 90 percent of them.

22 Q. 90 percent involved some allegations
23 of fraud?

24 A. Yes.

25 Q. And how many, over your lifetime, how

1 [REDACTED] - Confidential Pursuant to Protective Order
2 many cases in which you have testified as an
3 expert over your lifetime involved some
4 allegations of fraud?

5 A. You know, I can't recall
6 specifically. I would say that obviously many
7 of the SEC cases would, but, you know, I have
8 done a lot more than just the SEC cases, you
9 know, so probably a similar percentage, you know,
10 somewhere between 40 and 50 percent if we go
11 strictly on a guess of the math.

12 Q. How many cases over the last ten
13 years in which you have testified involved
14 disclosure obligations?

15 A. I would say disclosure as part of the
16 overall case, even if there is fraud involved,
17 there is a disclosure aspect of them, so I would
18 say the majority really.

19 Q. What about how many cases involved
20 disclosure obligations where there were no
21 allegations of fraud present?

22 A. Where there were no allegations of
23 fraud present, in the ones that I have testified
24 in?

25 Q. Yes.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 MR. HANAUER: Are we back at ten
3 years or lifetime?

4 Q. Let's do ten years.

5 A. Probably not as a standalone context.
6 They were all in connection with as I look at
7 them now.

8 Q. And what about over the course of
9 your lifetime?

10 A. Give me a moment to think. I just
11 can't recall.

12 Q. Sitting here today you can't recall a
13 case?

14 A. Right.

15 Q. In which you testified that involved
16 disclosure obligations under the securities laws,
17 but no allegations of fraud?

18 A. Right. There may have been one. I
19 don't know. I would have to go back and look.

20 Q. Mr. [REDACTED], is it accurate that the
21 SEC has not alleged any fraud in connection with
22 this litigation against Ripple?

23 A. I don't recall. It has been a while
24 since I read the complaint. I'm not sure.

25 Q. Okay. Is it also accurate that the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 SEC is not alleging that Ripple engaged in any
3 market manipulation, wash sales or pump and dump
4 schemes?

5 A. I believe that is true. Yeah.

6 Q. Have you ever offered expert
7 testimony on what constitutes material
8 disclosures under the Securities Act or the
9 Exchange Act?

10 A. Specifically or in connection, again
11 in connection with other activities?

12 Q. In connection is fine.

13 A. Probably in connection with.

14 Q. Have you ever testified as an expert
15 concerning whether an entity was obligated to
16 file disclosures under the Securities Act or
17 Exchange Act for a private offering of
18 securities?

19 A. For private offerings, so have I ever
20 testified? No.

21 Q. Have you ever testified as an expert
22 concerning whether an entity was obligated to
23 file disclosures under the Securities Act or
24 Exchange Act for a public offering of securities?

25 A. You know, it's all interwoven at

1 [REDACTED] - Confidential Pursuant to Protective Order
2 times, if you know what I mean. There could be
3 aspects of a particular case which touches on
4 that. Standalone, probably no.

5 Q. Have you ever testified as to whether
6 an asset or a financial instrument was a security
7 under the Securities Act or the Exchange Act?

8 A. I have not.

9 Q. Have you ever rendered an opinion
10 that a company's public disclosures were
11 sufficient under the Securities Act or the
12 Exchange Act?

13 A. I have not.

14 Q. Has a court ever disagreed with an
15 opinion you expressed?

16 A. I'm sorry, I didn't hear you.

17 Q. Sorry. Has a court ever disagreed
18 with an opinion you expressed?

19 MR. HANAUER: Objection.

20 Foundation.

21 Only that you are aware of.

22 A. Yeah. Not that I am aware of.

23 Q. To your knowledge, has a court ever
24 precluded or limited your testimony in a case
25 pursuant to a Daubert motion?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Yes.

3 Q. What was that case?

4 A. Okay. Actually coincidentally it
5 was one of the ones where I was on the other side
6 of the case from the SEC, believe it or not, and
7 that was SEC versus LEK Securities, and there was
8 a Daubert -- well, to give you the background,
9 the law firm came to me and said, look, we are
10 not happy with our expert. We want to hire you.

11 MR. HANAUER: [REDACTED], you can't be
12 talking about communications with a law
13 firm on another case.

14 A. I just want to give the background to
15 the Daubert, which was the judge wouldn't allow
16 them a second bite at the apple, so they said Mr.
17 [REDACTED] cannot substitute for this guy. You
18 have already made your choice, and you have to
19 live by it. So it was a technical kind of
20 thing.

21 Q. Have you ever testified as a fact
22 witness?

23 A. No.

24 Q. Have you ever been arrested?

25 A. No.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. On page 5, it says that you have not
3 authored any publications in the last ten years.
4 Is that accurate?

5 A. That is accurate, yes.

6 Q. To the best of your memory, what was
7 the last article or publication that you
8 authored?

9 A. Wow. It had to be back, that I
10 authored? Probably -- I don't recall any.

11 Q. Okay. How much are you being
12 compensated for your work on this case?

13 A. \$400 an hour.

14 Q. Is that contingent on the outcome of
15 the case?

16 A. No, it is not.

17 Q. Do you generally charge on an hourly
18 basis for your expert witness work?

19 A. Yes, I do.

20 Q. Mr. [REDACTED], I am going to ask you
21 some questions about your personal background.
22 Where did you attend college?

23 A. I went to St. Francis College in
24 Brooklyn, New York.

25 Q. Did you earn a degree?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Yes, I did.

3 Q. What was your degree?

4 A. Bachelor of arts in English.

5 Q. Did you attend graduate school?

6 A. I did.

7 Q. Did you earn a degree?

8 A. I did not.

9 Q. Did you ever go to law school?

10 A. I did not.

11 Q. Have you ever been licensed to
12 practice law?

13 A. I have not.

14 Q. Have you ever been admitted to any
15 state or federal bar?

16 A. I have not.

17 Q. Your CV states that you worked at the
18 NASD from 1972 to 2001. Is that accurate, or
19 maybe that should be 2004. My apologies.

20 A. NASD, excuse me, one second. Let me
21 just take a quick look if I may refresh my
22 recollection here.

23 Q. Yep.

24 A. I worked at NASD up until 2001.
25 February 2001, and then I went over to NASDAQ.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Okay. Then NASD was charged with
3 supervising NASDAQ's market operations, correct?

4 A. I'm sorry.

5 Q. Then NASD was charged with
6 supervising NASDAQ's market operations?

7 A. Yes.

8 Q. What did this market supervision
9 activity entail?

10 A. Well, I was head of market regulation
11 for 15 years, and we had a responsibility for all
12 of the over-the-counter market in terms of
13 surveillance, examination, enforcement at that
14 time, and the surveillance was both realtime of
15 the NASDAQ market where I had day-to-day
16 responsibility for realtime surveillance and
17 trading halts actually in the NASDAQ market, and
18 then market, what I call market maker compliance
19 rules, you know, and then we got into things like
20 insider trading, market manipulation, fraud, and
21 so on.

22 So it entailed a wide variety of
23 online and offline surveillance, and it entailed
24 a lot of technology as well.

25 Q. During your time at NASD, did you

1 [REDACTED] - Confidential Pursuant to Protective Order
2 ever work with security exchanges other than
3 NASDAQ?

4 A. Explain work with.

5 Q. Did you ever do any market
6 surveillance activities with respect to any
7 markets other than NASDAQ?

8 A. Let me think. We did contract with
9 a few other exchanges, but that was when I had
10 moved over to the technology space, and now FINRA
11 actually does surveillance for every market
12 including New York Stock Exchange.

13 Q. And you --

14 A. Not during my tenure I guess is the
15 point.

16 Q. You left NASD before it became FINRA,
17 correct?

18 A. Yes.

19 Q. So you never worked at FINRA?

20 A. No.

21 Q. Your report frequently refers to your
22 experience as a regulator. Is that a reference
23 to your work at NASD?

24 A. It is.

25 Q. Mr. [REDACTED], have you ever worked at

1 [REDACTED] - Confidential Pursuant to Protective Order
2 the SEC?

3 A. I have not.

4 Q. Your CV states that from 1986 to 1999
5 you were senior vice president of market
6 regulation for NASD, correct?

7 A. Yes.

8 Q. What were your responsibilities in
9 that role?

10 A. As I mentioned before, I was head of
11 the department, and so I had the entire
12 responsibility for surveillance and regulation of
13 the over-the-counter market including NASDAQ at
14 the time, which was not as yet registered as a
15 national securities exchange.

16 Q. And your report states you
17 established a dedicated fraud unit to focus on
18 issues of market manipulation. So from 1986 to
19 1999 how much of your work at NASD involved
20 identifying fraud or market manipulation?

21 A. You know, it really depends on the
22 periods of time you are talking about. You
23 know, in the late 80's it occupied a lot of my
24 time, because you had a penny stock issue in the
25 industry with, you know, household names, First

1 [REDACTED] - Confidential Pursuant to Protective Order
2 Jersey Securities, Stratton Oakmont, you know, if
3 you've ever watched The Wolf of Wall Street,
4 you'll know what I'm talking about, so I wanted
5 Brad Pitt to play me in a movie, but that never
6 happened.

7 So, you know, at that time it
8 occupied quite a bit of time. Other times we
9 had, you know, kind of, as head of the
10 department, you had to manage resources, okay?
11 And so like the SEC, you know, we were limited in
12 resources to address issues.

13 So part of my job was to allocate
14 resources where the most pressing regulatory
15 issues were. So it could be fraud during a
16 period, two or three years, and then it could be
17 market maker conduct of some type, trading ahead,
18 not protecting limit orders, whatever the flavor
19 of the day was. So it is kind of hard to
20 allocate specific time.

21 Q. If you look back on that period of
22 time, what percentage of that work involved some
23 sort of conduct that was alleged to be deceptive?

24 A. I would say most of it. Yeah.

25 Q. In your time at NASD, so outside of

1 [REDACTED] - Confidential Pursuant to Protective Order
2 those roles as well, were you responsible for
3 making a final determination about required
4 disclosures under the securities laws?

5 A. Yes.

6 Q. What was that work?

7 A. Well, let's start with the realtime
8 surveillance. Part of my responsibility was to
9 initiate trading halts in NASDAQ securities, and
10 the reason why we would halt trading is to permit
11 dissemination of material news to the
12 marketplace. Once the news was absorbed, it was
13 generally a 30-minute time frame that we halted
14 the stock. So we presume that the news was out,
15 and we would reopen the stock, so I would say on
16 an average of four to six times a day, I was
17 looking at press releases and talking to NASDAQ
18 issuers and making decisions as to materiality of
19 those announcements.

20 Then in the offline space, again, in
21 the investigatory and, you know, other issues
22 that we were dealing with on a non- realtime
23 basis, again I would say I was part of the mix of
24 everything that we looked at.

25 Q. And what sources of authority did you

1 [REDACTED] - Confidential Pursuant to Protective Order
2 look to to determine whether those disclosures
3 were material?

4 A. We had within our listing agreement
5 for NASDAQ, there was a definition of what we
6 viewed to be material news, and it tracked pretty
7 much with what the standard concept, industry
8 concept is for materiality, and, as a matter of
9 fact, I think it is footnoted somewhere.

10 If you look at footnote 6, as
11 background to SEC adopting regulation FD, they
12 define materiality, and that is kind of the
13 standard.

14 MR. HANAUER: [REDACTED], you are talking
15 of footnote 6 of your report?

16 THE WITNESS: Of my report. Yes.

17 A. That is kind of the standard
18 approach. If it's something that investors think
19 it is important to the mix of overall
20 information, then it would be material, but I had
21 to bring my judgment obviously. There could be
22 disputes as to and often there were with the
23 issuer concerning materiality of the release, and
24 I can give you some anecdotal stories but
25 probably bore you, but some of them were kind of

1 [REDACTED] - Confidential Pursuant to Protective Order
2 funny actually.

3 Q. Maybe during a break we can chat
4 about those.

5 A. Yes.

6 Q. So you said that you were looking at
7 that time at NASD policies or guidance to
8 determine materiality?

9 A. No, I said that we had within our
10 listing agreement an obligation for issuers to
11 disclose material news, and there was a
12 definition in there, I can't quote it verbatim,
13 but the definition would track pretty much to
14 what that footnote says based on, you know, that
15 particular SEC quote there.

16 Q. So you were basing your
17 determinations roughly on the standard in that
18 Supreme Court case?

19 A. Yeah, you know, I kind of brought my
20 own judgment to bear, but, with that as a
21 backdrop and whether it had been important to
22 investors, whether it would move the market was
23 another consideration. We also would halt the
24 stock if, you know, the stock could be moving.
25 There might not be news on the wire, and we would

1 [REDACTED] - Confidential Pursuant to Protective Order
2 want to know why.

3 We would contact the issuer and
4 sometimes there was news that needed to be
5 disclosed. We had halted the stock, and we
6 essentially recommended that they -- strongly
7 recommended that they put that news out.

8 Q. And your CV states that you employed
9 significant legal and technological staff at
10 NASD. What were the responsibilities of your
11 legal staff?

12 A. When I was there, the legal staff,
13 they had not yet, Mary Shapiro had not yet
14 created the Department of Enforcement, so
15 enforcement of market regulation rules were
16 contained within my department, so I had a number
17 of, I had a head lawyer, and he had about, we had
18 maybe five lawyers reporting up through him and
19 him into me, and they did, you know, they drafted
20 the complaints. They did depositions. They
21 did hearings and so on. So anything that related
22 to the disciplinary function, that was the role
23 of the legal department.

24 Q. Did they also interpret relevant
25 statutes and regulations?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. They may have in the context of
3 writing a complaint, for example.

4 Q. After you were at NASD, you went to
5 NASDAQ as the senior vice president of regulation
6 and controls. What did that role entail?

7 A. Well, let me give you a little bit of
8 background. NASDAQ elected to spin off from the
9 NASD, as you probably know, and become its own
10 separate self-regulatory organization, and they
11 contracted with NASD to carry out -- they didn't
12 have their own regulatory staff. They
13 contracted with NASD to do regulation of the
14 market, and, in doing so, they wanted to ensure
15 that there was a Chinese wall between what the
16 marketplace was doing and what the regulators
17 were doing, and so I kind of sat in the middle of
18 the Chinese wall and then was the liaison to NASD
19 for regulatory issues that related to the NASDAQ
20 market.

21 It could work both ways. I mean
22 NASDAQ might say, hey, you know, there is a
23 particular market maker practice we want NASD to
24 look at. Go tell them to look at that, and it
25 could work this way. NASD would say, you know,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 NASDAQ market makers are right, go tell NASDAQ to
3 promulgate a rule to stop that.

4 So it was that, plus I had
5 responsibility for overseeing the contractual
6 commitment with NASD making sure that they were
7 doing their role, negotiating regulatory budgets
8 with them and so on.

9 Q. And other than your time at NASD or
10 NASDAQ, do you have any other experience serving
11 in a regulatory or self-regulatory role?

12 A. No, not specifically.

13 Q. Your CV states you're currently
14 employed as the president of [REDACTED]
15 Is that accurate?

16 A. Yes.

17 Q. What is [REDACTED]

18 A. It's a consulting firm that I formed
19 in May of 2004. As I said before, I've done, I'm
20 pretty much a sole proprietor on my own, and I've
21 done a number of engagements for a lot of people
22 in the areas that are noted in my CV, resumé and
23 elsewhere.

24 Q. And I am going to call [REDACTED]
25 [REDACTED]. Is that okay?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Yes.

3 Q. Does [REDACTED] have any employees?

4 A. No.

5 Q. How many hours a week do you say you
6 devote to your work at [REDACTED]

7 A. Sometimes zero and sometimes a lot
8 depending on whether I'm doing one case, two
9 cases at a time or no cases or depending on how
10 big the case is, so I could be spending a lot of
11 hours or no hours.

12 Q. Since 2004, have you been employed by
13 any other entity outside of [REDACTED]

14 A. No, other than, you know, I don't
15 consider consulting employment, but I have been
16 retained by other people.

17 Q. Is your consulting work through

18 [REDACTED]

19 A. Yes.

20 Q. Have you ever provided services to a
21 client in connection with filing an IPO?

22 A. No.

23 Q. Have you ever provided services to a
24 client in connection with seeking no action
25 letters from the SEC?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. No.

3 Q. Have you ever provided services to a
4 client in connection with a client's
5 investigation by the SEC?

6 A. Could you clarify that for me.

7 Q. Sure. Have you ever provided
8 services to a client that had been or was in the
9 process of being investigated by the SEC?

10 A. When you say services, are you
11 meaning consultancy services?

12 Q. Let's say consultancy or expert
13 witness services.

14 A. Well, not specifically the SEC, but I
15 have in other cases, yes.

16 Q. When you say not specifically the SEC
17 bur other cases, do you mean other government
18 agencies?

19 A. No.

20 Q. Sorry. Can you clarify what you
21 mean, please.

22 A. Sure. I was retained by a law firm
23 to assist them in a criminal case which was a
24 very complex market maker compensation case
25 involving foreign equity markets, and it was

1 [REDACTED] - Confidential Pursuant to Protective Order
2 complicated, and so it was a criminal -- the U.S.
3 Attorney was coming after an individual, and I
4 consulted with the law firm on addressing that
5 issue.

6 Q. And that case was not brought by the
7 SEC, correct?

8 A. I believe there was a plea bargain.

9 Q. Have you ever provided services to a
10 client including through a law firm in connection
11 with an investigation by the SEC under section 5?

12 A. No.

13 Q. Of the Securities Act?

14 A. No.

15 Q. Have you ever provided services to a
16 client in connection with reviewing disclosures
17 made pursuant to the securities laws?

18 A. Let me think for a second. Would
19 you just repeat that. I want to make sure I
20 give you the proper answer.

21 Q. Of course. Have you ever provided
22 services to a client in connection with reviewing
23 disclosures made pursuant to the securities laws?

24 MR. HANAUER: Objection. Are we
25 back to all clients, or are we just

1 [REDACTED] - Confidential Pursuant to Protective Order
2 talking about nongovernment clients?

3 MS. GRESSEL: All clients.

4 A. Well, you know, that case I just
5 mentioned, I mean, involved disclosure, and there
6 was a disclosure aspect to it, so I guess the
7 answer would partially be yes.

8 Q. The case you mentioned is the one
9 brought by the U.S. Attorney in which you were
10 engaged by a law firm?

11 A. Yes. There I was on the defendant's
12 side.

13 Q. Got it. Have you ever provided
14 services to a client in connection with a
15 litigation brought by the SEC?

16 A. By the SEC?

17 Q. Um-hum.

18 A. Yes.

19 Q. And what case was that?

20 A. Well, it's not on the sheet because
21 it was more than ten years ago, but that was a
22 case down in Florida brought by the Miami
23 regional office. It was SEC versus Zacharia.
24 It was an insider trading case, and I was on the
25 defendant's side. I submitted an expert report,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 but did not testify.

3 Q. How was that case resolved?

4 A. I believe the defendant prevailed
5 over the SEC.

6 Q. Do you now hold or have you ever
7 previously held any other professional licenses
8 or certifications?

9 A. In any field?

10 Q. Sure.

11 A. I'm a certified personal trainer.

12 Q. Oh, great. Impressive. Have you
13 ever had any other licensures or certifications?

14 A. No.

15 Q. Okay. Have you ever had any
16 disciplinary or ethics complaints filed against
17 you?

18 A. No.

19 Q. I want to circle back to block chain
20 technology briefly. I know we talked about that
21 earlier. When did you first become aware of
22 block chain technology?

23 A. Well, again, you know, I have
24 throughout my career a great interest in
25 technology in that I was the main officer in NASD

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2 that dealt with all the surveillance systems and
3 the evolution of trying to keep up with the
4 explosion of NASDAQ trading and trying to get
5 your arms around the data that we needed to get
6 our arms around, so I always had an interest in
7 technology.

8 I managed a number of really, really
9 big technology projects such as OATS, for
10 example. That was the Order Audit Trail System.
11 So technology always interested me. So, when the
12 crypto phenomenon started, just like anybody
13 else, I mean it naturally piqued my curiosity, so
14 I started reading a little bit about it.

15 Q. When was that?

16 A. Oh, gosh. You know, I can't give
17 you a specific date, but probably several years
18 ago.

19 Q. Like ballpark five years ago, ten
20 years ago?

21 A. I would say more three to five years
22 probably.

23 Q. How familiar are you with block chain
24 technologies?

25 A. It depends on what you mean by how

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2 familiar. You know. I can't do code for it,
3 for example, but, you know, I kind of know, have
4 a general understanding of what it is.

5 Q. Are you familiar with what the term
6 "ledger" means with respect to block chain
7 technologies?

8 A. Yes.

9 Q. What does the term "ledger" mean?

10 A. Well, a ledger is, and again I'm not
11 an expert, and I'm not offering an opinion on
12 block chain technology, but my understanding is
13 that that is the block that constitutes the block
14 chain, so that there is a ledger of all the
15 individual blocks in the chain.

16 Q. Are you familiar with the information
17 that is recorded on a ledger?

18 MR. HANAUER: Objection to form.

19 A. Again, you know, my very general
20 understanding and I'm not an expert, I'm not
21 offering an opinion, but I know, for example,
22 that each one has its own unique cryptographic
23 designation that can't be tampered with, and I
24 think, you know, from what I've read that is the
25 key ingredient in the block chain technologies

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2 that it's kind of foolproof.

3 Q. And are you familiar with what
4 information is publicly visible on a block chain
5 ledger generally?

6 A. No.

7 MR. HANAUER: Objection to form.

8 Q. Have you ever transacted on a block
9 chain ledger?

10 A. I have not.

11 Q. Okay. When did you first become
12 aware of digital assets?

13 A. Probably around the same time.

14 Q. For the purpose of this deposition, I
15 may use the term digital asset and virtual
16 currency interchangeably. Is that okay with
17 you?

18 A. Yes.

19 Q. Alright. Are you involved in any
20 professional groups whose work have involved
21 digital assets?

22 A. No.

23 Q. Did your work at NASD or NASDAQ
24 involve block chain technologies?

25 A. It did not.

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2 Q. Did your work at NASD or NASDAQ
3 involve digital assets?

4 A. It did not, no.

5 Q. Has any of your prior consulting or
6 expert work involve the applicability of
7 securities laws to digital assets?

8 A. No.

9 Q. When did you first become aware of
10 XRP?

11 A. I believe it was when the SEC was
12 making inquiry regarding my retention.

13 Q. So, prior to the SEC calling you, you
14 would not have known what XRP referred to?

15 A. I don't believe so. No.

16 Q. Prior to the SEC calling you, had you
17 heard of the company Ripple?

18 A. No.

19 Q. Is it an accurate statement that you
20 have never offered expert testimony in an
21 enforcement action involving block chain
22 technologies?

23 A. That's correct.

24 Q. Is it an accurate statement you have
25 never offered expert testimony in a case or

1 [REDACTED] - Confidential Pursuant to Protective Order
2 enforcement action involving digital assets?

3 A. That's correct.

4 Q. Have you ever represented a client
5 before the SEC in an attempt to seek regulatory
6 clarity on digital assets?

7 A. No.

8 Q. Have you ever authored any
9 scholarships, articles or any other written
10 materials related to digital assets or block
11 chain technologies?

12 A. No.

13 Q. Are you familiar with digital asset
14 exchanges?

15 A. Somewhat. Yes. Generally.

16 Q. When did you first become aware of
17 digital asset exchanges?

18 A. Again, probably, you know, as I was
19 learning and as I was, you know, my curiosity was
20 piqued. I know that there were a number of
21 articles, for example, on Coinbase going public,
22 so I read about that. Generally.

23 Q. So Coinbase is an example of a
24 digital asset exchange. Are you familiar with
25 any other digital asset exchanges?

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2 A. I know there are more than people
3 think.

4 Q. And do you have any expert or
5 consulting experience involving digital asset
6 exchanges?

7 A. No.

8 Q. Do you have any experience concerning
9 what constitutes speculative trading in digital
10 asset markets?

11 A. Would you repeat that again. I just
12 want to make sure.

13 Q. Sure. Do you have any experience
14 concerning what constitutes speculative trading
15 in digital asset markets?

16 MR. HANAUER: Objection to the form.

17 A. I mean, you know, I could -- just say
18 it one more time. I'm sorry.

19 Q. No problem. Do you have any
20 experience concerning what constitutes
21 speculative trading in digital asset exchanges?

22 MR. HANAUER: Just objection, and I
23 will make it clear the term "speculative
24 trading." You may need to help him out
25 with that.

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2 A. Yeah.

3 Q. What do you understand the term
4 "speculative trading" to mean?

5 A. Well, you know, it depends on what
6 aspect that you're looking at. I mean, you
7 know, if you ask Warren Buffett, he thinks there
8 is a lot of speculative trading, so I don't know.
9 You know, there has been talk that there is a
10 bubble, and, you know, I discount all that stuff.
11 I'm not really offering an opinion on any of
12 that.

13 So, you know, do I believe personally
14 there may be speculative trading? You know, I'm
15 sure that, you know, the volatility in crypto has
16 hurt people, so I mean I don't know if that
17 answers your question, but, as I said before, I'm
18 not really offering any opinions on speculation
19 or anything like that.

20 Q. I just want to ask a question to make
21 sure I understand. Do you think there is an
22 agreed upon definition of what constitutes
23 speculative trading?

24 A. I don't think so. No.

25 Q. Okay, and are you familiar with what

1 [REDACTED] - Confidential Pursuant to Protective Order
2 might or might not constitute speculative trading
3 with respect to digital assets?

4 MR. HANAUER: Objection. Form.

5 Counsel, why don't you ask him what
6 speculative trading means to him.

7 Q. I'm just going to repeat that
8 question again.

9 A. Okay.

10 Q. Are you familiar, or do you have an
11 understanding of what speculative trading means
12 with respect to digital assets?

13 A. Well, you know, it's a wide-open
14 question. I mean by whose standards, for
15 example? I mean, you know, somebody defined
16 speculative trading? I don't think so. Not
17 that I know of. As I said before, I'm sure that
18 there's some highly speculative trading going on
19 somewhere, you know, but maybe people in Robin
20 Hood shouldn't be buying crypto. I don't know.

21 So, again, I don't know if there's a
22 defined standard. I don't think so. I haven't
23 heard of one.

24 Q. Okay, and have you ever purchased any
25 digital assets?

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2 A. I have not.

3 Q. Okay. Have you ever sold any digital
4 assets?

5 A. I have not.

6 MS. GRESSEL: Is now a good time for
7 a break?

8 THE WITNESS: I was just looking at
9 my watch.

10 MS. GRESSEL: Okay.

11 THE VIDEOGRAPHER: We are going off
12 the record. The time is 10:38 a.m.

13 (Recess taken)

14 THE VIDEOGRAPHER: We are back on
15 the record. The time is 10:56 a.m.

16 BY MS. GRESSEL:

17 A. I have a quick question for you. I
18 would like to go back and correct the record. I
19 believe that, when I was speaking about the time
20 I was not approved by the court as an expert that
21 I characterized it as a Daubert. It wasn't a
22 Daubert. It was just an order from the judge
23 saying I'm not reopening discovery. These two
24 experts can hit the road.

25 Q. Understood. Thank you.

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2 A. Okay.

3 Q. Mr. [REDACTED], I would like to turn
4 back to your report briefly.

5 A. Sure.

6 Q. There are two sets of bullets one on
7 page 1 and one on page 29 to 30 of your report.
8 Can you take a look at those two lists of bullets
9 briefly?

10 A. Sure.

11 Q. I am going to point you to a bullet
12 in each list. So looking at those two lists on
13 page 1 and pages 29 to 30, only the last bullet
14 in each list pertains to Ripple, correct?

15 MR. HANAUER: Can you give him some
16 time to review the list?

17 MS. GRESSEL: Of course.

18 A. Yes.

19 Q. Do you want to look at the other
20 bullet?

21 A. I'm sorry.

22 Q. The other set of bullets is pages 29
23 to 30, and I will ask you the same question.
24 Only the last bullet in that list pertains to
25 Ripple, correct?

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2 A. Yes. That's right.

3 Q. Okay. Would it be fair to summarize
4 your opinion as follows: If Ripple were
5 required to register its offers or sales of XRP,
6 it would have been required to make substantial
7 and meaningful disclosures to investors?

8 MR. HANAUER: Objection to the form.

9 Are you talking about his opinion, his
10 entire opinion?

11 Q. Your opinion in those two bullets.

12 A. Yeah. With the caveat of assuming
13 Ripple had to register its offers and sales of
14 XRP, yes.

15 Q. Okay. With that assumption?

16 A. With that assumption, yes.

17 Q. So that seems like a pretty basic
18 premise. If a company is offering a security, it
19 needs to comply with the various disclosures and
20 SEC reporting obligations that apply to
21 securities offerings, right?

22 A. Yes.

23 Q. And, conversely, if a company is not
24 offering a security, then it does not need to
25 comply with the disclosure and SEC reporting

1 [REDACTED] - Confidential Pursuant to Protective Order
2 obligations that apply to securities offerings?
3 Is that accurate?

4 A. That was a long sentence.

5 Q. Sure. So the converse point would
6 be, if a company is not offering a security, then
7 it does not need to comply with the disclosure
8 and SEC reporting obligations that apply to
9 securities offerings. Is that accurate?

10 A. If it's not a security, is that what
11 you said?

12 Q. Um-hum.

13 A. You know, I don't think I can offer
14 an opinion on that, but probably not. You know,
15 I would need more information as to what they
16 would be doing or not doing.

17 Q. How about as a general proposition.

18 A. In general, okay.

19 Q. If companies are not offering
20 securities, they generally do not need to comply
21 with the disclosures and SEC reporting
22 obligations that apply to securities offerings?

23 A. I would say that is a general
24 assumption, yes.

25 Q. Okay, and that is not a particularly

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2 complicated statement, is it?

3 A. No.

4 Q. Okay. It's pretty straightforward?

5 A. I think so, yeah.

6 Q. Okay. We just spoke about the
7 amended complaint a moment ago. You understand
8 the SEC is alleging that Ripple sales or offers
9 of XRP constituted investment contracts under the
10 securities laws, correct?

11 A. Correct.

12 Q. And you understand that the ultimate
13 legal issue for the court or the jury to decide
14 in this litigation is whether Ripple's sales or
15 offers of XRP constituted investment contracts
16 under the securities laws, correct?

17 A. I believe that is the central tenet
18 of the case, yes.

19 Q. Okay. Let's look briefly at page 1
20 of your report. Could you please read out loud
21 the sentence beginning with "This report takes no
22 position."

23 A. Page 1.

24 Q. I will point you to it. Apologies.
25 It is page 2. Thank you for correcting me.

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2 A. Yes.

3 Q. So at the bottom of page 2, can you
4 read the sentence that starts, "This reports
5 takes no position"?

6 A. "This report takes no position as to
7 whether defendants' XRP transactions involved
8 offers and sales of securities as defined by the
9 '33 Act or '34 Act."

10 Q. Okay. Great. Let's take a look at
11 page 28 as well. Under the header "Potential
12 Disclosures by Ripple," you have a sentence that
13 starts midway through the first paragraph, "To be
14 clear, I have not been asked to provide."

15 Do you see that?

16 A. Yes.

17 Q. Could you please read out loud that
18 sentence?

19 A. "To be clear, I have not been asked
20 to provide, and I am not providing an opinion as
21 to whether Ripple's XRP transactions constituted
22 offers and sales of securities."

23 Q. Could you please read the following
24 sentence?

25 A. "For purposes of this section of my

1 [REDACTED] - Confidential Pursuant to Protective Order
2 report, I have been asked to assume that these
3 transactions were in fact offers and sales of
4 securities and to provide an opinion on what
5 disclosures Ripple would typically be required to
6 make to the investing public if that was the
7 case."

8 Q. Thank you. I want to spend a moment
9 just clarifying what you meant by those
10 statements. You're not offering an opinion in
11 this matter about whether XRP itself is a
12 security, correct?

13 A. I am not.

14 Q. And you're not offering an opinion in
15 this matter about whether XRP itself is an
16 investment contract, correct?

17 A. That's correct.

18 Q. You're also not offering an opinion
19 in this matter about whether Ripple's
20 transactions of XRP constituted sales or offers
21 of investment contracts under the securities
22 laws, correct?

23 A. Correct.

24 Q. You are also not offering an opinion
25 in this matter about whether defendant Chris

1 [REDACTED] - Confidential Pursuant to Protective Order
2 Larsen's transactions of XRP constituted sales or
3 offers of investment contracts under the
4 securities laws, correct?

5 A. Correct.

6 Q. You're also not offering an opinion
7 in this matter about whether defendant Brad
8 Garlinghouse's transactions of XRP constituted
9 sales or offers of investment contracts under the
10 securities laws, correct?

11 A. That's correct.

12 Q. You're not offering an opinion that
13 defendant Chris Larsen's sales or offers of XRP
14 are within the territorial reach of the U.S.
15 securities laws, correct?

16 A. I am not, no.

17 Q. You're not offering an opinion that
18 defendant Brad Garlinghouse's sales or offers of
19 XRP are within the territorial reach of the U.S.
20 securities laws, correct?

21 A. Correct.

22 Q. Okay. We can agree that the
23 securities laws governing registration would
24 apply in this case only if Ripple's XRP
25 transactions were found to constitute offers or

1 [REDACTED] - Confidential Pursuant to Protective Order
2 sales of securities, is that right?

3 A. I would agree with that, yes.

4 Q. Do you agree that, if the court were
5 to determine that XRP itself is not a security or
6 an investment contract, then none of the
7 securities laws governing registration would
8 apply to those sales or offers of XRP?

9 MR. HANAUER: Objection to the form
10 and the term "XRP" itself.

11 A. Yeah. I think if the court
12 determines it's not a security, then as far as I
13 know, there would be no requirement to register.

14 Q. Okay. I will just ask that slightly
15 differently. If the court were to determine
16 that Ripple's sales and offers of XRP did not
17 constitute an investment contract or security,
18 then none of the securities laws governing
19 registration would apply to those sales and
20 offerings, correct?

21 A. I think that's reasonable.

22 Q. Okay, and then in that event you
23 would not be offering any opinion about what
24 disclosure obligations apply to defendants in
25 connection with XRP, correct?

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2 A. Right.

3 Q. Okay. So, Mr. [REDACTED], several
4 times in your report you state you're basing your
5 opinion on industry custom and practice, right?

6 A. Yes.

7 Q. Which industry's customs and
8 practices are you referring to?

9 A. The securities industry.

10 Q. And why did you elect to use that
11 term, industry custom and practice, in your
12 report?

13 A. Why? I think it's a customary term
14 that experts use in kind of defining their role.
15 You know, sometimes you come close to -- let me
16 make sure I state this okay before he objects.
17 Sometimes you come close to either stating a law
18 or stepping into where the trier of fact is the
19 real authority there, so you have to be, you
20 know, you want to look at what the customs and
21 practices are in the industry rather than making
22 a legal conclusion, for example.

23 Q. So your purpose in speaking about
24 industry custom and practice is to avoid making
25 any legal conclusions in your opinion?

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2 A. No. Not solely, but there are, the
3 way it usually works is that, you know, the law
4 is there, correct, and that trickles down or
5 feeds, if you will, the customs and practices and
6 procedures that the industry adopts to, you know,
7 stay in compliance with that law, so it's more
8 underneath the law that I'm talking about.

9 Q. So industry custom and practice is
10 generally based on the law?

11 A. Yes.

12 Q. And industry custom and practice
13 would also be based on things like SEC guidance
14 or other regulations that would be promulgated
15 under the law?

16 A. It could be part of the mix that the
17 industry considers in, you know, adopting those
18 customs, practices. Best practices is another
19 term that's frequently used and so on.

20 Q. So I just want to -- go ahead,
21 please.

22 A. But it starts with the law, and then
23 the law feeds down.

24 Q. And I just want to go back to a
25 question I asked before. I asked you, I'll ask

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2 it in a slightly different way.

3 Was one of the purposes in using the
4 term industry custom and practice in your report
5 to avoid drawing legal conclusions?

6 A. You know, I think as an expert, you
7 have to do that anyway. You know. I don't want
8 to hook the two together permanently, because
9 there are differences, but it's a consideration.

10 Q. When you say you have to do that
11 anyway, do you mean you have to draw legal
12 conclusions anyway?

13 A. No. I have to avoid drawing legal
14 conclusions.

15 Q. I see. So one of your purposes in
16 writing this report was to avoid drawing a legal
17 conclusion, correct?

18 MR. HANAUER: Objection. Misstates
19 his testimony.

20 A. Yeah, I would state it another way.

21 Q. Sure. How would you state it?

22 A. I would state it that in writing this
23 report I have to avoid having a legal conclusion
24 in mind.

25 Q. And is that true of your testimony in

1 [REDACTED] - Confidential Pursuant to Protective Order
2 this deposition today as well?

3 A. Yeah, I would say so.

4 Q. Okay. So, going back to industry
5 customs and practices, how did you come to be
6 aware of industry customs and practices for the
7 securities industry?

8 A. Oh, my gosh. That's a really broad
9 question, and I will give you a broad answer.
10 You know, I've been at this a long time, and you
11 know, there are so many different sources,
12 conversations, examinations, research,
13 enforcement actions, talking with firms,
14 reviewing compliance procedures with firms.

15 One of the things I did, which is
16 again in a consultancy role is I worked with
17 Boston Consulting in a review of BNP, Paribas, of
18 their risk management procedures.

19 MR. HANAUER: Don't get into the
20 specifics of that.

21 A. Yeah, no, just as an example. So,
22 in talking with the practitioners, okay, we come
23 to know what their expectations and practices and
24 norms are for that particular firm. So it's a
25 whole variety of things.

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2 Q. And when you say the practitioners,
3 do you mean lawyers?

4 A. No. I mean people in the securities
5 industry that are transacting business.

6 Q. So generally people who operate
7 within the securities industry?

8 A. Yeah, right.

9 Q. Have you ever offered expert
10 testimony on industry custom and practice?

11 A. All the time.

12 Q. All the time. Okay. Has your
13 testimony ever included opinions on whether an
14 entity should register securities offerings on
15 the basis of industry custom and practice?

16 A. Well, let me put it this way. A lot
17 of my testimony and opinions relate to the space
18 that relates to unregistered distributions and
19 offerings and so on.

20 So, in the context of things like
21 unregistered distributions, removal of restricted
22 legends to sell stock, roles of transfer agents,
23 broker dealers as gatekeepers for fraud. I mean
24 there is a whole variety of things that relate to
25 that.

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2 Q. In the securities industry, where
3 would someone look if they wanted to find a
4 respected source for industry customs and
5 practices?

6 A. Well, as I point out in my report,
7 there's a whole, it depends on, you know, what
8 you want to do. I mean there's a whole industry
9 around helping out the brokerage industry in
10 terms of compliance, and so, you know, I'm sure
11 you guys have broker-dealer clients. I'm sure
12 the accounting firm up the street has
13 broker-dealer clients. So there's, you know,
14 legal advice. There's accounting advice.
15 There's consultancy advice relating to best
16 practices around an issue.

17 So there's a lot, and, as I said
18 before, you could probably add the SEC to that
19 mix.

20 Q. In your report on pages 9 to 10 you
21 state, "In such a heavily regulated industry such
22 as the securities markets, industry custom and
23 practice including activities of companies
24 offering securities and their management is
25 influenced strongly by the relevant statutes,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 rules and their interpretation by the SEC and the
3 courts."

4 Do you see that sentence?

5 A. Let me take a minute to read that,
6 please.

7 Q. Sure.

8 A. Yeah. I think --

9 MR. HANAUER: Let her ask you a
10 question.

11 THE WITNESS: I'm sorry. Go ahead.

12 Q. Is that statement accurate?

13 A. Yeah, I think it summarizes what I
14 just said prior to that.

15 Q. In the securities industry, are there
16 industry customs and practices that are not
17 strongly influenced by relevant statutes, rules
18 and their interpretation by the SEC and the
19 courts?

20 A. I'm sure there could be. Yeah. By
21 that, I mean it may not be tied to a specific SEC
22 or FINRA rule. So how to consolidate how a audit
23 trail gets built or, you know, where you have a
24 industry-wide endeavor, the industry is good at
25 coming together to solve those problems on a

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2 collaborative basis often with, you know,
3 different firms and different systems and
4 different technology, but still coming together
5 on a best practice basis to collaborate in a
6 nonregulatory fashion.

7 Q. If someone were to deviate from those
8 industry customs and practices, would they be in
9 violation of the law?

10 A. It would depend.

11 MR. HANAUER: Objection to the form.

12 A. Yeah. I mean it is all facts and
13 circumstances. I can't express an opinion on
14 that.

15 Q. Does the violation of industry custom
16 and practices alone amount to a violation of the
17 law?

18 MR. HANAUER: Objection to the form.

19 A. I have no opinion on that I mean
20 without delving into what the particular facts
21 are.

22 Q. In the securities industry who is
23 generally responsible for determining what
24 constitutes industry custom and practice?

25 A. Well, you know, sometimes there are

1 [REDACTED] - Confidential Pursuant to Protective Order
2 various committees and so on, so, as I mentioned
3 before, it could be a collaborative thing, and
4 other times it can be done through osmosis, so to
5 speak. You know, it's just that this is just
6 what everybody does. You know, firms talk to one
7 another, and they share these kinds of things, as
8 I said before, particularly best practices in
9 that area, and, you know, there is a I don't want
10 to say a system, but there is a whole, you know,
11 as I said before, firms talk to one another.
12 There is a whole, it is not a process, but it is
13 an informal arrangement amongst compliance
14 directors, technology directors, heads of firms,
15 and they explore that through organizations like
16 SIFMA, STA and so on to come up with, you know,
17 practices that the industry can, you know, live
18 by.

19 I'm sure you guys have gone to
20 conferences, for example, of SIFMA, and I've
21 spoken at many conferences where we talk about
22 best practice in the market regulation area.

23 So it's that kind of whole spectrum
24 of things that develops that, standards, norms,
25 customs, assisting one another to aid in

1 [REDACTED] - Confidential Pursuant to Protective Order
2 compliance, because generally I would say the
3 industry is very compliance-focused.

4 Q. So I just want to make sure I
5 understand. You talk a lot about best practices
6 and compliance. Do you mean best practices for
7 compliance with the securities laws?

8 A. It could be. Sure. That could be
9 part of it. It could be something else too.

10 Q. What's an example of something else
11 it could be?

12 A. Back office administration,
13 communication protocols, I mean you name it.

14 Q. So, as relevant to your report, let's
15 just take your report as a standalone, not the
16 full industry. When you're talking about
17 industry customs and practices, are you really
18 talking about best practices for compliance with
19 the securities laws?

20 A. I'm talking about how the industry
21 would generally approach something based on a
22 rule or a regulation. It may not be best
23 practices per se, but it's how it's generally in
24 my experience approached.

25 Q. So general approaches towards

1 [REDACTED] - Confidential Pursuant to Protective Order
2 compliance with laws and regulations?

3 A. Yes. I would say that is a fair
4 characterization.

5 Q. Okay. Mr. [REDACTED], isn't it fair
6 to say the question of whether an asset or other
7 financial instrument is a security or investment
8 contract is a legal question?

9 A. A determination of that?

10 Q. I'll just repeat it.

11 A. Yeah.

12 Q. Mr. [REDACTED], is it fair to say that
13 the question of whether an asset or other
14 financial instrument is a security or an
15 investment contract is a legal question.

16 MR. HANAUER: Objection to form.

17 A. If somebody is trying to make a
18 determination whether or not it's a security, it
19 can be a legal question.

20 Q. Are there situations in which the
21 question of whether an asset or other financial
22 instrument is a security or an investment
23 contract is not a legal question?

24 A. I think the ultimate determination is
25 a legal question, but certainly you could figure

1 [REDACTED] - Confidential Pursuant to Protective Order
2 that out without coming to a legal conclusion.

3 Q. So you could figure out whether
4 something is a security or investment contract
5 without consulting a lawyer?

6 A. If you know the law, sure.

7 Q. You could -- go ahead.

8 A. You know, if you know what the
9 elements of what constitutes an investment
10 contract is, if I'm a compliance director and I
11 know I'm familiar with how and somebody brings a
12 new product to me, I want to make sure that, you
13 know, I don't have to go any further with it in
14 terms of recognizing a potential that it could be
15 an investment contract.

16 Q. And can you determine whether an
17 asset or other financial instrument is a security
18 or investment contract without consulting the
19 SEC?

20 MR. HANAUER: Can who determine?

21 Q. A company or person.

22 A. I think they can make a
23 determination, an initial determination, as to
24 whether or not it is, sure, because they know
25 what the elements of that particular thing is.

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2 So we have a saying in compliance and
3 regulation, and it is called the duck theory.

4 Q. What's the duck theory?

5 A. The duck theory is by a poet James
6 Whitcomb Reilly from Indiana who said, if it
7 walks like a duck, looks like a duck, it quacks
8 like a duck, it's probably a duck, and we
9 regulators like to spout that once in a while.

10 So, if somebody is looking at a set
11 of facts or circumstances, and it looks like a
12 Howey duck, then you've got to proceed with
13 caution, but I don't need a judge or a jury to
14 tell me that is what I'm saying.

15 Q. And you're saying any compliance
16 officer could sit down with Howey to make a
17 determination about whether something is an
18 investment contract or a security?

19 MR. HANAUER: Objection. Misstates
20 his testimony.

21 A. Well, first of all, we would hope
22 that the compliance director knows what Howey is,
23 but he can bring some judgment to bear on those
24 facts, yes.

25 Q. Okay. So let me continue going.

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2 Whether a company, is it fair to say, Mr.

3 [REDACTED], that whether a company must register
4 its sales or offers of a security is a legal
5 question, correct?

6 A. You know, at the end of the day, it
7 probably is. I think, again, they can figure
8 that out probably without, depending on facts and
9 circumstances, they might be able to figure it
10 out before they have to, you know, go to a lawyer
11 or a legal conclusion, but I would say in
12 general, yes.

13 Q. And whether a company's sales or
14 offers of securities qualify for any exemptions
15 from registration is a legal question, correct?

16 A. Yeah, as long as that is the last
17 step. Again, somebody who has the training and
18 knowledge and in this business the securities
19 business as heavily compliance-oriented as this,
20 you would expect somebody to know if they are
21 offering sales in a private offering exemption
22 space they should know what they're doing
23 irrespective of somebody concluding that this
24 complies with Reg S or Reg A or whatever.

25 Q. And whether a person or an entity is

1 [REDACTED] - Confidential Pursuant to Protective Order
2 a company insider or affiliate is a legal
3 question, correct?

4 MR. HANAUER: Objection to form.

5 A. Yeah. I wouldn't characterize it as
6 a legal question or not. I mean somebody should
7 know if they're a control person or affiliate.
8 They might have to look at Rule 144, but a CEO
9 should know he's a control person, right?

10 Q. But it's based on an understanding of
11 what the laws and regulations say. Correct?

12 A. Yeah. Again, I think any CEO that
13 is knowledgeable or worth his salt and this is
14 particularly, you know, in a public company
15 should know what his obligations are as a control
16 person.

17 Q. And if they didn't know, where would
18 they look to find out?

19 A. You know, I find it hard in this day
20 and age to find somebody who didn't know, but
21 obviously they would go to in-house counsel or
22 outside counsel or whatever.

23 Q. Okay, and whether sales of securities
24 are being offered to the public or to an
25 accredited investor is a legal question.

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2 Correct?

3 MR. HANAUER: Objection to form.

4 A. I guess it's the same answer.

5 Q. Whether public disclosures must be
6 filed with the SEC in connection with an offering
7 or sale of securities is a legal question.

8 Correct?

9 A. Say it again. I'm sorry, I lost my
10 train of thought.

11 Q. Sure. Is the question of whether
12 public disclosures must be filed with the SEC in
13 connection with an offering or sale of securities
14 a legal question?

15 A. Public disclosures meaning what? A
16 registration statement?

17 Q. That's a good example.

18 A. You know, again, I think that before
19 you get to a set of facts or circumstances where
20 a judge or a jury makes that determination, which
21 I agree is the ultimate determination, that there
22 are degrees along the way which somebody should
23 recognize that they need to do something.

24 Q. So someone might have an
25 understanding that they would have to make

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2 disclosures even if the ultimate legal question
3 of whether they are obligated to do so rests with
4 a court or a jury?

5 A. Yeah.

6 MR. HANAUER: Objection to form,
7 and, [REDACTED], please wait for her to finish
8 asking her question.

9 A. Yeah. Okay.

10 Q. Okay, and whether certain information
11 must be disclosed in a company's public filings
12 is a legal question, right?

13 MR. HANAUER: Objection to form.

14 A. Same answer. You know, it could be
15 a legal determination down the road, but, if I'm
16 your compliance director, I'm telling you, you
17 know, before it needs to become a legal question.

18 Q. Right. So someone could make that
19 determination about a company on whether it has
20 to publicly disclose certain information, but the
21 ultimate question of whether they are obligated
22 to is a legal question, right?

23 A. Yeah. I would say that's right.

24 Q. So you mentioned the Securities Act
25 of 1933 and the Securities and Exchange Act of

1 [REDACTED] - Confidential Pursuant to Protective Order
2 1934 several times, right?

3 A. Yes.

4 Q. Okay. I just want to go through the
5 terminology. By Securities Act or '33 Act, if I
6 use those terms, you'll understand I'm referring
7 to the Securities Act of 1933, correct?

8 A. Yes.

9 Q. And, by the Exchange Act or the '34
10 Act, you understand I'm referring to the
11 Securities and Exchange Act of 1934, correct?

12 A. Yes.

13 Q. Okay. You testified that you served
14 as a regulator at NASD. Is your opinion that
15 regulators can bring securities enforcement
16 actions based solely on alleged violations of
17 industry custom and practice?

18 A. Again, you know, it depends on the
19 facts and circumstances, what the customs and
20 practices involve, whether there was a rule
21 violation involved, so I don't have enough
22 information to answer that correctly I don't
23 think.

24 Q. If there is a rule violation involved
25 and a regulator brings a securities enforcement

1 [REDACTED] - Confidential Pursuant to Protective Order
2 action, is that based on a violation of industry
3 custom and practice?

4 MR. HANAUER: Objection to form.

5 Q. I'll retract that one. Mr.

6 [REDACTED], when the SEC brings an enforcement
7 action, can they do so based solely on alleged
8 violation of industry custom and practice?

9 A. It would have to be, you know, a rule
10 violation also. Sure.

11 Q. Okay. So they have to have a
12 violation of an underlying law or regulation?

13 A. They have to have a basis. It has
14 to be, I would agree with that. It would have
15 to be tied to some type of regulation, although
16 the industry custom and practice may have,
17 whatever that was may have been in the mix of
18 facts that you would need to consider.

19 Q. Okay. Let's turn to page 25 of your
20 report. So, at the top of the page, the last
21 sentence of that paragraph, do you see that? It
22 says, "Based on custom and practice"?

23 A. Yeah.

24 Q. Can you read that sentence out loud
25 for us, please.

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2 A. "Based on custom and practice in the
3 securities industry, the issuer cannot not shift
4 its responsibility for compliance to the
5 regulator."

6 Q. What do you mean when you say an
7 issuer cannot shift its responsibility for
8 compliance to the regulator?

9 A. That means that the responsibility
10 for compliance with the securities laws do not
11 rest with the government. It rests with the
12 entity that's involved. You know, it's my
13 responsibility, and the government really does
14 not have the responsibility for whether I'm in
15 compliance or not. That's my responsibility,
16 and I can't say to the government, oh, it's your
17 fault that I'm in this pickle.

18 Q. And why did you include this
19 observation in your report?

20 A. Why? I think it's in the -- can I
21 look at the context real quick?

22 Q. Sure.

23 A. I believe it's in the context of
24 firms spending an awful lot of money for
25 compliance, legal and accounting advice, because

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2 it's their responsibility to ensure that they're
3 in compliance with the rules, and so, you know,
4 what follows is part of what I call the safety
5 net where they can rely on advice of counsel such
6 as you guys or accounting firms and so on,
7 because they have the responsibility to spend
8 that money and bring in that safety net of
9 advisors to ensure that they're in compliance.

10 Q. So firms can spend a lot of money to
11 make sure that they're in compliance with laws
12 and regulations, and your view is that it is
13 custom and practice for them to do so, correct?

14 A. No, I don't think that was my
15 testimony. I think what I said was they're
16 responsible for it, and they spend a lot of money
17 because of that.

18 Q. And would you agree that a regulator
19 should be clear about what conduct amounts to a
20 violation of law?

21 A. Repeat that again. It's clear that?

22 Q. Would you agree that a regulator
23 should be clear about what conduct amounts to a
24 violation of law?

25 A. You know, as I said before, it's not

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2 their responsibility. Now they could be, you
3 know, they could be asked. They could put out
4 statements regarding the view of the commission,
5 for example. They could put out, you know,
6 other proposed rule changes, releases where they
7 explain rationale. So there's a lot of different
8 areas that they could speak to that, but it's not
9 their responsibility to do so, if they choose not
10 to.

11 Q. So your testimony is that, if a
12 regulator chooses to be unclear about laws and
13 regulations, it's entitled to do so?

14 MR. HANAUER: Objection, misstates
15 his testimony.

16 A. Yeah. No. I think what it says is
17 that most of the regulators in the securities
18 industry are really good about doing that. So
19 FINRA, for example, will put out release after
20 release after news release and so on to keep the
21 industry apprised of what is going down.

22 The SEC does that at times as well
23 through different bulletins, through, well,
24 there's different ways that the SEC can
25 communicate, as I said before. It could be a

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2 bulletin. It could be a no action letter. It
3 could be a rule filing. It could be an
4 enforcement action.

5 So there's a whole, you know, there's
6 a whole system. I wouldn't even call it a
7 system, but there's a lot of interaction between
8 the regulator and the securities industry that it
9 regulates in terms of what the expectations are
10 for compliance with certain rules.

11 Q. Mr. [REDACTED], your report discusses
12 the costs associated with initial public
13 offerings or IPOs, correct?

14 A. Yes.

15 Q. Do you have any personal or
16 professional experience working on IPOs?

17 A. I don't.

18 Q. Have you ever consulted for a company
19 concerning an IPO?

20 A. I have not.

21 Q. Have you ever represented a client in
22 connection with an IPO?

23 A. I have not.

24 Q. Have you ever been responsible for
25 estimating costs associated with an IPO?

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2 A. I have not.

3 Q. Do you have any other training or
4 experience related to costs associated with IPOs?

5 A. No.

6 Q. Okay. Isn't it the case that some
7 large companies have decided to remain private
8 rather than engaging in an IPO?

9 A. Yes.

10 Q. And isn't that because companies
11 don't necessarily need to raise capital through
12 an IPO?

13 A. Well, I don't know what their
14 individual decisions might be, but I think the
15 one that's most generally used is that IPOs are
16 expensive, and they find ways to try and avoid
17 that expense through different means.

18 Q. Isn't it the case that companies can
19 also raise money in the private market?

20 A. Yes. That's one of them.

21 Q. What are some other reasons that a
22 company might choose to not engage in an IPO?

23 A. Well, ironically enough, NASDAQ, when
24 it went public, did not engage in an IPO. They
25 just went to an exchange listing. SPACs are

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2 very popular now, and that's a way of raising
3 capital without going the IPO route, although at
4 some point there will be a registration statement
5 made.

6 So private offerings is probably
7 where the most capital lies, but there are other
8 ways.

9 Q. Based on your review of the amended
10 complaint and the other materials cited in your
11 report, are you aware that as of today Ripple has
12 not conducted an IPO?

13 A. Say it again. I missed the first
14 part.

15 Q. Sure. Based on your review of the
16 amended complaint and the other materials cited
17 in your report, are you aware that as of today
18 Ripple has not conducted an IPO?

19 A. I believe that's true.

20 Q. Okay. I'm going to be looking at
21 page 21 of your report.

22 A. Okay.

23 Q. So on the bottom of page 1, you say,
24 "had Ripple sought to raise that capital via a
25 traditional IPO rather than" --

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2 MR. HANAUER: 1? You said 21.

3 A. Excuse me. Yeah.

4 Q. 21. 21. Why don't you read it
5 actually. That's probably easier. So the second
6 sentence of the last paragraph starts with
7 "Assuming this." Do you see that?

8 A. Yes.

9 Q. Can you just read that sentence for
10 me, please?

11 A. "Assuming this figure is accurate and
12 based on the estimation tool available on PWC's
13 website, had Ripple sought to raise that capital
14 via a traditional IPO, rather than selling XRP on
15 an unregistered basis, this could have placed
16 their estimated IPO costs, excluding underwriting
17 fees, the largest component of a traditional
18 IPO's cost, in excess of \$10 million."

19 Q. I just want to make sure I understand
20 what you mean by that sentence.

21 A. Sure.

22 Q. Do you mean that, if Ripple had
23 structured its sales of XRP as an IPO rather than
24 selling XRP over time, these XRP -- this
25 XRP-related IPO would have cost Ripple over \$10

1 [REDACTED] - Confidential Pursuant to Protective Order
2 million to complete?

3 A. You know, again, it depends on the
4 facts and circumstances, but, if you look at the
5 beginning of that sentence, I say assuming these
6 estimations are accurate on PWC's website just
7 based on that particular set of tools, that's
8 what it calculated out to be.

9 Q. And I just want to just look at one
10 particular part of this. You say, had Ripple
11 sought to raise that capital via a traditional
12 IPO rather than selling XRP on an unregistered
13 basis.

14 A. Right.

15 Q. Do you mean that, had Ripple engaged
16 in an IPO with respect to its XRP, or do you
17 mean, had Ripple engaged in a traditional IPO
18 with respect to its -- to equity stock in the
19 company Ripple?

20 A. No. That would be XRP.

21 Q. XRP. So you're talking about an IPO
22 related to XRP?

23 A. Yes.

24 Q. Okay. Sitting here today, is it your
25 opinion that Ripple did not register its sales of

1 [REDACTED] - Confidential Pursuant to Protective Order
2 XRP as a public offering in order to avoid the
3 costs associated with an IPO?

4 A. I have no opinion on that. I don't
5 have the facts.

6 Q. Okay. So you're not drawing any
7 opinion either way about why Ripple did not
8 conduct an IPO?

9 A. I am not.

10 Q. Okay. Did you consider any
11 explanations as to why Ripple might have decided
12 to not conduct an IPO?

13 A. Did I consider? I'm sorry. Could
14 you repeat that again.

15 Q. That's okay. I'll just retract that
16 question. Okay. Mr. [REDACTED], in your report
17 you opine on the registration requirements
18 applicable to both public and private offerings
19 of securities under the securities laws.
20 Correct?

21 A. Yes. There's a portion in there. I
22 don't know if I'm opining about anything in
23 particular. It's just merely a recounting
24 philosophically of how those work.

25 Q. So you're talking just at a

1 [REDACTED] - Confidential Pursuant to Protective Order
2 philosophical level about the securities laws?

3 MR. HANAUER: Objection, misstates
4 his testimony.

5 A. Yeah. General overview.

6 Q. Okay.

7 A. Comparing, and I think I say that in
8 the report that it's not meant to be a detailed
9 discussion of what private offering exemption
10 applies where, but contrasting public versus
11 private offering and what's involved.

12 Q. Okay. During your career at NASD or
13 NASDAQ, were you responsible for advising
14 companies on how to comply with the registration
15 requirements under the securities laws?

16 A. Not advising, but certainly involved
17 from the regulatory standpoint.

18 Q. And were you responsible for advising
19 companies or individuals on which exemptions or
20 safe harbors would apply to their sales or offers
21 of securities?

22 A. I'm trying to think. You know, I
23 don't recall any specific instance, but it's not
24 beyond the realm of possibility where a firm
25 would come in, and, you know, seek guidance from

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2 NASD. We had our own corporate finance division,
3 and CorpFin may work with that, may have worked
4 with that company to ensure that compliance
5 offering exemption was appropriate.

6 We also policed our member firms, our
7 broker-dealer firms, in terms of whether they
8 complied with private offering exemptions, and so
9 we review things like offering memorandum and
10 those types of things, so, you know, that's my
11 familiarity with it.

12 It's more from the regulatory
13 standpoint as opposed to the business standpoint.

14 Q. And when you said we at NASD did
15 this, was that part of your role personally?

16 A. I could be involved, sure, but it was
17 mostly CorpFin, and if there was an issue that
18 they wanted to bring market regulation in on
19 either from a consultant standpoint or refer to
20 us for further inquiry from a regulatory
21 standpoint, then we would get involved.

22 Q. And, when they brought you in or
23 referred issues to you, what would you be asked
24 to consult on?

25 A. It would depend again on the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 circumstances or facts, you know. You know, it
3 could be a number of different things from what's
4 my opinion on something. I mean the lawyers
5 were forever coming in to me and saying, you
6 know, what do you think of this approach, that
7 approach.

8 So, even though I'm not a lawyer, I
9 at times directed them in certain ways.

10 Q. And what about specifically with
11 respect to companies' compliance with
12 registration requirements under the securities
13 laws? What were you brought in to consult on?

14 A. Well, again, that was mostly our work
15 dealing with unregistered distributions, and, if
16 it was, you know, I had a lot of responsibility
17 and wore a lot of hats, but, you know, if it was
18 a major issue or a major firm or a giant fraud or
19 something, they would bring me in and make sure I
20 was kept apprised of the most visible types of
21 actions that we were working on, and it could
22 involve and often did involve unregistered
23 offerings.

24 Q. Mr. [REDACTED], do companies typically
25 hire lawyers to determine whether they need to

1 [REDACTED] - Confidential Pursuant to Protective Order
2 register with the SEC in connection with their
3 sales or offers of securities?

4 A. I don't know if it's typical or not,
5 but it's certainly a resource that's available to
6 them, and, you know, if I was unsure about
7 something, as I've said before, if I was standing
8 in somebody's shoes, I would certainly bring in
9 counsel.

10 Q. And this is a relatively specialized
11 area of the law, isn't it?

12 A. Yeah. I think it's, you know,
13 securities, a firm that, you know, specializes in
14 the securities industry. Sure.

15 Q. Are you aware of the credentials of
16 the legal experts who focus on securities
17 registration or exemptions?

18 A. The credentials?

19 MR. HANAUER: And which experts?

20 A. Yeah.

21 Q. Of legal experts that are focused on
22 securities registration or exemptions.

23 A. Not every one. You know, I'm
24 assuming that they're qualified to offer opinions
25 in the securities area. I'm sure you guys go

1 [REDACTED] - Confidential Pursuant to Protective Order
2 through different interviewing techniques to see
3 if you're bringing on a securities expert, right?

4 Q. Mr. [REDACTED], what regulations
5 provide exemptions and safe harbors from
6 registration under the Securities Act or the
7 Exchange Act?

8 A. What rules or regulations? I'm
9 sorry.

10 Q. What regulations provide the
11 exemptions and safe harbors from registration
12 under the Securities Act or the Exchange Act?

13 A. Well, there's a whole variety of
14 regulations that the commission has put out.
15 You know, it's all in the report. It's a
16 very -- it can be a very complex area, so I'm not
17 opining on any of those rules or regulations, but
18 you have, you know, Regulation A, Regulation D
19 are the two primary ones. You have regulation
20 crowd funding. You have Regulation S, and you
21 can be afforded an exemption without, you know.
22 Those are kind of safe harbor kind of rules, so,
23 if you're within the characteristics or the
24 details of Reg D, it's pretty much sure that
25 you're not engaged in unregistered distribution,

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2 because you can do a private offering without
3 saying I'm complying with reg D or reg A, but it
4 gives you the comfort or safe harbor that you are
5 in compliance with the exemption.

6 Q. And, Mr. [REDACTED], you're not
7 providing testimony or an opinion about the
8 applicability of any exemptions or safe harbors
9 from registration in this case?

10 A. I am not, and I state that I think in
11 my report.

12 Q. Okay. Aside from the Section 4
13 exemptions you note in your report, are you aware
14 of any other exemptions from registration under
15 the '33 Act?

16 A. Not off the top of my head. I mean
17 there may be one I missed. I don't remember.

18 Q. Are you familiar with the exemption
19 provisions in Section 3 of the '33 Act?

20 A. Not off the top of my head, no. I
21 would have to look at it.

22 Q. Okay. Are you offering an opinion in
23 this case about whether any of Ripple's sales or
24 offers of XRP including its over-the-counter XRP
25 sales would qualify for the private placement

1 [REDACTED] - Confidential Pursuant to Protective Order
2 exemption in Section 4A2?

3 A. I have no opinion on that.

4 Q. Okay. Are you offering an opinion
5 about whether Ripple implemented any holding
6 periods in its over-the-counter contracts to
7 prevent immediate resale to downstream purchasers
8 of XRP?

9 A. I have no opinion. No.

10 Q. Are you offering an opinion as to
11 whether Ripple implemented any other deterrents
12 on immediate resale of XRP?

13 A. No, I'm not.

14 Q. Okay. Are you offering any opinion
15 about whether Brad Garlinghouse or Chris Larsen
16 are or were Ripple affiliates or insiders as
17 defined by the securities laws?

18 A. I am not.

19 Q. Are you offering any opinion on
20 whether Ripple placed any rules on insider or
21 affiliate sales of XRP?

22 A. I am not.

23 Q. Okay. Do you want to take a break?

24 A. A lunch break? What time do you
25 generally break?

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2 MR. HANAUER: We've been going for
3 about 40 minutes.

4 A. I'm fine for another ten or 15
5 minutes.

6 Q. Okay. Great.

7 A. Thank you.

8 Q. Mr. [REDACTED], you state in your
9 report that registration provides for full and
10 fair disclosure to investors that they may have
11 the pertinent -- so that they may have the
12 pertinent facts necessary to make informed
13 decisions.

14 MR. HANAUER: Are you reading from
15 his report?

16 MS. GRESSEL: I am. I can direct
17 you to the page.

18 Q. So it's page 29. It's the second
19 bullet in the second set of bullets on page 29.
20 Maybe you could read it out loud for us.

21 A. The second set of bullets.
22 "Registration provides for full and fair
23 disclosure to investors in order that they may
24 have the pertinent facts necessary to make
25 informed investment decisions."

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2 Q. Isn't it accurate that the relevant
3 legal standard for what information must be
4 publicly disclosed by registrants is materiality?

5 MR. HANAUER: Objection to form.

6 A. Say it again. I want to make sure I
7 answer you properly.

8 Q. Let me start slightly differently.

9 A. Okay.

10 Q. Are you familiar with the materiality
11 standard for public disclosures under the
12 securities laws?

13 A. Yes.

14 Q. And how did you become familiar with
15 that materiality standard?

16 A. I think we testified, I testified
17 earlier as to what constituted materiality in the
18 NASDAQ world and my familiarity with it. There
19 are actually specific rules relating to
20 disclosure in the IPO world. Form S1,
21 regulation S-K I believe and S-X.

22 So, you know, whether that gets to,
23 there can be those disclosures, but there can be
24 other disclosures, for example, where CorpFin
25 when they review an offering prior to its

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2 becoming effective will work with the company to
3 clean up disclosure or make them make other
4 disclosures based on the facts and circumstances.
5 So hopefully that answers your question.

6 Q. And so the facts and circumstances
7 are very important in determining what is
8 material, correct?

9 A. I would say so, yes.

10 Q. And you cite, we talked earlier about
11 the Supreme Court case you cite on page 15 of
12 your report, which provides that legal standard
13 for materiality, correct?

14 A. Yes.

15 Q. Why don't you read what you have in
16 that parenthetical on page 15 in the footnote.

17 A. Okay. "Information is material if
18 there is a substantial likelihood that a
19 reasonable shareholder would consider it
20 important in making an investment decision. To
21 fulfill the materiality requirement, there must
22 be a substantial likelihood that a fact would
23 have been viewed by the reasonable investor as
24 having significantly altered the total mix of
25 information made available."

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2 Q. So we can agree based on this Supreme
3 Court standard you quoted it's important to look
4 at the total mix of information available to a
5 reasonable investor to determine what is
6 material?

7 A. I think that's right.

8 Q. Okay, and undertaking the analysis
9 for your report, what steps, if any, did you take
10 to determine the total mix of information
11 available to potential XRP purchasers?

12 A. You know, just say it one more time.

13 Q. In undertaking the analysis for your
14 report, what steps, if any, did you take to
15 determine the total mix of information available
16 to potential XRP purchasers?

17 A. None.

18 Q. None. Why not?

19 A. Well, it's not the purpose of my
20 report. I don't have an opinion on that, nor am
21 I offering an opinion.

22 Q. So you didn't view it as part of your
23 assignment?

24 A. Right.

25 Q. Okay. So, sitting here today, you

1 [REDACTED] - Confidential Pursuant to Protective Order
2 have not done research into the total mix of
3 information concerning either XRP or Ripple
4 that's publicly available to potential XRP
5 purchasers?

6 A. Not totally. I have looked at some
7 of their marketing reports that are available
8 online. I don't know if that is what you're
9 talking about.

10 Q. Do you recall which market reports
11 you looked at?

12 A. I believe it was several years ago.

13 Q. And what information did you look at
14 in those market reports?

15 A. Just how they were reporting their
16 sales of XRP and some of the other information
17 that was available on there like I think there
18 were trending prices and had other disclosures
19 regarding what was happening at the company and
20 so on.

21 Q. And did those, your review of those
22 XRP market reports inform your opinion about what
23 information would be material about Ripple or
24 XRP?

25 A. No, it did not.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. It did not. Sitting here today, are
3 you offering an opinion about what information
4 would be material to purchasers of XRP under the
5 standard we discussed from the Supreme Court and
6 relevant SEC regulations?

7 A. Well, I think that, if this is what
8 you're asking me, I think we have to go back to
9 the presumption that drives everything else is
10 that this is based on an assumption that XRP
11 would have registered, right? So the material
12 disclosures, some of which I list, you know, on
13 page 29, so.

14 Q. So, sitting here today, you are
15 offering the opinion that the disclosures you
16 list on page 29 would be material to purchasers
17 of XRP under the legal standard set forth by the
18 Supreme Court and relevant SEC regulations?

19 A. I would say it would be important to
20 investors to know that. Yes.

21 Q. In your mind, is there a difference?

22 A. I think I wouldn't have put them in
23 here unless they were material in my view.

24 Q. Okay. So your opinion is that that
25 list of disclosures on page 29 would be material

1 [REDACTED] - Confidential Pursuant to Protective Order
2 to purchasers of XRP?

3 A. Right. As I said in the report, the
4 list is by no means exhaustive or, you know,
5 cherry-picked for whatever reason.

6 Q. Okay. Do you understand the
7 question of what is material information under
8 the securities laws to be a legal issue?

9 A. Certainly when I was making those
10 determinations at NASD, I don't recall, it may
11 have been one or two occasions where I consult my
12 counsel before I made a determination on issuing
13 a trading halt, and so again I was making the
14 calls on materiality based on facts and
15 circumstances, and, you know, I think generally
16 somebody can figure out on their own what's
17 important, what's not important.

18 Q. Do companies normally consult lawyers
19 on what's considered sufficiently material that
20 it should be disclosed in the company's SEC
21 filings?

22 A. I would say that would be typical.
23 Yeah.

24 Q. Mr. [REDACTED], let's take a closer
25 look at that list you have on page 29. So you

1 [REDACTED] - Confidential Pursuant to Protective Order
2 conclude your report on page 29 with a statement
3 -- well, it's above the title Conclusion. Why
4 don't you read that statement to us, that last
5 paragraph right above the conclusion header?

6 A. "Without the benefit"?

7 Q. Um-hum.

8 A. "Without the benefit of registration
9 and further periodic and current reporting,
10 investors were deprived of what I believe were
11 important disclosures, which could have shone
12 substantial light on the nature of XRP, Ripple
13 and Ripple's key employees."

14 Q. Did you write that sentence?

15 A. I did.

16 Q. What's your basis for your statement
17 that XRP purchasers were deprived of what you
18 believe were important disclosures concerning
19 XRP, Ripple or Ripple's employees?

20 A. Okay. Again let's go back to the
21 presumption, right? The presumption is, if they
22 were required to register, then these would be
23 important disclosures to investors.

24 Q. And what's your basis for concluding
25 that they would be important disclosures to

1 [REDACTED] - Confidential Pursuant to Protective Order
2 investors?

3 A. Again, my own personal experience in
4 dealing with thousands of material disclosures
5 over the years as well as the standards that we
6 employed at NASDAQ, the Supreme Court decision,
7 which I cited. So the concept of materiality is
8 one that's pretty well generally accepted
9 throughout the industry.

10 Q. Did you do any research concerning
11 what information was actually provided to
12 purchasers of XRP other than looking at those XRP
13 market reports we talked about earlier?

14 A. I did not.

15 Q. Okay. You state on page, let's turn
16 back to page 28, just back one page.

17 A. Um-hum.

18 Q. So I'm looking at the second to last
19 paragraph, the last sentence in that that starts
20 "Without periodic."

21 A. Oh, in the middle of the paragraph.

22 Q. Can you read Starting from "Without
23 periodic" to the end of that paragraph.

24 A. "Without periodic reporting, as
25 Ripple continued to offer and sell, XRP investors

1 [REDACTED] - Confidential Pursuant to Protective Order
2 would not be alerted to the ongoing status of the
3 enterprise, the company's financial statements,
4 MD&A, recent sales of securities, insider
5 transactions and new products or services."

6 Q. What was your basis for that
7 statement?

8 A. Okay. Again, we go back to the
9 presumption that, if they were registered, these
10 are the important disclosures that would flow
11 from that registration process, so, as I say in
12 the sentence before that, which I didn't read, is
13 that the prospectus and registration statement
14 would be the customary way for the investing
15 public to learn about Ripple, for example, if in
16 fact they had registered as a security.

17 Q. So is it correct, is it generally
18 correct that you view those disclosures in that
19 last sentence you read as being typical of what
20 is generally in a prospectus or registration
21 statement?

22 A. Yes.

23 Q. Okay. Did you conduct any research
24 into what information was publicly available to
25 XRP purchasers concerning Ripple's enterprise?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. No, I did not, other than those
3 market reports that I mentioned.

4 Q. Did you conduct any research into
5 what information was publicly available to XRP
6 purchasers concerning Ripple sales of equity
7 stock?

8 A. No.

9 Q. Did you conduct any research into
10 what information was publicly available to XRP
11 purchasers concerning Ripple sales of XRP?

12 A. Just the market reports which I think
13 report sales.

14 Q. Did you conduct any research into
15 what information was publicly --

16 MR. HANAUER: Anna, do you mind
17 slowing down a little bit?

18 MS. GRESSEL: I do not mind.

19 Q. So I'll just let me start that one
20 again. Did you conduct any research into what
21 information was publicly available to XRP
22 purchasers concerning sales of XRP by Brad
23 Garlinghouse?

24 A. No.

25 Q. Did you conduct any research into

1 [REDACTED] - Confidential Pursuant to Protective Order
2 what information was publicly available to XRP
3 purchasers concerning sales of XRP by Chris
4 Larsen?

5 A. No.

6 Q. Okay. Did you conduct any research
7 into what information was publicly available to
8 XRP purchasers concerning Ripple's products or
9 services?

10 A. No, other than those market reports
11 again.

12 Q. Okay. Now let's go back to 29 to
13 the bullets you have there. Mr. [REDACTED], in
14 order to determine what specific disclosure
15 obligations apply to a sale or offer of
16 securities, isn't it important first to determine
17 which disclosure obligations are -- let me take
18 that question back.

19 In order to determine what disclosure
20 obligations apply to a sale or offer of
21 securities, isn't it important first to determine
22 what type of offer or sale of securities is at
23 issue?

24 A. I'm not understanding the question.

25 Q. So let me just take an example. An

1 [REDACTED] - Confidential Pursuant to Protective Order
2 IPO contains different disclosure requirements
3 than other public or private offerings of
4 securities, correct?

5 A. It may or may not. I mean I've seen
6 some private offering memorandums that are as
7 detailed as any prospectus you want to see.

8 Q. Are you providing an opinion in this
9 case about which registration requirements apply
10 to Ripple sales or offers of XRP?

11 A. I think the theme, and it may be
12 stated somewhere, is that it's the IPO. So it
13 would be full registration.

14 Q. So your view is, if Ripple were
15 required to register its sales or offerings as a
16 security, it would be required to do so as an
17 IPO?

18 A. No. That's not what I'm saying.
19 I'm saying that the context of the report is,
20 assuming that Ripple registered as an IPO, this
21 is what would fall. Okay. I'm not saying Ripple
22 should have done a private placement or should
23 have done an IPO or anything.

24 Q. And there are other frameworks for
25 disclosure that could apply other than an IPO,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 correct?

3 A. For example, what?

4 (Discussion off the record between
5 witness and counsel)

6 Q. For example, Section 12G of the
7 Exchange Act.

8 A. Right.

9 Q. Okay.

10 A. So, when I say IPO as I said before,
11 I think it's in the report, it is registration
12 generally, you know. Those terms are
13 interchangeable, but it relates to the
14 registration process, and, yes, they could avail
15 themselves of other methods of going public or
16 you know. The thing is, though, even with the
17 series of Section 12, that triggers other
18 reporting down the road.

19 Q. But the disclosure requirements are
20 different under Section 12G than they would be
21 for an IPO, correct?

22 A. I'd have to look at more information
23 on that. I can't answer honestly off the top of
24 my head.

25 Q. Okay. So I just want to go back to

1 [REDACTED] - Confidential Pursuant to Protective Order
2 these bullets. You mentioned that you -- I
3 don't want to characterize your testimony.

4 MR. HANAUER: What page are we on,
5 Counsel?

6 Q. The top of 29. The top set of
7 bullets in 29. Is it your opinion that these
8 bullets are typical of the information that would
9 be required to be disclosed on a Form S1
10 registration statement with respect to an IPO?

11 A. If the facts and circumstances are
12 similar, sure.

13 Q. Similar to what?

14 A. Similar to other things that, you
15 know, similar to what the company is doing. You
16 know, so, if you look at an S1, for example, you
17 will see a lot of these things, you'll see
18 insider sales, you'll see whether the lockup
19 periods or dilution factors are in there, how
20 insiders are compensated, so these are general,
21 the use of proceeds, so these are general
22 disclosures that are made in a typical
23 prospectus.

24 Q. The second to last of these bullets
25 references "Ripple's use of promotions,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 incentives and payments to Ripple's customers and
3 third parties in developing its products and uses
4 for XRP." Do you see that, the second to last
5 of the bullets?

6 A. Yes.

7 Q. Is it your opinion that incentives
8 and payments to a company's customers and third
9 parties in developing products is information
10 required to be disclosed in a company's public
11 SEC filings?

12 MR. HANAUER: Objection to form.

13 A. Again, I'll fall back on facts and
14 circumstances. I'd have to look at the
15 individual facts. You know, certainly I have
16 seen these disclosures many times as I said
17 before in a prospectus. It goes to the nature
18 of the market for the securities, for example.
19 It goes to the dilution factor. It goes to how
20 vendors are being compensated, which I think is
21 an important disclosure. So it pretty much is
22 pretty standard.

23 Q. Maybe I'll ask that a different way.
24 Is information concerning incentives and payments
25 to a company's customers and third parties in

1 [REDACTED] - Confidential Pursuant to Protective Order
2 developing products typically called for in a
3 form S1?

4 A. It can be called for depending on
5 what the circumstances are. Yes.

6 Q. And, when you say depending on what
7 the circumstances are, do you mean depending on
8 whether that information is material?

9 A. Yeah.

10 Q. Okay. Are you drawing a conclusion,
11 perhaps you testified to this earlier, but are
12 you drawing a conclusion that each of these
13 bullets on the top of 29 would be material to XRP
14 purchasers?

15 A. Should it have been registered, I
16 think these disclosures in my opinion should have
17 been in there, sure.

18 Q. And what is your basis?

19 A. As I said before, my basis is that
20 these are typically seen in, you know, S1's, and
21 I'm not familiar enough, you know, it has been a
22 while since I looked at regulation S-K and S-X,
23 for example, which detailed the disclosures, but
24 certainly where an issue rises to, as you
25 suggested, to the level of materiality that's

1 [REDACTED] - Confidential Pursuant to Protective Order
2 involved based on the particular facts and
3 circumstances of that individual company, then,
4 you know, it should be disclosed, and that
5 determination can be made by the company, through
6 its counsel, through conversations with CorpFin
7 at the SEC.

8 So it's not -- I wouldn't say it's an
9 automatic thing, but certainly I have seen it
10 many, many times in different offerings or
11 prospectuses.

12 Q. And did you undertake any research
13 concerning the facts and circumstances specific
14 to Ripple or XRP?

15 A. I did not.

16 Q. You did not, so have you ever spoken
17 to a purchaser of XRP?

18 A. I have not.

19 Q. Have you ever reviewed any material
20 reflective of the views and opinions of
21 purchasers of XRP?

22 A. I have not.

23 Q. Have you ever reviewed any material
24 reflecting the views of purchasers of digital
25 assets more generally?

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2 MR. HANAUER: Beyond what is cited
3 in his report?

4 Q. Beyond what is cited in your report.

5 A. I have not.

6 Q. In your opinion, would the same
7 information be material for a purchaser of
8 Bitcoin as for a purchaser of XRP?

9 MR. HANAUER: Objection to form.

10 A. I have no opinion on that.

11 Q. Okay.

12 A. I do have an opinion regarding a
13 break, though, if you don't mind, either a break
14 or break for lunch or however you want to handle
15 it.

16 MS. GRESSEL: Yep. Let's go off
17 the record and take at least a ten-minute
18 break.

19 THE VIDEOGRAPHER: We are going off
20 the record. The time is 12:10 p.m.

21 (Recess taken: 12:10 p.m.)

22 THE VIDEOGRAPHER: We are back on
23 the record. The time is 12:24 p.m.

24 BY MS. GRESSEL:

25 Q. Mr. [REDACTED], have you ever heard the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 term "XRP ledger"?

3 A. Yes.

4 Q. What is your understanding of what
5 that term means?

6 A. Well, again, I'm not an expert in
7 cryptocurrency, but I believe that is, correct me
8 if I'm wrong, that is the block chain component
9 of what they do maybe.

10 Q. So, if I said the XRP ledger is the
11 underlying block chain to which the digital asset
12 XRP is native, would you understand what that
13 was?

14 A. I think that's what I said, yeah.

15 Q. Okay. Do you know what information
16 is publicly recorded on the XRP ledger?

17 A. No, I don't. Not specifically.

18 Q. Are you aware that the XRP ledger
19 publicly records information concerning addresses
20 in digital wallets that transact on the XRP
21 ledger?

22 A. I'm not aware of that, no.

23 Q. Are you aware that the XRP ledger
24 publicly records information concerning balances
25 of those digital wallets?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. I'm not aware of that either.

3 Q. Are you aware that the XRP ledger
4 publicly records information concerning the
5 transaction history related to digital wallets?

6 A. No.

7 Q. Are you aware that as publicly
8 recorded information on the XRP ledger this
9 information is actually available to the public
10 on websites like XRPscan.com?

11 A. I'm not aware of that.

12 Q. Have you ever visited the website
13 XRPscan.com?

14 A. No.

15 Q. Are you aware that certain
16 individuals analyze the XRP ledger to determine
17 what sales of XRP or other assets are being
18 recorded on the ledger?

19 A. Not specifically, no.

20 Q. Are you aware that individuals
21 analyze the XRP ledger to determine who may be
22 engaging in transactions of XRP?

23 A. I'm not aware of that, no.

24 Q. Okay. Are you aware that certain
25 information regarding sales by Ripple's founders

1 [REDACTED] - Confidential Pursuant to Protective Order
2 is publicly available by virtue of being recorded
3 on the XRP ledger?

4 A. I'm not aware of that.

5 Q. Okay. Mr. [REDACTED], your report
6 states that section 2A1 of the Securities Act
7 provides the definition of a security, which
8 includes the concept of an investment contract,
9 is that correct?

10 A. Yes.

11 Q. Okay, and whether or not something
12 qualifies as an investment contract under this
13 definition is a legal conclusion, correct?

14 MR. HANAUER: Objection to form.

15 A. I'll go to my prior answer earlier
16 on, and that's ultimately it could be determined
17 in a legal conclusion, but, you know, there are
18 steps, or there could be some recognition either
19 through compliance or counsel or whatever that
20 possibly we could be dealing with an investment
21 contract here without the legal conclusion.

22 So, again, it's what I testified this
23 morning, kind of grades with the legal conclusion
24 being the ultimate determination.

25 Q. And your report states the term

1 [REDACTED] - Confidential Pursuant to Protective Order
2 "investment contract" is purposefully broad. Is
3 that statement accurate?

4 A. Yeah. That's very accurate, and,
5 you know, as an aside, and I don't mean to get,
6 put my professor hat on again, but that's the
7 purpose of this report.

8 So, you know, Congress in its wisdom
9 crafted two very important areas to be as broad
10 as possible. One is the investment contract
11 concept, which I thought was brilliant in the
12 definition section, and, as you know, 10(b)5 is a
13 fraud statute, and that's purposefully broad,
14 because there is all kinds, there's flexibility
15 needed for all kinds of new and innovative
16 products and services and activities and actions
17 and everything else that comes down the road, so
18 that it can be encompassed in either the
19 investment contract definition or in the
20 anti-fraud provision, so there are certain ones
21 that are purposefully broad to take that into
22 consideration.

23 Q. What sources would someone in the
24 securities field look to as authoritatively
25 answering the question of whether a statutory

1 [REDACTED] - Confidential Pursuant to Protective Order
2 term such as investment contract is broad or
3 narrow?

4 A. You know, I guess they can ask their
5 counsel or, you know, again, I go back to the
6 safety net where, if these questions come up,
7 there's a bunch of people you can ask including
8 the SEC.

9 Q. And are there court cases
10 interpreting whether terms like investment
11 contract are broad or narrow?

12 A. Whether they're broad or narrow, I
13 think there are some language which points to the
14 fact that investment contract is purposefully
15 broad. I can't cite the exact, you know, legal
16 decision, but I think that's mentioned in a
17 couple of decisions or footnoted at least that
18 I've seen.

19 Q. And, if lawyers had a dispute about
20 whether a term like investment contract from a
21 statute is broad or narrow, is that something
22 that a court might be asked to weigh in on?

23 A. Depending on facts and circumstances,
24 sure.

25 Q. Okay. Do you have any expertise in

1 [REDACTED] - Confidential Pursuant to Protective Order
2 determining whether an asset or financial
3 instrument is an investment contract?

4 A. That what kind of financial
5 instrument?

6 Q. An asset or a financial instrument is
7 an investment contract.

8 A. Specifically, no, but I do have, you
9 know, the principles that have been, you know,
10 put forth in Howey, for example, which is the
11 industry guiding principle in that space.

12 Q. So you look to guiding principles
13 from Supreme Court cases?

14 A. Sure.

15 Q. And you're not a lawyer, right?

16 A. No.

17 Q. Okay. If a company wants to
18 determine whether their assets or financial
19 instruments are investment contracts, they
20 generally hire lawyers to provide them with legal
21 advice on this question, right?

22 A. They could, sure.

23 Q. And those lawyers would consult legal
24 sources like statutes, regulations and case law,
25 right?

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2 A. I presume so, sure.

3 Q. Are you aware of whether Ripple hired
4 lawyers to provide them with advice on whether
5 XRP might be considered an investment contract?

6 A. I believe there's a portion, and
7 again I feel bad because it has been a while
8 since I read the complaint, but I think there is
9 a portion in the complaint where it said that
10 they had consults with attorneys regarding that
11 question. Yes.

12 Q. Did you review any of the legal memos
13 concerning XRP in connection with your work on
14 this case?

15 A. I did not.

16 Q. Okay, and your report states you
17 received a copy of the answer to the amended
18 complaint in the course of preparing your report,
19 correct?

20 A. I did.

21 Q. Did you read that document?

22 A. I did a while ago. Um-hum.

23 Q. Okay, and it's included in the list
24 of materials reviewed in Appendix A to your
25 report, correct?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Say it again.

3 Q. It's included in the list of
4 materials reviewed in Appendix A to your report?

5 A. Yes. I'm sorry.

6 Q. I would like to show you what has
7 been marked as Exhibit [REDACTED] 3.

8 (Defendant Exhibit [REDACTED] 3, Amended
9 complaint, was so marked for
10 identification, as of this date.)

11 Q. Please turn to paragraph 53 of the
12 answer to the amended complaint. I will give
13 you a moment to get to paragraph 53.

14 Did you find it?

15 A. Yes.

16 Q. Could you please read out loud the
17 first two sentences of that paragraph?

18 A. "Ripple denies the allegations in
19 paragraph 53, which selectively quote and
20 mischaracterize portions of a legal memorandum
21 dated February 8, 2012 from a law firm that was
22 addressed to co-founder and another individual
23 and a second legal memorandum dated October 19,
24 2012 from the same law firm that was addressed to
25 Mr. Larsen, co-founder, and OpenCoin."

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Next one? "Ripple avers that any
3 reasonable reader of the true and accurate
4 contents of the memorandum dated October 19, 2012
5 would understand that counsel's ultimate
6 conclusion was that Ripple Credits as described
7 did not constitute securities under the federal
8 securities laws. The documents speak for
9 themselves, and Ripple respectfully refers the
10 Court to the full text of the documents for an
11 accurate and complete record of their contents."

12 Q. Mr. [REDACTED], do you recall reading
13 this paragraph in your review of the answer to
14 the amended complaint?

15 A. Not specifically, but I've read it.

16 Q. Do you know what Ripple Credits are?

17 A. No.

18 Q. Is it correct that the answer to the
19 amended complaint states that Ripple's founders
20 received legal advice as early as 2012 with the
21 ultimate conclusion XRP did not constitute
22 securities under the federal securities laws?

23 MR. HANAUER: Objection. Ripple's
24 answer speaks for itself.

25 A. I mean that's what it says, so I'm

1 [REDACTED] - Confidential Pursuant to Protective Order
2 assuming that's correct.

3 Q. Okay. You understand that whether or
4 not Ripple sales or offers of XRP constituted an
5 investment contract is a legal issue in this
6 litigation?

7 A. I think that's right.

8 Q. And that's why you're not providing
9 an opinion today on whether Ripple sales or
10 offers of XRP constituted an investment contract,
11 right?

12 A. That's right. It's not my role.

13 Q. And you understand the question of
14 whether XRP the token itself is an investment
15 contract is a legal question in this litigation,
16 right?

17 A. In this litigation, yes.

18 Q. And that's why you're not providing
19 an opinion today on whether XRP is an investment
20 contract, correct?

21 A. That's right.

22 Q. Okay. In your report, you mention
23 the Supreme Court case SEC versus W.J. Howey,
24 right?

25 A. Yes.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Are you offering an opinion on how
3 Howey applies to the facts of this case?

4 A. No.

5 Q. Okay. You have stated the SEC has
6 brought 75 or more enforcement actions related to
7 digital assets by the end of 2012, right? Oh.
8 2020.

9 A. Yeah. No. That was in the context
10 of a report that I footnote in my report. A
11 Cornerstone report. That wasn't me.

12 Q. Did you read the Cornerstone report
13 in preparing your report?

14 A. I glanced through it. Yeah.

15 Q. Okay. Were you personally involved
16 in any of those enforcement actions brought by
17 the SEC?

18 A. I was not.

19 Q. What have you done in connection with
20 your assignment in this case to review those
21 enforcement actions?

22 A. I have reviewed some of the
23 enforcement actions, not all of them. Kick
24 Interactive rings a bell. There was one more
25 that I don't recall offhand. Kick was the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 primary one.

3 Q. Okay. So you read the Kick
4 Interactive case, and your testimony is
5 potentially one other enforcement action.

6 Did you read any other enforcement
7 actions or just those two?

8 MR. HANAUER: Objection to form.

9 Are you still talking about the
10 Cornerstone report?

11 Q. Yes, of the 75 enforcement actions
12 cited in that report that you referred to.

13 A. No. I believe those were the only
14 ones. I think they're in there. I did read
15 the SEC litigation release regarding the first
16 one, which was the Ponzi scheme, and I forget the
17 name of the case, but I didn't read the
18 complaint. I read the summary of the SEC.

19 Q. The SEC's first enforcement action
20 regarding digital assets, is that correct?

21 A. That's correct.

22 Q. Okay. How did you select which of
23 those enforcement actions to review?

24 A. I had no specific reason to do that.
25 I think in my overall research I picked that up

1 [REDACTED] - Confidential Pursuant to Protective Order
2 somewhere in a footnote or whatever. As a
3 matter of fact, I think I read Kick prior to my
4 retention at the SEC as background for they were
5 interviewing me as a potential expert, so I
6 wanted to bone up on what was involved.

7 Q. So you had previously -- you read
8 Kick prior to your engagement on this matter, and
9 then, in the course of reading the Cornerstone
10 report, you selected one other case to read?

11 A. Yeah, just to see what was going on,
12 right.

13 Q. Okay. Are you aware of how many of
14 those 75 enforcement actions involved a
15 determination that a digital asset is an
16 investment contract under Howey?

17 A. Not specifically, no.

18 Q. Okay. Do you have a rough estimate
19 of how many?

20 MR. HANAUER: Objection. A
21 determination by who?

22 Q. A legal determination that a digital
23 asset is an investment contract.

24 MR. HANAUER: Same objection. By
25 who?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Are you aware -- I'll just rephrase
3 the question. How many of those 75 enforcement
4 actions involved a finding in the order that a
5 digital asset was an investment contract under
6 Howey?

7 MR. HANAUER: Objection to form.
8 What order?

9 Q. In the administrative order filed as
10 part of the settlement.

11 MR. HANAUER: Again, objection to
12 form.

13 Q. In the administrative order filed as
14 part of the settlement with the SEC.

15 MR. HANAUER: Are you talking about
16 all 75 actions?

17 MS. GRESSEL: Yes.

18 Q. Within the universe of all those 75
19 actions, how many involved a determination that a
20 digital asset is an investment contract or an
21 allegation by the SEC?

22 A. I don't know.

23 Q. Okay. So, to avoid a similar
24 objection, I'm just going to tell you, I'm still
25 talking about the 75 enforcement actions, and I'm

1 [REDACTED] - Confidential Pursuant to Protective Order
2 still talking about allegations. So just up
3 front or findings.

4 So how many of those 75 enforcement
5 actions had findings or allegations that focused
6 on initial coin offerings or ICOs?

7 A. I don't know.

8 Q. Okay. Isn't it the case that --
9 well, Mr. [REDACTED], do you recall whether the
10 Cornerstone report spoke to that question?

11 A. Whether there was a determination by
12 somebody about a security for a digital asset?

13 Q. Did the Cornerstone report in your
14 recollection speak to how many of those 75
15 enforcement actions had allegations or findings
16 focused on initial coin offerings or ICOs?

17 A. I don't have a specific recollection,
18 but I think there was a breakdown, I don't know
19 if it was by date or subject matter, there was a
20 breakdown that was in there. I mean, you know,
21 and again I go back to the purpose of my report
22 was not to read all those cases. It was that
23 the only point is that the SEC was active in the
24 enforcement area.

25 Q. Mr. [REDACTED], what is your

1 [REDACTED] - Confidential Pursuant to Protective Order
2 understanding of the term "initial coin
3 offering"?

4 A. An ICO?

5 Q. Um-hum.

6 A. Again, it may not be the correct one,
7 but, you know, it's a, and, again, you probably
8 know better than I do, correct me if I'm wrong,
9 it's an initial coin offering, so it's a sale of
10 a digital asset or a coin by somebody.

11 Q. Isn't it the case that ICO -- that
12 enforcement actions focused on allegations or
13 findings regarding ICOs would not provide
14 guidance to individuals that are not engaged in
15 ICOs, but seek instead to determine whether a
16 digital asset is a security?

17 MR. HANAUER: Objection to form.

18 A. I'm not aware. You know, again, I
19 don't have an opinion on that.

20 Q. Mr. [REDACTED], isn't it the case that,
21 when people look at enforcement actions to seek
22 guidance from them, they generally focus on
23 enforcement actions with similar facts and
24 circumstances?

25 A. They can. Sure.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Okay, and, if the facts and
3 circumstances are very different, is it the case
4 that they would provide less guidance?

5 A. If it was not applicable to their
6 particular facts and circumstances, sure.

7 Q. Okay. Again, we're going back to
8 the Cornerstone report.

9 A. Um-hum.

10 Q. Do you recall how many of those 75
11 enforcement actions had findings or orders,
12 findings or allegations involving fraud?

13 A. Almost certainly the Ponzi scheme one
14 did, but that's the only one that I know of.

15 Q. So you don't know either way?

16 A. No. I mean, like I said, I didn't
17 look at all 75.

18 MR. HANAUER: Counsel, is this a
19 memory test? Do you want to just put the
20 report in front of him and see what it
21 says?

22 MS. GRESSEL: No, I'm okay, I think.

23 MR. HANAUER: Okay.

24 Q. Mr. [REDACTED], isn't it the case that
25 enforcement actions involving fraud allegations

1 [REDACTED] - Confidential Pursuant to Protective Order
2 would not necessarily provide guidance in cases
3 that don't involve allegations of fraud?

4 MR. HANAUER: Objection to form.

5 A. You know, I don't know. They could.
6 They couldn't. Again, it's a hypothetical that
7 I really can't answer.

8 Q. Mr. [REDACTED], of those 75 enforcement
9 actions, are you aware of how many were resolved
10 through settlements?

11 A. No. It may have been one of those
12 breakdowns I talked about, but, again, I'm going
13 from memory now, which is not too good.

14 Q. Is it your view that settlements
15 provide the same type of binding precedent as
16 court opinions?

17 A. They can. Sure.

18 Q. Isn't it the case that settlements
19 only reflect what an alleged securities violator
20 agreed constituted a violation of the securities
21 laws?

22 A. Say it again, please.

23 Q. Isn't it the case that settlements
24 only reflect what an alleged securities law
25 violator agreed constituted a violation of the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 securities laws?

3 MR. HANAUER: Objection to form.

4 A. Certainly you could say that, but
5 I've seen SEC pronouncements that or releases
6 that show that an offer of settlement has been
7 accepted and provides specific rationale, well,
8 actually they'll describe the conduct and say the
9 specific rationale that they're accepting, why
10 they're accepting the settlement, what was
11 involved.

12 So it depends on how detailed the
13 decision is. I've seen some very detailed ones.

14 Q. But it's the case that those
15 settlements don't necessarily reflect what an
16 independent factfinder determined to have been
17 the facts at issue in the case, correct?

18 A. Well, as you stated earlier, it's a
19 settled case. So the parties are agreeing on
20 what the facts are and for whatever reason
21 agreeing to accept whatever SEC sanctions or
22 conclusions or censures are involved, so I don't
23 know. I can't offer an opinion on an
24 independent factfinder.

25 Q. Okay. Is it your opinion that the

1 [REDACTED] - Confidential Pursuant to Protective Order

2 SEC's prior enforcement actions provide guidance
3 to the market about whether a digital asset that
4 was not the subject of those actions should be
5 considered an investment contract?

6 A. I'm not following. I don't even know
7 if there is such a thing.

8 Q. Is such a thing as what?

9 A. As a decision that points to. You
10 had better read it again.

11 Q. Okay. Is it your opinion that the
12 SEC's prior actions, prior enforcement actions,
13 provide guidance to the market about whether a
14 digital asset that was not the subject of that
15 action or those actions should be considered an
16 investment contract?

17 A. But how would they do that? Through
18 an aside or if it's not the subject of the
19 action, why would they reference another asset?
20 I'm not following.

21 Q. Are you offering an opinion on how
22 many of the SEC's prior enforcement actions
23 involved facts, circumstances or transactions
24 similar to Ripple and XRP?

25 A. No.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Are you aware of the ways in which
3 the SEC versus Ripple litigation differs
4 significantly from the SEC's prior enforcement
5 actions?

6 A. I'm not aware of any. No.

7 Q. Okay. So you have not analyzed the
8 differences between the SEC's prior enforcement
9 actions and this litigation?

10 MR. HANAUER: Objection. What SEC
11 enforcement actions?

12 Q. Sorry. Sitting here today, Mr.
13 [REDACTED], you have not analyzed the differences
14 between the SEC's 75 prior enforcement actions
15 cited in the Cornerstone report and this SEC
16 versus Ripple litigation, correct?

17 A. That's right.

18 Q. Alright. You mentioned you're
19 familiar with the Kick case. Are you offering
20 an opinion today on how the SEC versus Ripple
21 litigation is similar to or different from the
22 Kick case?

23 A. I'm not.

24 MS. GRESSEL: Okay. Do you want to
25 break for lunch now?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 THE WITNESS: Yeah. That would be
3 terrific.

4 MS. GRESSEL: Alright. Great.

5 THE VIDEOGRAPHER: We are going off
6 the record. The time is 12:48 p.m.

7 (Lunch recess: 12:48 p.m.)
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1 [REDACTED] - Confidential Pursuant to Protective Order

2 Afternoon Session

3 1:49 p.m.

4 J A M E S C A N G I A N O, having been
5 previously duly sworn, was examined and testified
6 further as follows:

7 THE VIDEOGRAPHER: We are back on
8 the record. The time is 1:49 p.m.

9 EXAMINATION (Continued)

10 BY MS. GRESSEL:

11 Q. Mr. [REDACTED], I would like to refer
12 you to page 24 of your report. I would like you
13 to take a look at under header B the second
14 paragraph. Could you please read the sentence
15 that starts "The SEC in my observation"?

16 A. "The SEC, in my observation over many
17 years, has been particularly adept at keeping up
18 with new and dynamic products both in the past
19 and now in the digitally driven world."

20 You said two sentences?

21 Q. Just that one.

22 A. Okay. That's fine.

23 Q. Thank you. Mr. [REDACTED], you state
24 this is your observation based on many years.
25 What's your basis for this statement?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Well, you know, we have personal
3 experience of interaction between NASD and the
4 SEC and how to regulate, you know, new products.
5 I can give you a specific example if you want,
6 but, you know, there's no end to Wall Street's
7 creativity and how they package products, market
8 them and so on.

9 So I think the most vivid one that I
10 can recall is when the concept of an index fund
11 or an index option was introduced, and somebody
12 said, well, you know, why would you want to buy
13 that? Don't you want to buy a company, and
14 doesn't this go against capital raising which is
15 the purpose of the capital markets and so on?
16 There was a whole big debate as to what the
17 product was, how do we get it regulated, and now
18 they are in everyone's 401K, so this just is par
19 for the course. I mean, you know, Wall Street
20 innovates. I think I say something in there
21 about that. They innovate, and then we have to
22 regulate.

23 Q. And what in your view has the SEC
24 done that you see as particularly adept at
25 keeping up with new and dynamic products?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. As I said before, they, as the
3 government agency that is in charge of securities
4 markets, they have to ensure that they have a
5 regulatory approach to anything that, you know,
6 can meet the definition of a security, investment
7 contract, whatever their jurisdiction is, right?

8 So, you know, they have, as I said
9 before, they have an obligation to do that as the
10 government agency in charge, and I think I say
11 somewhere in the report that, you know, they have
12 been, although, by its very nature, regulation
13 catches up, and sometimes you have enforcement
14 predating rulemaking, for example.

15 It doesn't mean that they're not
16 carrying out their obligation to protect the
17 investor.

18 Q. With respect to digital assets in
19 particular, have you seen the SEC do anything
20 that you view as particularly adept by keeping
21 up?

22 A. Well, we talked earlier about the
23 enforcement actions. We talked about a whole
24 mix of information from investor.gov releases to
25 speeches by individual commissioners and other

1 [REDACTED] - Confidential Pursuant to Protective Order
2 things that as -- I like to call it a mix of
3 different information that you can take bits and
4 pieces of or the whole thing, but it alerts the
5 public that they are interested in a particular
6 set of circumstances or a particular product and
7 that, you know, they are going to regulate it
8 even before there are statutes on the books that
9 address that particular course of conduct.

10 Q. And why do you view that as adept?

11 A. As what? I'm sorry.

12 Q. As adept. You used the word
13 "adept," particularly adept in your report.

14 A. Because I think that, because their
15 first approach is usually enforcement, that they
16 are usually on top of new or different types of
17 investment scams, for example. I think the 2013
18 Bitcoin or whatever it was, Ponzi scheme, the
19 first enforcement action, is a good indicator of
20 that, because here was a new product, a new
21 technique that was being foisted on the public
22 and, you know, yet they still brought the
23 enforcement action, even though it involved the
24 digital assets, and they didn't shy away or turn
25 their back on the fact that this was a new

1 [REDACTED] - Confidential Pursuant to Protective Order
2 investment product that was being foisted on the
3 public.

4 Q. And you mentioned that this
5 enforcement sometimes precedes regulation, right?

6 A. Yes.

7 Q. Is it difficult for the public to
8 understand or expect how enforcement actions will
9 evolve, if there's no regulation on the books?

10 A. Well, that's, again, again, the SEC
11 is adept at putting out notification of that
12 enforcement action, putting out investor beware
13 kind of things.

14 So, in that regard, I don't know if
15 they did or not, but as an example they may have
16 said, look, we just brought an enforcement action
17 in the digital asset space. Here's what
18 investors need to know about. A, you know, do
19 you understand anything about the digital
20 product? B, if it sounds too good to be true, it
21 probably is. You know, so they would lay out,
22 and that is typically what they do, and
23 investor.gov is a great resource for the
24 investing public.

25 Q. It sounds like that you see those as

1 [REDACTED] - Confidential Pursuant to Protective Order
2 guidance that's provided to investors. What
3 about to companies that might engage in those
4 activities? Is the SEC particularly adept at
5 providing guidance to them?

6 A. You know, I don't want to
7 characterize it as good or bad, but, you know, I
8 think we had that discussion a little bit this
9 morning where the obligation falls on the company
10 to, and not the government, to ensure that
11 they're keeping up, you know. SEC goal number 1
12 is investor protection. I'm not sure, you know,
13 I'm not sure, and I'm not speaking for the SEC,
14 trust me, but, you know, in my view and I think
15 it's their view that the obligation would fall on
16 the company itself.

17 Now that doesn't mean that they turn
18 their back and don't do anything for them. I
19 think we went over some of the things this
20 morning that I testified to that there's a total
21 mix of information, there's a safety net of
22 advisors, lawyers, accountants, SEC releases, SEC
23 enforcement actions and so on.

24 So it's not like they turn their back
25 totally and say ah-ha I got you.

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2 Q. And, if the SEC wanted to provide
3 more clarity to companies about what they were
4 doing, what would you expect them to do?

5 A. You know, again, I don't feel that
6 that's their primary role. You know, I would
7 put the shoe back on the company to say, okay,
8 SEC, here's a set of facts, here's a set of
9 circumstances. Assuming or presuming or
10 hypothetically, if we go forward with this, what
11 would be your feeling, and that's essentially,
12 you know, a no action position if it gets to
13 that. Certainly before the no action position,
14 they can go to the SEC informally and talk and
15 get some indication, although, you know, if they
16 want a more formal response, then the no action
17 way is the way to go.

18 Q. So, in your view, companies can
19 engage in some compliance activities, and then,
20 if they want assurances from the SEC, they can go
21 to the SEC and seek those assurances that what
22 they're doing is in compliance with the law?

23 A. Yes, and they can do that formally or
24 informally, although the informal assurances are
25 not, you know, certainly not binding, neither is

1 [REDACTED] - Confidential Pursuant to Protective Order
2 a no action letter for that matter, because
3 there's a disclaimer, but, you know, it's a
4 little bit more formal response, and you have a
5 response back in writing.

6 Q. And what does that disclaimer say on
7 the no action letter?

8 A. You know, it's been a while since
9 I've looked at one, but I think it says --

10 MR. HANAUER: Don't speculate.

11 A. Okay. I'm speculating. Generally, I
12 think it says, you know, this doesn't preclude,
13 you know, an enforcement action down the road or
14 whatever, you know.

15 Q. And that is based on no action
16 letters you've seen in the past?

17 A. Sure.

18 Q. Okay. Mr. [REDACTED], I would like you
19 to turn to page 1 of your report. So this is,
20 looking at the bullets, this is the fourth bullet
21 down. Can you read that for us. It starts
22 with "There are various best practices."

23 A. "There are various best practices for
24 practitioners to ensure compliance with the
25 securities laws, including by working with

1 [REDACTED] - Confidential Pursuant to Protective Order
2 regulators and others to achieve a high degree of
3 comfort that their actions are in keeping with
4 the securities industry's high standards of
5 investor protection."

6 Q. Mr. [REDACTED], did you write this
7 sentence?

8 A. I did.

9 Q. What's your basis for this opinion?

10 A. Again, you know, it's basically my
11 experience and knowledge over the years as to
12 what firms do and what the best practice is in
13 this area in terms of getting advice and what the
14 industry norm is. The industry norm is, you
15 know, working with regulators and others.

16 Q. And, when you say firms in that
17 sentence, you mean companies, not law firms,
18 correct?

19 A. Well, I mean companies or broker
20 dealers or whoever is, you know, whoever is
21 seeking the advice.

22 Q. What do you mean there by high degree
23 of comfort?

24 A. Well, rather than speculating
25 themselves as to whether they should move forward

1 [REDACTED] - Confidential Pursuant to Protective Order
2 with a transaction, they can, you know, they do
3 have some comfort in that, you know, hey, I've
4 got this from the SEC now, and this is what
5 they're saying, and, you know, I would view that
6 as some form of comfort that, you know, they're
7 proceeding on the right way if the SEC has said
8 that they would not recommend enforcement action
9 based on a set of circumstances.

10 Q. And what types of statements or
11 indications from the SEC do you think gives
12 companies that sense of high degree of comfort?

13 A. Just that, that, you know, we would
14 not recommend enforcement action if you do ABC
15 and D.

16 Q. And those would be statements in
17 writing?

18 A. Yeah.

19 Q. Would they also be statements during
20 meetings?

21 A. It could be.

22 Q. What about statements with
23 disclaimers like we discussed before?

24 A. Well, like I said, it's a boilerplate
25 response in any no action letter.

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2 Q. Are there other steps that a company
3 could take to get a high degree of comfort that
4 their actions are in keeping with the securities
5 laws?

6 A. Yes. So I go back to my safety net
7 comment, you know. That's why you guys have
8 this big building, very nice, because people hire
9 you to do things. That's why Ernst & Young and
10 Price Waterhouse have their big buildings, and,
11 you know, there are advisors, there are attorneys
12 and, you know, just even talking to other
13 practitioners, I mentioned this morning, other
14 companies, hey, what are you guys doing, how are
15 you guys addressing this new rule, what systems
16 have you put in place.

17 So granted I'm coming from the
18 broker-dealer point of view, but I think it would
19 work too with a company or an issuer.

20 Q. And does the term "high degree of
21 comfort" have a generally accepted meaning in the
22 securities industry?

23 A. That's my own words. You know, I
24 could have chose other words maybe, but some
25 recognition that they've made the inquiry that

1 [REDACTED] - Confidential Pursuant to Protective Order
2 they have some guidance and that's the proper way
3 to do it.

4 Q. So they have inquired of their
5 lawyers, and their lawyers have told them, okay,
6 we think, you know, you have minimal risk here?

7 MR. HANAUER: Objection to form.

8 A. I don't know, you know, what their
9 lawyers would tell them under any, you know,
10 specific circumstances, but I think they can
11 certainly heed a lawyer's advice.

12 And, by the way, the safety net again
13 does not relieve their obligation for compliance,
14 you know. They still have to do that, but they
15 can use tools and other resources to mitigate
16 that somewhat.

17 Q. Well, let me ask you this. Does
18 having a high degree of comfort the way you
19 understand it mean that there has to be zero risk
20 that their actions don't comply with the
21 securities laws?

22 A. No, and, you know, that's totally the
23 decision of the company. Okay? They can
24 determine and take on a lot of risk, or they can
25 determine not to do any risk at all and not do

1 [REDACTED] - Confidential Pursuant to Protective Order
2 the transaction. So that's up to the board of
3 directors, the CEO, and whoever else is the
4 decision makers.

5 Q. How much risk is too big to have a
6 high degree of comfort that a company's actions
7 comply with the securities laws?

8 MR. HANAUER: Objection to form.

9 A. You know, I don't want to quantify
10 it.

11 Q. Is it quantifiable?

12 A. I don't know. Probably not. I
13 mean I guess the highest amount of risk is if you
14 want to commit a fraud and hope you don't get
15 caught. So, you know. Then we go down from
16 there.

17 Q. And then the lowest amount of risk is
18 what?

19 A. Not doing the deal.

20 Q. Right, and then what is a high degree
21 of comfort that you're compliant?

22 A. I've got this statement from my
23 lawyer. I've got this statement from my
24 accountant. I've got this conversation with the
25 SEC. I have this no action letter. You know.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 You have a file this thick of why you make a
3 decision on behalf of the corporation.

4 Now you're absolutely right. Can a
5 corporation put other factors ahead of that?
6 They might, but at least they've got the file to
7 show whoever wants to see it as they proceed. So.

8 Q. Does a company have to obtain a no
9 action letter from the SEC to have a high degree
10 of comfort that they're complying with the
11 securities laws?

12 A. They may not. They may not. I
13 contend it's the best way to do it, but that may
14 not be their decision.

15 Q. Do most companies seek no action
16 letters from the SEC before they embark on a
17 business decision?

18 MR. HANAUER: Objection to form.

19 A. I don't know, you know, if most do or
20 not. The enlightened ones do. The best
21 companies do.

22 Q. The best companies do?

23 A. Well, the most compliance-conscious
24 or however you want to in my experience.

25 Q. Do you have any experience advising

1 [REDACTED] - Confidential Pursuant to Protective Order
2 clients on how to get a high degree of comfort
3 their actions are in keeping with the standards
4 of the industry?

5 A. You know, over my long career I'm
6 sure people have come to me and said, you know,
7 [REDACTED], what do you think of this circumstance, and,
8 you know, [REDACTED], you know, this is the way we're
9 going to set up, this is a hypothetical example,
10 this is the way we're going to set up our
11 automated interface that captures the spread and,
12 you know, pays the rep, you know, two cents
13 commission. What do you think of that?

14 Well, you know, I can say, well, gee,
15 I don't know. You know, I don't know if it
16 comports with 11Ac1 or whatever SEC rule. I
17 said, you know, you may want to go down there and
18 ask. I'm sure that has happened, you know,
19 quite a few times when I was running market
20 regulation, because, in those days, you know, I
21 had relationships with almost every head of every
22 NASDAQ trading desk on the Street.

23 So I was getting constant calls and
24 constant inquiries about new things or new
25 products or new systems or new approaches.

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2 Q. And your response was call the SEC
3 and ask them and have a conversation?

4 A. If it was appropriate, yes.

5 Q. Were there situations in which it
6 wasn't appropriate?

7 A. If we could resolve it within the
8 NASD and in the context of NASD rules and if I
9 felt that they were going down the right path, I
10 would say, you know, I think you guys are doing
11 the right thing.

12 Now the fact that I said it again
13 does not absolve them. They can't shift the
14 burden to me and say, you know, [REDACTED] told
15 me it was alright to do this. No, you know, it's
16 still their burden.

17 Q. And, just to be clear, were any of
18 these people who were coming to you clients of
19 yours?

20 A. They weren't clients. They were
21 member firms of the NASD.

22 Q. Okay, and do you have any experience
23 advising clients on how to get a high degree of
24 comfort that their activities with respect to
25 digital assets are specifically in keeping with

1 [REDACTED] - Confidential Pursuant to Protective Order
2 the securities laws?

3 A. In relation to my consulting
4 business? Is that what you're saying?

5 Q. Ever.

6 A. Well, just in the context that I
7 mentioned of me dealing with NASD member firms.

8 Q. And did those questions ever involve
9 digital assets?

10 A. No.

11 Q. Okay. So you've talked several times
12 about this idea that you have about a safety net
13 of advisors that involve lawyers and accountants
14 and others to manage risks, that companies are
15 operating in the framework of the law. Is that
16 correct?

17 A. Yes.

18 Q. So lawyers are part of that safety
19 net. You've mentioned that. Does that include
20 outside counsel?

21 A. Sure.

22 Q. Okay, and outside counsel are law
23 firms, right?

24 A. Sure.

25 Q. How about in-house counsel?

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2 A. Sure.

3 Q. Those are lawyers at the company,
4 right?

5 A. Yes, absolutely.

6 Q. Why does it include in-house counsel?
7 What role do they play?

8 A. I think in-house counsel is your
9 first go-to person. You know, and assuming that
10 you've hired somebody who is competent, they are
11 really the go-to initial person to run something
12 by. He may come back with some very good
13 advice. He may come back with very bad advice,
14 or he may come back and say let's check with our
15 outside counsel, but in-house counsel is your
16 first line of defense, so to speak, when you're
17 seeking information.

18 Q. What about outside counsel? What
19 role do they play?

20 A. Well, I think, as the next step, if
21 in-house counsel is doing his job right, if he's
22 not satisfied with, you know, whatever he's
23 telling his client which happens to be, you know,
24 the boss of his company or whoever, then I think
25 outside counsel would certainly play a role.

1 [REDACTED] - Confidential Pursuant to Protective Order
2 They would bring him in when the issue can't get
3 resolved internally.

4 Q. So outside counsel comes in you said
5 when the issue can't get resolved internally?

6 A. I would think so. I think that's a
7 good example.

8 Q. What work do you do, if any, in this
9 case to evaluate whether lawyers, including
10 outside or in-house counsel, experienced
11 uncertainty or confusion about how the securities
12 laws applied to digital assets between 2013 and
13 December 20, 2021?

14 A. I don't have an opinion on that.

15 Q. Did you undertake any work to form an
16 opinion on that?

17 A. No.

18 Q. Okay. Did you undertake any research
19 related to that question?

20 A. Not specifically, no.

21 Q. Okay. Were you asked by the SEC to
22 undertake any research related to that question?

23 A. No.

24 Q. Okay. What work did you do, if any,
25 as part of your work in this case to evaluate

1 [REDACTED] - Confidential Pursuant to Protective Order
2 whether accountants experienced uncertainty or
3 confusion about how the securities laws applied
4 to digital assets between 2013 and December 20,
5 2021?

6 A. None.

7 Q. Okay. Mr. [REDACTED], let's look at
8 pages 26 to 27 of your report. I want you to
9 look at the very last sentence that begins on 26,
10 but continues on to the top of 27 starting "The
11 no action letter process." Can you please read
12 that out loud?

13 A. Sure. "The no action letter process
14 is a routine and common practice for market
15 participants to get an understanding of whether
16 their proposed activity complies with federal
17 securities laws including whether offers and
18 sales of an instrument involves an investment
19 contract."

20 Q. What personal or professional
21 experiences have you had with the SEC's no action
22 letter process?

23 A. Oh, gosh. You know, over the years,
24 lots. I mean, if you go back early in my career
25 with NASD, one of the major issues for the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 industry then was net capital and how not only
3 net capital, but the customary protection rule,
4 how that all intertwined, and I don't know if you
5 know, Andy probably knows Mike Macciarole. I
6 mean he was dealing with these things day in and
7 day out, and, you know, we had a slew of no
8 action letters in the Capitol area back in those
9 days in the 15C33 area, so I mean I've looked at
10 tons.

11 Q. Mr. [REDACTED], what personal or
12 professional experiences have you ever had with
13 the SEC's no action letter process in the context
14 of registration of securities?

15 A. I can't recall one specifically. It
16 may have been over the years, but I don't recall
17 them.

18 Q. Have you ever made a no action letter
19 request to the SEC for yourself?

20 A. No.

21 Q. Have you ever assisted a client with
22 a no action letter request to the SEC?

23 A. What do you mean assist? I mean I've
24 recommended, as I said before, that people go to
25 the SEC and seek no action relief.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. What about a client of yours in a
3 consulting relationship or any other client
4 you've had over the years? Have you ever
5 assisted them with a no action letter request to
6 the SEC?

7 A. No.

8 Q. Okay. Specifically with respect to
9 the digital asset space, what personal or
10 professional experience have you had with the
11 SEC's no action letter process?

12 A. Right. None.

13 Q. Okay. So you've never consulted or
14 worked with a company in the digital asset space
15 in connection with obtaining a no action letter?

16 A. No.

17 Q. Okay. What work have you done in
18 this case to assess how well the no action letter
19 request procedure has worked with respect to
20 digital assets?

21 A. I'm not following.

22 Q. Well, let me rephrase that. Have
23 you done any work in this case to assess how well
24 the no action letter request process has worked
25 with respect to digital assets?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. No. Not specifically.

3 Q. Okay. Do you know when the SEC
4 issued its first no action letter in the digital
5 asset space?

6 A. I know I footnote it there, but it's
7 a while since I had looked at that cite, so I'm
8 not, it must have been, you know, I wrote 2002,
9 so I think that was probably it, but I would have
10 to go back and look at the cite. I apologize
11 for that.

12 Q. That's fine. Do you have a
13 recollection of the case that you're thinking of?

14 A. No, I don't.

15 Q. And can you point me to the footnote
16 that you're referring to?

17 A. 32.

18 Q. I see. So it's at the link that you
19 cite here, [www.sec.gov/corpfin/corpfin-no-action-](http://www.sec.gov/corpfin/corpfin-no-action-letters#2a1)
20 [letters#2a1](http://www.sec.gov/corpfin/corpfin-no-action-letters#2a1)?

21 A. Right.

22 Q. Okay. Are you aware that the SEC --
23 that the first SEC no action letter related to
24 digital assets was not issued until April 3rd,
25 2019?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Can you give me more information. I
3 might be.

4 Q. Sure. Why don't we actually show
5 you what we have marked as Exhibit 15. [REDACTED] 15.

6 (Defendant Exhibit [REDACTED] 15, No action
7 letter, was so marked for identification,
8 as of this date.)

9 Q. Take a moment to read that document.

10 A. Okay.

11 Q. Mr. [REDACTED], does this refresh your
12 recollection that the first no action letter that
13 the SEC issued with respect to digital assets was
14 on April 3rd, 2019?

15 A. Not specifically, but I'll take your
16 word for it. I don't recall reading this
17 release either.

18 MR. HANAUER: I would just state for
19 the record this exhibit is not an SEC
20 release.

21 MS. GRESSEL: No. This exhibit is
22 a news article titled "SEC issues first
23 ever no action letter for digital token
24 sales."

25 A. Right.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Have you heard of the no action
3 letter with respect to TurnKey Jet Incorporated?

4 A. No, I haven't.

5 Q. Okay. Do you know how many entities
6 or persons in the digital asset space sought no
7 action relief from the SEC prior to April 2019?

8 A. I don't.

9 Q. Did you ask the SEC for any
10 information on how many persons have sought no
11 action relief from the SEC related to digital
12 assets?

13 A. No.

14 Q. Why not?

15 A. You know, my reference again in the
16 report is not to laser focus on the no action
17 process, but to characterize it as a place where
18 again people can go for comfort, and, you know,
19 there's a lot of other places besides no action
20 letters which, you know, I list and talk about as
21 resources, so basically a no action letter my
22 point is that it's a resource that you can
23 utilize.

24 You know, I never intended to get
25 into the nitty-gritty of who did what. I'm just

1 [REDACTED] - Confidential Pursuant to Protective Order
2 putting it forward as a resource.

3 Q. And so did you undertake any analysis
4 of no action letters with respect to digital
5 assets for your report?

6 MR. HANAUER: Objection. Asked and
7 answered.

8 A. You know, the answer is no, because
9 it wasn't my intent in making the point in my
10 report. I didn't think I needed to do that.

11 Q. Okay. Let's take a look at page 26
12 of your report. So you say here, well, we've
13 already read this quote, but I'll read it back,
14 "The no action letter process is a routine and
15 common practice for market participants to gain
16 an understanding of whether their proposed
17 activity complies with the federal securities
18 laws."

19 In making that statement, is it fair
20 to say you're making a general statement not
21 specific to how the no action relief process has
22 worked in the digital asset space?

23 MR. HANAUER: Objection to form.

24 A. So again help me out here. Can you
25 just repeat that.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. So I'll just read this sentence back
3 to you. It's at the bottom of 26 up to the top
4 of 27. You say, "The no action letter process
5 is a routine and common practice for market
6 participants to gain an understanding of whether
7 their proposed activity complies with the federal
8 securities laws, including whether offers or
9 sales of an instrument involves an investment
10 contract."

11 And my question is, is it fair to say
12 that in that sentence you're making a general
13 statement not specific to how the no action
14 relief process has worked in the digital asset
15 space?

16 A. Yeah, I would say it's a general
17 statement, and I would say again it's putting
18 forth a tool or a process or a custom in the
19 industry as to what they do when they need, when
20 they seek advice.

21 Q. And does this general statement
22 assume that the SEC always engages with the
23 requester on a relief, on a request for no action
24 relief?

25 A. Not necessarily.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Are you familiar with whether how
3 often the SEC has engaged with no action requests
4 related to digital assets?

5 A. No, but, you know, that's, you know,
6 their call. I know some they answer, and some
7 they don't. What their criteria is I don't know
8 specifically.

9 Q. And a requester of no action relief
10 can only gain an understanding of the SEC's
11 views, as you wrote, if the SEC engages with
12 them, right?

13 A. By engage, you mean talk about no
14 action letter and eventually produce it? Is that
15 what engage means or call them on the phone?

16 Q. Any kind of response to the no action
17 request.

18 MR. HANAUER: Objection to form.

19 A. So I'm sorry. You had better repeat
20 it again.

21 Q. I'll repeat it. No problem. The
22 requester of a no action letter can only gain an
23 understanding of the SEC's views if the SEC
24 engages with the requester, right?

25 MR. HANAUER: Objection to form.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Are you talking strictly about the no
3 action process, or are you talking overall in
4 general?

5 Q. The no action process.

6 MR. HANAUER: Same objection.

7 A. Right. Well, presumably, if they're,
8 you know, seeking the no action letter, I guess
9 it would be important for that to occur, yes.

10 Q. For that to occur, you mean for the
11 SEC to respond?

12 A. Right. Now, you know, if they don't
13 respond, then, you know, they can take other
14 action again. They can have their in-house or
15 outhouse counsel, you know, put some pressure on
16 them or find out the reason. I mean there's
17 other forms of engagement other than, you know,
18 if it was me and the SEC is not acting on my no
19 action request, I would bring in some resources
20 to bear to find out why and then see if I can get
21 some kind of response. I don't just walk away
22 and say okay, have a nice day.

23 Q. So you would open up other avenues,
24 create back-channel communications?

25 A. That's what I would do, yes.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. That's what you would do. Put some
3 pressure on the SEC to respond?

4 A. Exactly.

5 Q. You state on page 27, we can actually
6 look at this, it's in the footnote there,
7 footnote 32, "Based on industry custom and
8 practice." Can you read that sentence for me.

9 A. "Based on industry custom and
10 practice, a prime means of ascertaining the SEC's
11 position regarding their XRP transactions would
12 have been for defendants to submit a no action
13 letter request to the SEC."

14 Q. What custom and practice are you
15 referring to here?

16 A. The one that we were, you know,
17 talking about this afternoon, and that is, you
18 know, if it was me and I was unsure and, you
19 know, at the recommendation of in-house or
20 outhouse counsel, and I do not have the degree of
21 comfort I would want, the best avenue to pursue
22 is the SEC no action letter.

23 Q. And what work have you done in this
24 case, if any, to determine whether there was an
25 industry custom and practice for block chain

1 [REDACTED] - Confidential Pursuant to Protective Order
2 technology companies to seek no action relief
3 from the SEC?

4 A. Well, I think that, are you talking
5 block chain technology specifically, or are you
6 talking the digital world generally?

7 Q. Block chain technology specifically.

8 A. I'm not aware of any.

9 Q. Okay, and you used this term here
10 "prime means." What do you mean by "prime
11 means"?

12 A. You know, I guess prime probably in
13 that context means the most definitive, you know,
14 being number 1. Prime means number 1, so.

15 Q. So, in your view, it's the best
16 option?

17 A. The SEC, right, putting a stamp on
18 it.

19 Q. Okay, and this sentence makes an
20 assumption that the SEC would have provided its
21 position in response to questions about XRP
22 transactions, correct?

23 MR. HANAUER: Objection to form.

24 A. I think it says for defendants to
25 submit the no action request. I don't think I

1 [REDACTED] - Confidential Pursuant to Protective Order
2 speculate on whether the SEC would answer it or
3 not.

4 Q. You just testified that prime to you
5 means that the SEC puts a stamp on it. What did
6 you mean by that?

7 A. That again, and I testified before
8 that the no action request says under these set
9 of circumstances we will not recommend an
10 enforcement action, and I think that's a high
11 degree of comfort for a company to have a
12 statement from the SEC that they can put in their
13 folder with anything else they got, but it's the
14 number one and prime, because it's from the SEC
15 directly.

16 Q. Right, so one can only get that prime
17 means of ascertaining the SEC's position if the
18 SEC responds to the request, right?

19 A. Yeah. Maybe prime is wrong. Maybe
20 I should have said optimal or something like
21 that.

22 Q. And the SEC's position can only be
23 ascertained if the SEC provides a position?

24 A. That's correct.

25 Q. Okay. So what work have you done in

1 [REDACTED] - Confidential Pursuant to Protective Order
2 this case to determine whether the SEC was
3 willing to answer questions about its position on
4 XRP at any time before December 22, 2020?

5 A. None.

6 Q. Okay. Have you reviewed any
7 inquiries made to the SEC about XRP?

8 A. No.

9 Q. Did you ask the SEC to provide you
10 any inquiries that it received about XRP?

11 A. No.

12 Q. Why not?

13 A. Because that's not what the report is
14 all about. I'm not offering an opinion on XRP
15 or what they did or didn't do. I'm just stating
16 that there is a practice, a general practice in
17 the industry to take these steps to gain comfort
18 and a high degree of confidence about moving
19 forward without running afoul of the rules and
20 regulations.

21 Q. So you just said you're not offering
22 an opinion on XRP or what they did or didn't do.

23 A. Right.

24 Q. So in that sentence that we just read
25 in footnote 32, you're not offering an opinion

1 [REDACTED] - Confidential Pursuant to Protective Order
2 there on what Ripple should or shouldn't have
3 done with respect to obtaining a no action
4 letter?

5 A. No. Right.

6 Q. Okay. Are you aware that as late as
7 October 2020 the SEC was still informing market
8 participants it had not yet decided whether XRP
9 was or was not a security?

10 A. I'm not aware of that.

11 Q. Okay, and that is because you haven't
12 seen any document saying that either way?

13 A. Right.

14 Q. Okay. I would like to show you what
15 has been marked as Exhibit [REDACTED] 10.

16 (Defendant Exhibit [REDACTED] 10, e-mail
17 chain between Mr. Frank Mossmann and SEC's
18 Office of Investor Education and Advocacy,
19 was so marked for identification, as of
20 this date.)

21 Q. Would you take a moment to review
22 this document.

23 THE WITNESS: Excuse me. One
24 second.

25 MR. HANAUER: I was actually going

1 [REDACTED] - Confidential Pursuant to Protective Order
2 to say what you just said.

3 A. Should I go back to front or front to
4 back?

5 Q. I would go back to front. The last
6 message is the earliest, and the first message on
7 page 1 is the most recent.

8 A. Okay. Is there a difference between
9 the first two here? They look the same unless
10 I'm missing something.

11 Q. You're correct. There is some
12 portions here that have been redacted, and it
13 appears that some of these messages were repeated
14 or replicated.

15 A. Okay. Is it appropriate to ask who
16 Frank Mossmann is? Okay. It doesn't matter.

17 Q. He's an individual.

18 A. Okay. I gathered that. Okay. I
19 think I get it.

20 Q. Mr. [REDACTED], do you recognize this
21 document to be an e-mail chain between a Mr.
22 Frank Mossmann and the SEC's Office of Investor
23 Education and Advocacy?

24 A. I don't.

25 Q. You don't recognize this to be an

1 [REDACTED] - Confidential Pursuant to Protective Order
2 e-mail chain between someone named --

3 MR. HANAUER: Objection, foundation.

4 Q. Mr. [REDACTED] --

5 MR. HANAUER: You're asking him to
6 authenticate an e-mail he has never seen
7 before and he's not on?

8 Q. Mr. [REDACTED], this is an e-mail chain
9 between Mr. Frank Mossman and the SEC's office
10 of investor education and advocacy. Have you
11 ever seen this document before?

12 A. I have not.

13 Q. Were you aware that the SEC produced
14 this document to Ripple in discovery in this
15 litigation?

16 A. No.

17 Q. Alright. Mr. [REDACTED], do you know
18 what the SEC's office of investor education and
19 advocacy is?

20 A. Generally, yes.

21 Q. What is it?

22 A. It's a separate, I don't know if it's
23 a division or department of the SEC, which deals
24 with investor kind of issues for the general
25 public.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. And are you aware that members of the
3 public can contact the office of investor
4 education and advocacy with questions?

5 A. Yes.

6 Q. Okay. Let's turn to page 5 of this
7 document. This is the e-mail chain below all of
8 the redactions.

9 A. Okay.

10 Q. Is it accurate that this e-mail
11 states that Mr. Mossmann originally e-mailed the
12 SEC Chairman Jay Clayton on August 21st, 2020
13 asking whether the SEC had determined that
14 cryptocurrency XRP (Ripple) and other digital
15 currencies are considered securities?

16 MR. HANAUER: Objection. Are you
17 asking if you just read the e-mail
18 correctly?

19 MS. GRESSEL: Yes.

20 A. You said the e-mail was dated
21 August 21st, 2020?

22 Q. Why don't you read that sentence that
23 begins, "Thank you for your August 21st, 2020
24 e-mail."

25 A. "Dear Mr. Mossmann: Thank you for

1 [REDACTED] - Confidential Pursuant to Protective Order
2 your August 21, 2020 e-mail to the U.S.
3 Securities and Exchange Commission Chairman Jay
4 Clayton."

5 I was looking for a date in the
6 header. That's why I didn't see it.

7 Q. And you see in the next sentence it
8 says that his correspondence was forwarded to the
9 SEC's office of investor education and advocacy
10 for response?

11 A. Right.

12 Q. Okay, and then, in the following
13 sentence it says that Mr. Mossmann's question is
14 whether the cryptocurrency XRP (Ripple) and other
15 digital currencies are considered securities,
16 correct?

17 A. Right.

18 Q. Okay. Now the e-mail chain
19 continues, and I want to -- actually I want to
20 look at just the next sentence right there.

21 A. Um-hum.

22 Q. Can you read the SEC's response
23 beginning with "Whether," just that sentence?

24 A. Yeah. "Whether a cryptocurrency is
25 considered a security will depend on the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 characteristics and use of the cryptocurrency."

3 Q. Did the SEC provide a direct response
4 to Mr. Mossmann's question concerning whether XRP
5 is considered a security?

6 MR. HANAUER: In this specific
7 e-mail at the bottom of the chain?

8 Q. Yes, in the specific e-mail at the
9 bottom of the chain.

10 A. That specific sentence or the whole
11 e-mail?

12 Q. In that whole e-mail.

13 A. Give me one second, so I can read it
14 again, please.

15 Q. Sure.

16 A. Your question was?

17 Q. My question was did the SEC provide a
18 direct response to Mr. Mossmann's question
19 concerning whether XRP was considered a security?

20 A. You know, I'm not going to
21 characterize the response. The response speaks
22 for itself. You know, it did refer him to other
23 websites and other information, so I'm not going
24 to characterize it. It's their response.

25 Q. There is no yes or no answer in here

1 [REDACTED] - Confidential Pursuant to Protective Order
2 as to the SEC's view, correct?

3 MR. HANAUER: Objection.
4 Argumentative. The e-mail speaks for
5 itself, Counsel.

6 MS. GRESSEL: That's okay. He can
7 answer.

8 A. Yeah. Again, I'm not going to
9 characterize it. I think it speaks for itself.
10 You know. The SEC may consider it in direct
11 response.

12 Q. Okay. Mr. Mossmann, can you keep
13 reading --

14 MR. HANAUER: Mr. [REDACTED]?

15 Q. I'm sorry. Mr. [REDACTED].

16 A. I didn't write this e-mail.

17 Q. Can you please keep reading from the
18 next sentence which starts, "For additional
19 information" through the end of the e-mail,
20 please.

21 MR. HANAUER: Into the record or to
22 himself?

23 MS. GRESSEL: Into the record.

24 A. "For additional information on this
25 topic, we suggest that you review Chairman

1 [REDACTED] - Confidential Pursuant to Protective Order
2 Clayton's statement on Cryptocurrencies and
3 Initial Coin Offerings at" blah, blah, blah blah.
4 Do you want me to read the whole --

5 Q. Sure.

6 A. -- "www.sec.gov/news/public-
7 statement/statement-clayton-2017-12-11.

8 Additionally, the SEC has created a spotlight
9 section on its website to help address questions
10 and concerns about the rising interest in ICOs
11 and other digital assets

12 (see:<https://www.sec.gov/ICO>). The spotlight
13 section contains ICO updates, which provide
14 information about recent SEC's actions involving
15 ICOs. You may also wish to review the SEC's
16 spotlight on Initial Coin Offerings and Digital
17 Assets which also has links to investor alerts
18 and investor bulletins regarding cryptocurrency.

19 You can find this information at
20 [https://www.investor.gov/additional-resources/
21 specialized-resources/spotlight-initial-coin-
22 offerings-digital-assets](https://www.investor.gov/additional-resources/specialized-resources/spotlight-initial-coin-offerings-digital-assets). Once again, thank you
23 for contacting the SEC. If you have any
24 questions , please call an OIEA staff member at
25 202.551.6327. Sincerely."

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Thanks, Mr. [REDACTED]. In all of
3 what you read, do you see any yes or no response
4 to whether XRP was considered to be a security by
5 the SEC?

6 MR. HANAUER: Objection. Asked and
7 answered.

8 A. Again, I'll go back and say, you
9 know, it's not appropriate for me to characterize
10 their response. Their response is their
11 response.

12 Q. So you're not going to say whether
13 you see a yes or a no in this e-mail chain you
14 just read into the record?

15 A. No. You know, I think that the
16 e-mail is the e-mail. It speaks for itself.

17 Q. Alright. Let's turn to the bottom
18 of page 3 which is the page ending in 000214.

19 A. Yeah, I have it.

20 Q. Could you please read Mr. Mossmann's
21 response at the bottom of the page starting with
22 "Thanks for your answer."

23 A. "Thanks for the answer to my
24 question, but it really, it isn't really answer,
25 but it isn't really answer. I want to know when

1 [REDACTED] - Confidential Pursuant to Protective Order
2 there will be regulatory clarity especially for
3 XRP. The statement from Jay Clayton is three
4 years old and not really actual? It would be
5 really nice to hear that there will be clarity
6 this year or the next year? Regards, Frank
7 Mossmann."

8 You want me to read the German?

9 Q. No. Thanks. Is it fair to say that
10 in this communication Mr. Mossmann expresses to
11 the SEC that he does not perceive there's
12 regulatory clarity around XRP and then asks when
13 the SEC will provide that clarity?

14 MR. HANAUER: Objection. The
15 document speaks for itself.

16 A. Would you state your question again.
17 I just want to make sure.

18 Q. Sure. Is it fair to say in this
19 communication Mr. Mossmann expresses to the SEC
20 that he does not perceive there is regulatory
21 clarity around XRP and asks when the SEC will
22 provide that clarity?

23 MR. HANAUER: Same objection.

24 A. The way I read it, it is objecting
25 that there's not really an answer. I don't

1 [REDACTED] - Confidential Pursuant to Protective Order
2 know. I think he's asking when there will be
3 regulatory clarity, but you can read it yourself.
4 I mean.

5 Q. Well, how do you read it?

6 A. Again, it sounds like he feels that
7 he didn't get an answer and was wondering when
8 there will be regulatory clarity. I mean that's
9 how I read it.

10 Q. Okay. Let's go to the next page
11 over, like the middle message on that page.
12 Starting with "Dear Mr. Mossmann." It is the
13 response dated 10/20/2020.

14 A. Okay. You want me to read the whole
15 thing?

16 MR. HANAUER: Well, read it to
17 yourself first.

18 Q. Yeah. Read it to yourself first.

19 A. Okay.

20 Q. I would like you to read the two
21 sentences that begin, "As we explained
22 previously."

23 A. "As we explained previously, the SEC
24 has not issued a determination on whether the
25 cryptocurrency XRP is a security. Also, this

1 [REDACTED] - Confidential Pursuant to Protective Order
2 office cannot comment on whether the SEC will
3 make a determination as to whether XRP is a
4 security or otherwise provide a timeframe for
5 which any determination might be made. Thank
6 you for contacting the SEC. Sincerely, Amy
7 Rosenthal, investor assistant specialist, office
8 of investor education and advocacy U.S.
9 Securities and Exchange Commission."

10 Q. That's fine. Thanks, and looking up
11 the chain, is it fair to say Mr. Mossmann
12 responds, but that's the last response in the
13 chain from the SEC, correct?

14 A. This is his response.

15 MR. HANAUER: Objection to the form
16 of the question. Objection, foundation.

17 Q. After this message, which is dated
18 October 20, 2020, do you see any further
19 communications from the SEC to Mr. Mossmann?

20 MR. HANAUER: On this exhibit?

21 Q. On this exhibit.

22 A. That would be the one in the front,
23 right, you're talking about?

24 Q. I believe the e-mail message on the
25 front is from Mr. Mossmann to the SEC.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. Right, and you asked if there were
3 any others from the SEC that I see?

4 Q. That are more recent than October 20,
5 2020.

6 A. I don't see any.

7 Q. Okay. So is it accurate that the
8 SEC stated it had not yet determined whether XRP
9 was a security as of the date of that message on
10 October 20, 2020?

11 A. That's what it appears to say. Yes.

12 Q. Okay. Now let's assume, this is a
13 hypothetical, let's assume the SEC received
14 dozens of similar outreach messages over a period
15 of years asking for guidance on whether XRP is a
16 security, and the SEC each time provided a
17 response it had not yet issued a determination on
18 whether the cryptocurrency XRP is a security and
19 could not provide a time frame for when that
20 determination might be made.

21 Assuming that's true, would that
22 change your opinion on whether the SEC provides
23 guidance on the application of the securities
24 laws to digital assets to individuals who contact
25 them directly?

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2 A. You know, I can't characterize what
3 the SEC response or nonresponse is, you know.
4 There may be privileged reasons why. You know,
5 there could be a thousand reasons why they can't
6 respond at this point, and I'm sure they have
7 their reason, but you would have to ask them what
8 it was, so I can't characterize that for you.

9 Q. So let's take that as an assumption
10 that the SEC for some reason can't respond. Is
11 it the case then that people who have asked for
12 guidance received it?

13 MR. HANAUER: Objection. Form.
14 Foundation.

15 A. You know, I'll just stay with my
16 first answer. If the SEC does not respond, I'm
17 sure there's pretty good reasons why they're not
18 doing that.

19 Now, you know, is Mr. Mossmann upset
20 about that? You know, it sounds like he is,
21 but, you know, as an agency of course they have
22 to weigh what they're doing behind closed doors
23 versus what they're public with, and I don't know
24 what's going on here.

25 Obviously you feel that or Mr.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Mossmann rather feels that he's not getting a
3 straight answer, but again the agency has to
4 weigh what they say and not say and have reasons
5 for it.

6 Q. Mr. [REDACTED], so, putting aside why
7 the SEC might or might not have commented on
8 requests that they received and focusing on what
9 guidance was issued to members of the public who
10 sought further responses and clarity, is it the
11 case that, if the SEC did not provide guidance in
12 response to these requests, that members of the
13 public would not have received that clarity?

14 MR. HANAUER: Objection to the form.

15 Objection to the hypothetical.

16 Q. Putting this objection to the
17 hypothetical aside, staying with the
18 hypothetical, you say in your report, Mr.
19 [REDACTED], that "for market participants uncertain
20 of whether their conduct or proposed conduct
21 implicates the securities laws, input may be
22 sought from the SEC staff directly."

23 A. Um-hum.

24 Q. If the SEC declines to provide that
25 input, are market participants left with

1 [REDACTED] - Confidential Pursuant to Protective Order
2 uncertainty about whether their conduct might
3 violate the securities laws?

4 MR. HANAUER: Objection. Are you
5 going back to these e-mails, or are you
6 talking about the statements in his
7 report?

8 MS. GRESSEL: I'm talking about the
9 statement in your report.

10 A. Again, I think that's where, if it
11 was me and my firm, that's where the escalation
12 would take place. By the way, just glancing
13 down here, I mean there is some guidance here.
14 The guidance is whether cryptocurrency is a
15 security will depend on characteristics and the
16 use of cryptocurrency. That's guidance, right?
17 I think.

18 So it depends on the facts and
19 circumstances of that individual asset, and then
20 you may want to review Jay Clayton's speech.
21 That's guidance, right? And then their public
22 statement on cryptocurrency is guidance.

23 So, if they're not getting the
24 satisfaction of what they feel is an appropriate
25 answer, they've got a couple of channels that

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2 they can do. They can back-channel. They can
3 ask their attorneys to contact the SEC, or,
4 barring that, they can go back, weigh all the
5 factors in their decision and make their own
6 decision, because at the end of the day it's not
7 the SEC who's going to determine, you know, their
8 compliance or not. That burden rests with them.

9 So they've got to make the best
10 decision that they possibly can. I mean it
11 might be unfortunate that -- let me put it
12 another way. It might be the case where they
13 would like a lot more information and a lot more
14 guidance, but they may choose to, you know, move
15 forward on another basis, but at the end of the
16 day it's them, and they can't point to the SEC
17 and say it's your fault.

18 Q. And for, you know, members of the
19 public who don't have back-channel options to the
20 SEC and who might not have big law firms
21 representing them, is their only option to read
22 this kind of guidance and draw whatever
23 conclusions they can draw?

24 MR. HANAUER: Objection to the form
25 of the question.

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2 A. You know, if the member of the public
3 is unhappy with the SEC and what the SEC is doing
4 and the guidance or no guidance, I would pick up
5 the phone and call my congressman.

6 Q. Fair enough. So you're saying, for
7 people who are unhappy with what the SEC is
8 doing, it makes sense to call for legislative
9 action and additional legislative clarity?

10 A. Or put a bug in some congressman's
11 ear and have them get on the phone with, I don't
12 know whether Jay Clayton was there or not, you
13 know. That's the only way I think in my mind the
14 public can escalate it. So.

15 Q. Okay. Your report talks a lot about
16 custom and practice. We've talked about that
17 before.

18 A. Um-hum.

19 Q. Do you have an opinion on whether
20 between 2013 and 2020 there was a custom and
21 practice for XRP to be sold on the secondary
22 market by market participants without registering
23 under Section 5?

24 A. You've got to repeat that because
25 that's a new twist. Secondary market. And I

1 [REDACTED] - Confidential Pursuant to Protective Order
2 want to make sure I understand what you're
3 saying.

4 Q. Yeah. It's a question about the
5 secondary market.

6 A. Right.

7 Q. Do you have an opinion on whether
8 between 2013 and 2020 there was a custom and
9 practice for XRP to be sold on the secondary
10 market by market participants without registering
11 under Section 5"?

12 MR. HANAUER: Objection to form.

13 Objection, vague.

14 A. You know, I'm sorry. It must be me,
15 but I'm having trouble understanding.

16 Are you saying am I aware that XRP
17 was traded on a secondary market without
18 registration?

19 Q. Let's start with that. Are you
20 aware?

21 A. I think I know. You know, I know
22 that it trades on a secondary market. I just
23 don't know offhand what the dates would be. I'm
24 sure you're right in saying it's between this and
25 this, but I don't know the exact date.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Did you do any research in the course
3 of your work on this matter to examine the
4 secondary market for XRP?

5 A. I did not.

6 Q. Okay. Did you request any documents
7 from the SEC concerning the secondary market for
8 XRP?

9 A. I did not.

10 Q. Okay. Have you ever provided
11 consultation services that involved directly
12 contacting the SEC on whether a proposed
13 transaction involved the offer or sale of a
14 security?

15 A. Not that I can recall.

16 Q. Okay. Have you ever provided expert
17 testimony in connection with a matter that
18 involved directly contacting the SEC on whether a
19 proposed transaction involved the offer or sale
20 of a security?

21 A. Not that I recall.

22 Q. Have you ever secured meetings with
23 the SEC to discuss their views on the legality of
24 any conduct related to digital assets?

25 A. I have not.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Okay. Have you ever secured meetings
3 with the SEC concerning their views on whether a
4 particular digital asset was a security?

5 A. I have not.

6 Q. Are you aware that in this litigation
7 the SEC was ordered by the court to produce all
8 communications with distributed ledger
9 stakeholders or groups concerning XRP, Bitcoin
10 and Ether?

11 A. I'm not aware of that.

12 Q. Okay. Are you aware that in response
13 to that order the SEC has produced certain
14 communications in which individuals requested
15 guidance on digital asset regulation?

16 A. If you say so.

17 Q. You were not previously aware of
18 that?

19 A. No.

20 Q. Okay. Have you reviewed any
21 communications in which individuals requested
22 guidance on digital asset regulations from the
23 SEC?

24 MR. HANAUER: Beyond the e-mails you
25 have shown him?

1 [REDACTED] - Confidential Pursuant to Protective Order

2 MS. GRESSEL: Yes.

3 A. Beyond this, no. No, I have not.

4 Q. In the process of working on the
5 report, did you request from the SEC to see any
6 communications between the SEC and individuals or
7 companies trying to or concerning the application
8 of the securities laws to digital assets?

9 A. No, I did not.

10 Q. Mr. [REDACTED], at any point did the
11 SEC make you aware it maintained records of such
12 communications?

13 A. No, it did not.

14 Q. What other research, if any, have you
15 conducted concerning whether market participants
16 have been able to obtain meaningful guidance on
17 the regulation of digital assets through meetings
18 with SEC commissioners or staff members?

19 MR. HANAUER: Beyond what is in his
20 report?

21 MS. GRESSEL: Including what's in
22 his report.

23 A. Can I take a look at my report real
24 quick?

25 Q. Sure.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. You know, other than what's in the
3 report and what we've discussed here today in
4 detail, I don't recall any offhand. There may
5 have been a few.

6 Q. My apologies if I've forgotten this,
7 but maybe I will just ask it more broadly. Have
8 you conducted any research about whether market
9 participants have been able to obtain meaningful
10 guidance on the regulation of digital assets
11 through meetings with SEC commissioners or staff
12 members?

13 MR. HANAUER: Objection to form.

14 A. Yeah, just repeat it, because I want
15 to make sure I'm answering correctly, because --
16 go ahead.

17 Q. Sure. Have you conducted any
18 research concerning whether market participants
19 have been able to obtain meaningful guidance on
20 the regulation of digital assets through meetings
21 with SEC commissioners or staff members?

22 MR. HANAUER: Same objection.

23 A. I have not conducted research, no.

24 Q. Okay. In preparing your report on
25 this case, did you review any evidence reflecting

1 [REDACTED] - Confidential Pursuant to Protective Order
2 the content of meetings between third parties and
3 the SEC?

4 A. I did not.

5 Q. Okay. So you can't speak to whether
6 the SEC in the course of any such meetings
7 provided useful guidance to any market
8 participant on issues concerning how the
9 securities laws applied to digital assets?

10 A. Not directly, no.

11 Q. Alright. What do you mean not
12 directly? Did you indirectly speak to them?

13 A. You know, I didn't sit in the
14 meetings with them or look at correspondence or
15 you know.

16 Q. Do you have any basis --

17 A. I think -- I'm sorry.

18 Q. Go ahead.

19 A. I want to finish the question, but I
20 do recall seeing that I believe some of the
21 principals of Ripple, and I don't know if it was
22 in, it may have been in your answer. Again, I
23 know that there were some meetings by Ripple
24 executives. So, you know. I'm aware from that
25 standpoint.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Okay, but you're not aware of any
3 other meetings with the SEC about digital assets?

4 A. No, I didn't research that which is
5 what your question was.

6 Q. Did you review any evidence in this
7 case reflecting that sophisticated market
8 participants who obtained legal advice from
9 outside counsel told the SEC they did not
10 consider XRP to be a security and shared the
11 basis for their determinations with the SEC?

12 A. I'm not aware of that.

13 Q. Did you review any evidence in this
14 case reflecting that, even after the SEC received
15 this information from sophisticated market
16 participants, the SEC never told those
17 participants that the XRP was a security or that
18 the SEC's position was that it was a violation of
19 securities laws to engage in transactions
20 involving XRP?

21 A. That was a long sentence. I'm
22 sorry.

23 Q. Okay. I'll take it more slowly.
24 Did you review any evidence in this case
25 reflecting that, even after the SEC received this

1 [REDACTED] - Confidential Pursuant to Protective Order
2 information from sophisticated market
3 participants, the SEC never told those market
4 participants that XRP was a security or that the
5 SEC's position was that it was a violation of the
6 securities laws to engage in transactions
7 involving XRP?

8 A. I'm not aware of that. No.

9 Q. Did you review any evidence in this
10 case reflecting that, before and after such
11 meetings between the SEC and sophisticated market
12 participants to discuss XRP, these market
13 participants transacted in XRP and did not stop
14 those transactions after their meetings with the
15 SEC?

16 A. No.

17 Q. Okay. Is it accurate that your
18 opinion doesn't take into account any SEC
19 communications at all from individuals or
20 companies seeking guidance on the applicability
21 of the securities laws to digital assets?

22 MR. HANAUER: Objection to form.

23 A. Are you speaking in general or with
24 respect to Ripple? I don't understand.

25 Q. In general. Is it accurate that

1 [REDACTED] - Confidential Pursuant to Protective Order

2 your opinion does not take into account any SEC
3 communications from individuals or companies
4 seeking guidance on the applicability of the
5 securities laws to digital assets?

6 MR. HANAUER: Beyond what's in his
7 report?

8 Q. You can identify something in your
9 report.

10 A. Well, certainly with no individuals,
11 and I'm trying to think about others, but, you
12 know, other than what's in my report, probably
13 not.

14 Q. Okay, and you can't think of anything
15 in your report off the top of your head?

16 A. No.

17 Q. Okay. Did you review any specific
18 SEC statements or speeches in preparing your
19 report?

20 A. Yes.

21 Q. Which statements or speeches did you
22 review?

23 A. Jay Clayton. I read, I don't know,
24 I think his name is pronounced Hinman, William
25 Hinman. Did you say SEC releases too or

1 [REDACTED] - Confidential Pursuant to Protective Order
2 statements?

3 Q. I said statements or speeches.

4 A. Or speeches specifically? Those are
5 the two I recall.

6 Q. Okay. You stated that it's industry
7 custom and practice to place less weight on
8 public statements of SEC officials, is that
9 right?

10 A. What was the context of that?

11 MR. HANAUER: Less weight than what?

12 Q. It's in your report on page 27. I
13 can direct you to that statement. So you say
14 it's in the second sentence in the second --
15 well, the first full paragraph. It says, "That
16 said, based on industry custom and practice,
17 market participants typically place less" --

18 A. Hang on. I'm not with you. Where
19 is it?

20 Q. Okay. Top of the page, first full
21 paragraph, second sentence.

22 A. Got it.

23 Q. Why don't you read that into the
24 record.

25 A. Okay. "That said, based on industry

1 [REDACTED] - Confidential Pursuant to Protective Order
2 custom and practice market participants typically
3 place less weight on the views of individual
4 commissioners or staff members who lack the
5 authority to speak to the SEC or bind the
6 commission to their position."

7 Q. And what's your basis for this
8 opinion?

9 A. Well, I mean I think we can start
10 with the standard SEC disclaimer in any public
11 speech or statement which says I am speaking on
12 behalf of my own individual opinions and not on
13 behalf of the commission, and that's standard in
14 every speech that I've ever read, so, you know,
15 that's the start of it, and again it takes 3 out
16 of 5 commissioners to establish policy or enact
17 an enforcement action or whatever.

18 So it's the majority of the
19 commission rather than one individual. The
20 individual is stating his or her own views.

21 Q. But people still do place some weight
22 on those statements, right?

23 A. Sure. It's just, you know, if it was
24 me, it would be interesting and again another
25 part of the mix of information that's out there,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 but, you know, not binding.

3 Q. And you mentioned that you're
4 familiar with the speech given by William Hinman
5 on June 14, 2018 who was at that time the SEC's
6 director of the division of corporate finance,
7 correct?

8 A. You know, I read it a while ago.

9 Q. Okay.

10 A. The same thing with Jay Clayton. I
11 mean it was one of the first things I read in the
12 case.

13 Q. So you read those after you were
14 engaged on the case?

15 A. I think I read Jay Clayton before
16 that. I think I read Hinman afterwards.

17 Q. Is it okay if I call the speech the
18 Hinman speech as a shorthand?

19 A. Sure.

20 Q. So you weren't present when Mr.
21 Hinman give the Hinman speech on June 14, 2018?

22 A. I was not.

23 Q. Okay. Do you recall the first time
24 you read it when it was?

25 A. Maybe August.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. August of 2021?

3 A. Yeah.

4 Q. Have you written any articles or
5 publications relating to the Hinman speech?

6 A. I have not.

7 Q. Have you advised any clients on the
8 meaning of the Hinman speech?

9 A. I have not.

10 Q. In this case, are you offering an
11 opinion on the meaning of the Hinman speech?

12 A. I am not.

13 Q. Do you recall that in the speech that
14 Mr. Hinman used the term "sufficiently
15 decentralized" when talking about block chain
16 technology?

17 A. Not specifically.

18 Q. Okay, and do you know what that term
19 "sufficiently decentralized" means in the context
20 of Mr. Hinman's speech?

21 MR. HANAUER: Objection. A term in
22 a speech that is not in front of him that
23 he didn't recall reading?

24 Q. Okay. You don't really recall that
25 term.

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2 A. No.

3 Q. Okay. As part of your assignment in
4 this case, what work did you do, if any, to
5 assess the weight market participants gave to the
6 Hinman speech?

7 A. None.

8 Q. Okay. As part of your work in the
9 case, what did do you, if anything, to assess the
10 meaning that market participants gave to the
11 Hinman speech?

12 A. None.

13 Q. Did the SEC give you to review their
14 communications with market participants that were
15 produced in this litigation about the Hinman
16 speech?

17 A. No.

18 Q. Were you aware that the SEC had
19 produced those documents to Ripple?

20 A. No.

21 Q. Did you ask the SEC to review any
22 communications with market participants
23 concerning digital asset regulation?

24 A. No.

25 Q. How about communications with market

1 [REDACTED] - Confidential Pursuant to Protective Order
2 participants concerning XRP?

3 A. No.

4 Q. Okay. So, when you wrote on page 27
5 of your report, we just read that sentence, that
6 market participants typically place less weight
7 on the views of individual commissioners or staff
8 members and the same holds true for public
9 statements by SEC officials, you meant that as a
10 general statement, correct?

11 A. Yes.

12 Q. And you wrote typically, not always?

13 A. Right.

14 Q. Do you think certain speeches by SEC
15 officials can have more weight than others in the
16 minds of market participants?

17 A. Yes and no. Some do, some don't.
18 I can give you a perfect example. Back I forget
19 the dates exactly. Commissioner Aquilar gave a
20 speech. The disclaimer was there, and it was
21 about a SEC proposed rule governing transfer
22 agents, and there was a 128-page release, and he
23 laid out I thought very beautifully in a speech
24 why the need to amend the transfer agent
25 regulations was critical. Well, guess what?

1 [REDACTED] - Confidential Pursuant to Protective Order
2 They never got done.

3 So some commissioners get listened
4 to, and others don't. So it just depends.

5 Q. So, even if a commissioner gives a
6 speech, it's not necessarily the case that it
7 leads directly to a new regulation or a new rule,
8 correct?

9 A. Right. It doesn't compel on anything
10 on the other end. He's just stating his opinion
11 or her opinion.

12 Q. Do you know either way whether the
13 SEC's chairman pointed to the Hinman speech in
14 his communications with Congress?

15 MR. HANAUER: Which chairman?

16 THE WITNESS: I believe Clayton.

17 MR. HANAUER: It's your question.

18 A. I'm not aware of that. No.

19 Q. Do you know whether the SEC itself
20 directed market participants to analyze whether
21 digital assets were securities under the factors
22 that Hinman outlined in the Hinman speech?

23 A. The SEC in general or somebody at the
24 SEC or who at the SEC?

25 Q. That staff members at the SEC.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 A. I'm not aware of any. No.

3 Q. Are you offering any opinion in this
4 case as to how much weight market participants
5 gave to the Hinman speech?

6 A. No.

7 Q. Are you offering any opinion about in
8 this case about how the SEC used the Hinman
9 speech in its communications with market
10 participants?

11 A. No.

12 Q. Okay. In your report you cite a
13 client --

14 THE WITNESS: We might take a break
15 for a moment if you don't mind.

16 MS. GRESSEL: No problem.

17 THE VIDEOGRAPHER: We are going off
18 the record. The time is 3:10 p.m.

19 (Recess taken)

20 THE VIDEOGRAPHER: We are back on
21 the record. The time is 3:29 p.m.

22 BY MS. GRESSEL:

23 Q. Mr. [REDACTED], on page 25 of your
24 report, you cite a client alert written by the
25 prominent law firm of Latham & Watkins. Is that

1 [REDACTED] - Confidential Pursuant to Protective Order
2 correct?

3 A. Yes.

4 Q. How did you come to select this
5 client alert to cite in your report?

6 MR. HANAUER: I'm sorry if I missed
7 it. Which alert are you talking about?

8 A. The first one, right?

9 Q. Actually, you know, both of them for
10 that question. These client alerts. How did you
11 select these client alerts to cite in your
12 report?

13 A. Just through my own search efforts.

14 Q. So was this part of a broader review
15 you conducted about law firm analysis of digital
16 assets?

17 A. Yeah. I could characterize it as
18 that. You know, I was looking at what
19 pronouncements were out there in the legal
20 community that dealt with not only digital
21 assets, but the need for clients to gear up and
22 be careful in the crypto space.

23 Q. Do you recall what steps you took in
24 that research?

25 A. Not specifically, but, you know, it

1 [REDACTED] - Confidential Pursuant to Protective Order
2 could be as basic as using, I used duckduckgo,
3 and they're pretty good, and I keep, you know,
4 I'm a fairly good researcher, so I keep plugging
5 away and following different threads and lines
6 and so on.

7 Q. And, just for the record, duckduckgo
8 is a search engine, correct?

9 A. Yes.

10 Q. Did you review any client alerts by
11 any other law firms concerning digital asset
12 regulation?

13 A. Not that I recall.

14 Q. So this is the only, these two Latham
15 & Watkins alerts were the only two alerts you
16 recall reading by law firms that relate to
17 regulation?

18 A. Yeah, that relate specifically to
19 regulation and the need for, you know, linking it
20 to a cautionary tale for, you know, for those who
21 are venturing into that space.

22 Q. Did you look for any, whether any law
23 firms provided client alerts that didn't express
24 that same cautionary tale?

25 A. I didn't look for that specifically,

1 [REDACTED] - Confidential Pursuant to Protective Order
2 no.

3 Q. Okay. So you sought out law firm
4 client alerts that spoke to the need for caution
5 in this regard?

6 A. Yeah. There may have been others.
7 I just don't recall. You know, I used these two
8 because they were spot on, and Latham & Watkins
9 is, you know, one of the biggest firms in the
10 country, as you know probably.

11 Q. And are you aware of other law firms
12 that have written on the SEC's regulation of
13 digital assets?

14 A. Not sitting here trying to remember.
15 There may be, but I can't recall at the moment.

16 Q. Okay. So no other law firms come to
17 mind sitting here right now?

18 A. They don't come to mind. Right.

19 Q. Okay, and do you view Latham &
20 Watkins as having specialized knowledge
21 concerning SEC regulation that other law firms
22 don't possess?

23 A. I don't know if I can compare them to
24 other law firms. So I really can't answer that
25 question. I know they're prominent in the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 securities field. They hired me for LEK
3 Securities, so they must know what they're doing.
4 No, I'm only kidding. So, yeah, I mean it's
5 just the weight of the name, and they have a
6 robust securities practice.

7 Q. Are you aware of any other law firms
8 with a robust securities practice?

9 A. Oh, sure.

10 Q. What firms?

11 A. Yours, for example. Sidley. Wilmer
12 Cutler, Greenberg Traurig. I could name, you
13 know, a half-dozen, some of which I've worked
14 for.

15 Q. So Latham & Watkins, you didn't
16 choose Latham & Watkins because you viewed them
17 as an author -- a solely authoritative voice on
18 securities laws issues?

19 A. I think it was a two-step process.
20 I think the quotes really fit with the point that
21 I was trying to make and put forward and secondly
22 that they were of enough weight and repute to be
23 meaningful.

24 Q. Okay. So I want to take, well, I'm
25 not going to take a look at it, but I just want

1 [REDACTED] - Confidential Pursuant to Protective Order
2 to mention, I'm clarifying which one of these
3 alerts I'm talking about to Ben's helpful point.
4 So in footnote 27 you cite a client alert called
5 "The Yellow Brick Road for Consumer Tokens: The
6 Path to SEC and CFTC Compliance," which is
7 written by Latham & Watkins, correct?

8 A. Yes. Actually, this was a conference
9 over in London, and, in addition to Latham &
10 Watkins, there were other discussions that were
11 not on point, but, if you go and look at the
12 global legal insight block chain cryptocurrency
13 cite, you'll see a whole bunch of discussion.

14 Q. Did you attend that conference in
15 person?

16 A. No.

17 Q. Did you attend that conference
18 virtually?

19 A. No, I did not.

20 Q. You read the reports from the
21 conference?

22 A. I read the reports. That's right.

23 Q. Okay, and are you aware that that
24 client alert or conference report titled The
25 Yellow Brick Road for Consumer Tokens refers to

1 [REDACTED] - Confidential Pursuant to Protective Order
2 Director Hinman's speech?

3 A. I don't recall that. Not
4 specifically, no.

5 Q. Are you aware that Latham & Watkins
6 stated that Director Hinman's speech indicated a
7 possible path for token transactions to no longer
8 be characterized exclusively as security
9 transactions?

10 A. Are you saying that that was part of
11 this report?

12 Q. Yes, that that was quoted in that
13 Latham article.

14 A. Yeah. I guess, you know, at that
15 point I was really focused on --

16 MR. HANAUER: Hold on. She's
17 asking if you know if what's in, if that's
18 in the report.

19 A. I don't know for sure, because I was
20 focused on the regulatory issue and the
21 appropriate quote to put in here, so either I
22 read it and didn't think twice about it, or I
23 missed it.

24 Q. Okay. I'm just going to mention a
25 few other things in that piece. Are you aware

1 [REDACTED] - Confidential Pursuant to Protective Order
2 that Latham & Watkins stated the Director Hinman
3 speech said that a digital asset offered as a
4 security can over time become something other
5 than a security?

6 A. I'm not aware of that.

7 Q. Do you recall that from reading
8 Director Hinman's speech?

9 A. I do recall that. Yes.

10 Q. Okay. Are you aware that Latham &
11 Watkins also stated that Director Hinman's speech
12 indicated that digital assets are not necessarily
13 securities?

14 A. That specifically I don't recall.

15 Q. Okay. Are you aware that Latham &
16 Watkins believed Director Hinman's speech
17 indicated that there's less of a public policy
18 need to correct information asymmetries that the
19 securities laws aim to prevent when digital
20 assets are sufficiently decentralized?

21 A. I don't recall that portion either.

22 Q. Okay.

23 A. And again it's not because I didn't
24 read it, but I wasn't focused on it.

25 Q. Okay. So you were focused on the

1 [REDACTED] - Confidential Pursuant to Protective Order
2 quote that you put into your report, but not on
3 the other quotes?

4 A. Right, and that portion I'm trying to
5 remember, yeah, it could have occurred later on
6 after I decided to put this quote in, you know,
7 what I'm saying, later on in the article, so
8 that's maybe why I missed it, because I stopped
9 right there.

10 Q. Okay. Do you mean that, once you
11 found that quote, that --

12 A. I didn't go any further.

13 Q. Meaning you're not sure you read the
14 whole article?

15 A. Exactly.

16 MS. GRESSEL: Okay. Alright. I
17 think we're done.

18 EXAMINATION BY MR. HANAUER:

19 Q. Mr. [REDACTED], do you remember being
20 asked questions whether you did work representing
21 clients related to IPOs?

22 A. Yes.

23 Q. During your time at the NASD, did you
24 have experience working with IPOs?

25 A. Oh, yes, sure.

1 [REDACTED] - Confidential Pursuant to Protective Order

2 Q. Approximately how many?

3 A. Well, if you want to say that, you
4 know, we had a regulatory interest in every IPO
5 that traded on NASDAQ from day 1, so it ranged
6 from ensuring that, for example, no trades were
7 taking place prior to SEC effectiveness, so even
8 though, you know, the SEC could declare effective
9 at noon we wanted to make sure there were no
10 transactions between 9:30 and 12, so from that
11 standpoint, that was one.

12 You know, the other SEC and FINRA,
13 NASD rules that pertain to trading of IPOs,
14 10(b)16, short sales, there is a bunch. So we
15 policed all those IPOs, and of course IPO trading
16 could be very volatile as well, so we often had
17 to contact the company and make sure everything
18 was copacetic with them.

19 Q. So --

20 A. In terms of the trading and so on.

21 Q. So you worked on a lot of IPOs when
22 you were at NASD?

23 A. Every one that traded on NASDAQ, yes.

24 Q. I want to refer you to page 29 of
25 your report. Do you remember counsel asking you

1 [REDACTED] - Confidential Pursuant to Protective Order
2 some questions about what assumptions you made
3 when you were stating things that Ripple would
4 have been required to disclose if those
5 assumptions were true?

6 A. Sure. Quite a few.

7 Q. I just want to clarify. Was the
8 assumption that Ripple filed a registration
9 statement and conducted an IPO or that Ripple
10 filed a registration statement period?

11 A. I think it goes to the latter. You
12 know, you could be registered and not do an IPO I
13 guess is the answer. There would be a variety
14 of reasons for that, not the least of which is
15 market conditions, for example.

16 Q. And then the last question I want to
17 ask about is do you recall counsel asking you
18 questions about an investor making inquiries to
19 the SEC about the status of XRP?

20 MS. GRESSEL: Objection.

21 A. Yes.

22 Q. And, in your experience, if the SEC's
23 enforcement division is conducting an enforcement
24 investigation, does the enforcement division
25 typically disclose the existence of that

1 [REDACTED] - Confidential Pursuant to Protective Order
2 investigation to the public?

3 A. No.

4 MR. HANAUER: Thank you, Mr.

5 [REDACTED].

6 THE WITNESS: Thank you.

7 MS. GRESSEL: Nothing else from us.

8 Thanks, Mr. [REDACTED].

9 THE WITNESS: Thank you so much.

10 THE VIDEOGRAPHER: We are going off
11 the record. The time is 3:42 p.m.

12 (Time noted: 3:42 p.m.)

13
14
15 _____
[REDACTED]
16 Subscribed and sworn to
17 before me this ____ day of _____, 2021.

18
19 _____
20 Notary Public
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C E R T I F I C A T I O N

I, JOSEPH R. DANYO, a Shorthand
Reporter and Notary Public, within and for the
State of New York, do hereby certify:

That I reported the proceedings in
the within entitled matter, and that the within
transcript is a true record of such proceedings.

I further certify that I am not
related, by blood or marriage, to any of the
parties in this matter and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 19th day of November, 2021.



JOSEPH R. DANYO

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I N D E X

Witness	Page
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[REDACTED]	4
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E X H I B I T S

Defendant	Page
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Exhibit [REDACTED] 1	Report of [REDACTED] dated October 4, 2021	15
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Exhibit [REDACTED] 3	Amended complaint	137
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Exhibit [REDACTED] 15	No action letter	175
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Exhibit [REDACTED] 10	e-mail chain between Mr. Frank Mossmann and SEC's Office of Investor Education and Advocacy	185
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NAME OF CASE:

DATE OF DEPOSITION:

NAME OF WITNESS:

Reason Codes:

1. To clarify the record.

2. To conform to the facts.

3. To correct transcription errors.

Page _____ Line _____ Reason _____

From _____ to _____

Page _____ Line _____ Reason _____

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