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INTRODUCTION

The SEC respectfully requests that this Court certify for interlocutory appeal two holdings in its July 13, 2023 order on summary judgment (D.E. 874, the “Order”): (1) the ruling that, as a matter of law, Defendants’ “Programmatic” offers and sales of XRP over crypto asset trading platforms could not lead investors to reasonably expect profits from the efforts of others; and (2) the ruling that Ripple’s “Other Distributions” of XRP as a “form of payment for services” (*id.* at 4) was legally insufficient to constitute an “investment of money” under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). Immediate appeal of these rulings is warranted under 28 U.S.C. § 1292(b) because they involve controlling questions of law as to which there are substantial grounds for difference of opinion, and obtaining an appellate ruling on these issues now may materially advance the ultimate termination of this litigation.

These two rulings involve controlling legal issues because they can be—and were—resolved as a matter of law on an undisputed factual record (*e.g.*, Order at 10, 15), and they disposed of the SEC’s claims regarding the majority of Defendants’ offers and sales at issue and all of the primary Section 5 liability claims against the individuals. And there are significant grounds for difference of opinion on the correctness of both rulings. Since this Court’s decision, another court in this district explicitly disagreed with the Order’s ruling on the Programmatic Sales. *SEC v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299, at *15 (S.D.N.Y. July 31, 2023) (“the Court declines to draw a distinction [where] coins sold directly to institutional investors are considered securities and those sold through secondary market transactions to retail investors are not” because “*Howey* makes no such distinction”). Likewise, this Court’s “Other Distributions” ruling departs from the holdings in numerous cases that an “investment of money” under *Howey* can be met through a non-cash contribution such as the provision of goods or services.

An immediate appeal of these two rulings—which are the core of the Court’s summary judgment holding—will also materially advance the ultimate, final termination of this action. It is indisputable that a final judgment as to all parties will require this Court to determine what remedies are appropriate in light of Ripple’s violations the Court found existed on summary judgment. This will require resource-intensive steps like discovery, *see* D.E. 471 (contemplating such discovery), *Daubert* practice, *see* D.E. 472 n.1 (deferring certain *Daubert* briefing until “the issue of remedies is ripe”), and briefing complex legal issues. Ripple has also indicated its own consideration of an appeal at some point in this proceeding. *See, e.g.*, D.E. 889 at 1 n.2.

The relevant question, therefore, is whether it makes sense to take the appellate path most likely to result in a single remedies phase instead of two separate rounds. The SEC respectfully submits that interlocutory review is that path, because immediate appellate resolution of the two rulings makes it more likely that this Court will be able to assess in one proceeding the remedies for all of the violations for which Defendants are ultimately held liable. By contrast, delaying appeal until after one litigated remedies phase will result in additional litigation should the Second Circuit disagree with any portion of this Court’s liability rulings.

There is an additional benefit to obtaining appellate review of the rulings now: the intra-district split on critical aspects of the legal framework governing the SEC’s claims heightens the need for appellate resolution. The ultimate answer to these questions could affect a number of pending cases involving crypto assets offered and sold by issuers on crypto asset trading platforms and cases in which issuers have distributed such assets for non-cash labor and services.

BACKGROUND

This case involves Defendants’ offers and sales to public investors of more than \$2 billion of the crypto asset XRP through at least four channels. First, in its “Institutional Sales,”

Ripple sold \$728 million in XRP to “sophisticated” counterparties pursuant to written contracts. (*See* Order at 4, 15). Second, via “Programmatic Sales,” Ripple sold \$757 million in XRP over crypto asset trading platforms to investors in “blind bid/ask transactions.” (*Id.*). Third, Ripple recorded \$609 million in non-cash revenue for “Other Distributions” of XRP in exchange for services such as labor. (*Id.* at 4-5, 15-16). Fourth, similar to Programmatic Sales, Defendants Garlinghouse and Larsen personally sold over \$600 million in XRP over crypto asset trading platforms. (*Id.* at 5, 27-28). Because Defendants never registered any of these offers and sales, the SEC sued, alleging that each Defendant had violated Section 5 of the Securities Act of 1933 (“Securities Act”) and that Garlinghouse and Larsen had aided and abetted Ripple’s violations.

A. The Court’s Summary Judgment Decision

Following extensive discovery, the SEC and Defendants cross-moved for summary judgment. Two of the three elements of a Section 5 violation—utilizing the means of interstate commerce and the lack of registration—were not in dispute. (Order at 10). Thus, the dispositive issue the Order addressed was whether Defendants offered and sold “investment contracts” under *Howey*. The Court correctly concluded that, as the parties agreed, this inquiry presents a “legal question that the Court resolves based on the undisputed record.” (*Id.* at 11, 15).

For the Institutional Sales, where Ripple sold XRP to “sophisticated individuals and entities ... pursuant to written contracts,” the Court correctly determined that the *Howey* test was satisfied. (Order at 16-22). The Court thus found an “investment of money” by buyers paying Ripple “fiat or other currency in exchange for XRP.” (*Id.* at 16). A “common enterprise” likewise existed because: (a) Ripple “pooled the proceeds of its Institutional Sales”; (b) “Ripple used the funds it received from its Institutional Sales to promote and increase the value of XRP by developing uses for XRP and protecting the XRP trading market”; and (c) accordingly, “each Institutional Buyer’s ability to profit was tied to Ripple’s fortunes and the fortunes of other

Institutional Buyers.” (*Id.* at 17-18). Lastly, the Court properly determined that “reasonable investors ... would have purchased XRP with the expectation that they would derive profits from Ripple’s efforts.” (*Id.* at 18-19). The Court premised this finding on “Ripple’s communications, marketing campaign, and the nature of the Institutional Sales,” including promotional brochures Ripple circulated to sophisticated investors in 2013 and 2014, the “XRP Market Reports” posted on its website, and the online public statements of its “senior leaders,” including Garlinghouse and Larsen. (*Id.* at 19-21). The Court also noted that the lockup provisions or resale restrictions that some institutional buyers agreed to were “inconsistent with the notion that XRP was used as a currency or for some consumptive use.” (*Id.* at 21).

With respect to the Programmatic Sales, the Court reached a different conclusion. The Court concluded that Ripple’s sales “to public buyers” over “digital asset exchanges” did not create a “reasonable expectation of profits” from the efforts of others: “[w]hereas the Institutional Buyers reasonably expected that Ripple would use the capital it received from its sales to improve the XRP ecosystem and thereby increase the price of XRP, ... Programmatic Buyers could not.” (*Id.* at 23). The Court reasoned that programmatic buyers “could not have known if their payments of money went to Ripple” and “Ripple did not make any promises or offers because Ripple did not know who was buying the XRP.” (*Id.* at 23-24). The Court found that, unlike a reasonable Institutional Buyer—who would have been aware of Ripple’s “marketing campaign and public statements”—a “reasonable Programmatic Buyer, who was generally less sophisticated,” did not share such understandings. (*Id.* at 25).

For Ripple’s “Other Distributions”—exchanging XRP for non-cash services, including compensating its employees with XRP and providing XRP to third parties “to develop new applications for XRP”—the Court found there was no “investment of money.” (Order at 26).

The Court reasoned that employee labor and third-party services in exchange for XRP did not constitute “tangible and definable consideration,” and that Ripple could not have funded its projects with these XRP distributions because it “never received the payments” from them. (*Id.*)

As for Garlinghouse and Larsen, the Court held that their XRP sales “were programmatic sales on various digital asset exchanges through blind bid/ask transactions.” (Order at 27). Relying on the same reasoning that governed its ruling on Ripple’s Programmatic Sales, the Court thus granted the individuals summary judgment on the SEC’s primary Section 5 charges against them. (*Id.* at 27-28). On the other hand, the Court denied summary judgment on the aiding and abetting claims against the individuals vis-à-vis the Institutional Sales, finding there were issues of fact as to the individuals’ knowledge or reckless disregard of Ripple’s violation, and as to substantial assistance for Larsen for a certain period. (*Id.* at 30-33).

B. Remaining Proceedings Before Final Judgment

Resource-intensive litigation remains to determine appropriate remedies—such as injunctive relief, disgorgement, and civil monetary penalties—for Ripple’s Institutional Sales in violation of Section 5. *See, e.g., SEC v. Ahmed*, 72 F.4th 379, 391 (2d Cir. 2023) (following grant of summary judgment to SEC, litigation moves to remedies stage to determine injunctive and monetary relief and to address various disgorgement-related issues). This will involve discovery and potentially several rounds of briefing. For example, the parties previously agreed to postpone *Daubert* briefing for one of Defendants’ experts whose proposed testimony is limited to issues relating to monetary relief. *See* D.E. 471, 472. The focus of this proposed testimony is the scope of expenses properly deductible from disgorgement under *Liu v. SEC*, 140 S. Ct. 1936 (2020), an issue that will likely raise an array of additional fact and legal questions. *See generally Ahmed*, 72 F.4th at 396-99. Both this Court and Magistrate Judge Netburn will presumably be asked to rule on a number of discovery and *Daubert* disputes.

The SEC will also seek discovery related to its anticipated requests for injunctive and monetary relief, particularly since Defendants previously obtained an order blocking discovery of documents that post-dated the filing of the Complaint, D.E. 249 at 2, all of which will be relevant to Defendants’ ongoing conduct and the likelihood of future violations. *E.g.*, *SEC v. Cavanagh*, 155 F.3d 129, 135 (2d Cir. 1998). The SEC will seek this discovery, in part, because Ripple’s own publicly available “XRP Market Reports” disclose that “Ripple has continued to sell XRP only in connection with ODL transactions.” *See* Ex. A <https://ripple.com/insights/q1-2023-xrp-markets-report/>). This Court has already found that Ripple’s ODL transactions violated Section 5. (Order at 4, 16-22). Moreover, these publicly available XRP Market Reports show that Ripple has made an additional approximately *\$3 billion* in net, unregistered ODL sales since the filing of this case. *E.g.*, Ex. B-E (certain additional Ripple’s XRP Market Reports).

Ripple will presumably vigorously oppose any such claims for relief, and in fact it preemptively recognized the potential for “additional fact or expert discovery on the issue of disgorgement.” D.E. 471. Ripple has now also explicitly indicated that it intends to argue that its current Institutional Sales do not implicate the federal securities laws under *Morrison v. Nat’l Australia Bank*, 561 U.S. 247 (2010), in order to oppose the SEC’s request for injunctive or other relief. D.E. 889 at 4. Again, both this Court and Magistrate Judge Netburn will be called upon to rule on these disputes. And, at the end of this discovery, the parties will submit briefs and the Court will have to rule on the various relief-related arguments, including as to *Liu* and *Morrison*.

The Order also found triable issues of fact on the aiding and abetting claims relating to Institutional Sales. (*See* Order at 34). Accordingly, litigating this case to a final judgment now also means that, should the Second Circuit reverse or remand the rulings at issue here, this Court would need to redo remedies-phase litigation *and* any trial on the aiding and abetting claims.

ARGUMENT

Under 28 U.S.C. § 1292(b), a court may certify an order for interlocutory appeal where: (1) it “involves a controlling question of law,” (2) “as to which there is substantial ground for difference of opinion,” and (3) “an immediate appeal from the order may materially advance the ultimate termination of the litigation.” *SEC v. Rio Tinto PLC*, 2021 WL 1893165, at *1 (S.D.N.Y. May 11, 2021) (cleaned up); *see, e.g., TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 443 (1976) (interlocutory appeal after summary judgment but before remedies phase); *Westwood Pharm., Inc. v. Nat’l Fuel Gas Distrib. Corp.*, 964 F.2d 85, 86 (2d Cir. 1992) (same). Here, all three factors support certification.

The Second Circuit has accepted Section 1292(b) appeals to resolve questions of whether different financial instruments constitute “securities” under the Securities Act. *See, e.g., Pollack v. Laidlaw Holdings*, 27 F.3d 808 (2d Cir. 1994); *Chem. Bank v. Arthur Andersen & Co.*, 726 F.2d 930 (2d Cir. 1984). The Second Circuit has likewise accepted various other interlocutory appeals to resolve important questions of securities law, including the appeal this Court certified in *Rio Tinto*.¹ *See also TSC Indus., Inc.*, 426 U.S. at 443 (Supreme Court review after Second Circuit interlocutory review of controlling question as to the application of the securities laws).

¹ *SEC v. Rio Tinto PLC*, 41 F.4th 47 (2d Cir. 2022); *see also FHFA v. UBS Ams. Inc.*, 712 F.3d 136 (2d Cir. 2013) (addressing Securities Act’s statute of limitations); *W.R. Huff Asset Mgmt. Co., LLC v. Deloitte & Touche LLP*, 549 F.3d 100 (2d Cir. 2008) (addressing an investment adviser’s standing to assert certain securities claims); *Teamsters Local 445 v. Dynex Cap., Inc.*, 531 F.3d 190 (2d Cir. 2008) (addressing the standard corporate scienter for securities fraud claims); *Litzler v. CC Invs., L.D.C.*, 362 F.3d 203 (2d Cir. 2004) (addressing the tolling of claims under the securities laws); *Cal. Pub. Emps’ Ret. Sys. v. WorldCom, Inc.*, 368 F.3d 86 (2d Cir. 2004) (addressing whether Securities Act claims can be removed to federal court as “related to” pending bankruptcies); *SEC v. U.S. Envtl., Inc.*, 155 F.3d 107 (2d Cir. 1998) (addressing the scienter standard for securities market manipulation); *Dinsmore v. Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin*, 135 F.3d 837 (2d Cir. 1998) (addressing the viability of private claims for conspiracy to commit securities fraud); *McMahan & Co. v. Warehouse Entm’t, Inc.*, 65 F.3d 1044 (2d Cir. 1995) (addressing the measure of damages available under the Securities Act).

The Court should certify this interlocutory appeal as well, including because of the express intra-district split on certain of the Order’s rulings made as a matter of law, and because of the many pending securities actions involving crypto assets offered and sold by their issuers on crypto asset trading platforms or in exchange for services such as labor.

A. The Court’s Ruling on Offers and Sales on Trading Platforms and Those for Services Involve Controlling Questions of Law.

A question of law is “controlling” when “reversal of the district court’s opinion, even though not resulting in dismissal, could significantly affect the conduct of the action.” *Rio Tinto*, 2021 WL 1893165, at *2 (citations omitted); *see also In re Duplan Corp.*, 591 F.2d 139, 148 n.11 (2d Cir. 1978). Certification can also be particularly appropriate where the issue involves “a purely legal question about which there are no triable issues of fact.” *In re Air Crash*, 27 F. Supp. 2d 431, 435 (S.D.N.Y. 1998). And whether a legal question is “controlling” is also informed by whether “the certified issue has precedential value for a large number of cases.” *Rio Tinto* at *2; *see also Klinghoffer v. S.N.C. Achille Lauro*, 921 F.2d 21, 24 (2d Cir. 1990) (courts “may properly consider the system-wide costs and benefits of allowing the appeal ... the impact that an appeal will have on other cases is a factor that [courts] may take into account”). Here, each of these considerations shows that the Order’s rulings involve controlling questions of law.

The rulings at issue involve pure legal questions about the application of *Howey* to crypto asset offers and sales, *and* they significantly affect the conduct of the action. As the Order itself held, “[w]hether Defendants offered or sold ‘investment contracts’ is a *legal* question that the Court resolves based on the undisputed record.” Order at 15 (emphasis added); *see also id.* at 10, 15 (ruling on undisputed facts). The rulings dismissed the SEC’s claims related to more than half of the XRP offers and sales at issue and entirely disposed of the primary Section 5 liability claims against the individuals.

In addition, both rulings could have a substantial impact on a large number of pending litigations. The Programmatic Sales ruling could have significant persuasive value in various pending SEC enforcement actions where issuers offered and sold crypto assets indiscriminately to public investors over crypto asset trading platforms, including cases pending in this district. *See, e.g., SEC v. Coinbase, Inc.*, No. 23-cv-4738 (S.D.N.Y., filed June 6, 2023) (Compl. ¶¶ 65, 294) (alleging defendants operated unregistered exchange that facilitated the offer and sale of various crypto asset securities, including offers and sales by issuers over the platform); *SEC v. Binance Holdings Ltd.*, No. 23-cv-1599 (D.D.C., filed June 5, 2023) (Compl. ¶¶ 306, 308-09, 363) (similar allegations); *SEC v. Sun*, No. 23-cv-2433 (S.D.N.Y., filed Mar. 22, 2023) (Compl. ¶¶ 91-93) (alleging manipulative trading of crypto asset securities offered and sold over crypto asset trading platforms and transferred in exchange for services); *SEC v. Eisenberg*, No. 23-cv-503 (S.D.N.Y., filed Jan. 20, 2023) (Compl. ¶¶ 47-48, 62) (same); *SEC v. Wahi*, No. 22-cv-1009 (Compl. ¶ 1) (W.D. Wash., filed July 21, 2022) (alleging insider trading as to various crypto asset securities acquired on crypto asset trading platforms). The *Coinbase* defendants and amici on their behalf have cited this Court’s Order extensively in support of dismissal. Case No. 23-cv-4738, D.E. No. 36; D.E. No. 50 at 16.²

The “Other Distributions” ruling likewise could impact various pending SEC cases, including in this district, where the alleged offers and sales of crypto assets were made in exchange for services such as labor. *See, e.g., Sun, supra* (Compl. ¶¶ 91-107) (unregistered distributions for non-cash consideration such as for promotion of the crypto asset); *SEC v.*

² The issues decided in the Order could also affect cases not involving the SEC. For example, the District of New Jersey’s Chief Bankruptcy Judge recently observed that the Order could “complicat[e],” “affect” and “open new potential defenses” in bankruptcy proceedings involving crypto asset exchanges. Law360, “Ripple Order Complicates Crypto Bankruptcies, Say Judges,” July 28, 2023, available at <https://www.law360.com/articles/1704192/>.

Hydrogen Tech. Corp., No. 22-cv-8284 (S.D.N.Y., filed Sept. 29, 2022) (Compl. ¶ 5) (distributions for labor and promotional services); *Binance, supra* (Compl. ¶¶ 308-310) (distributions as employee compensation); *SEC v. Dragonchain, Inc.*, No. 22-cv-1145 (W.D. Wash., filed Aug. 16, 2022) (Am. Comp. ¶¶ 68-73) (distributions for labor and services).

Defendants incorrectly frame the proper Section 1292(b) inquiry, arguing that the rulings at issue do not involve pure legal questions because determining whether something is a “security” depends on the facts of each case. *See* D.E. 889 at 2. This is a non sequitur—no two legal cases ever present the exact same facts. The question is whether the ruling at issue involves a *legal* dispute or a *factual* dispute between the parties. As the Court correctly repeatedly noted, the application of *Howey* here to an undisputed set of facts constitutes a pure legal determination. *E.g.*, Order at 15 (citing *SEC v. Thompson*, 732 F.3d 1151, 1160–61 (10th Cir. 2013)).

Nor does the SEC hereby seek to appeal a ruling based on a disputed fact, request that the Court of Appeals revisit this Court’s correct determination that the facts are undisputed, or overturn any findings of fact given that the Order made none. Instead, the rulings that the SEC seeks to appeal were *legal determinations* about the existence of investment contracts based on *undisputed* facts. The *undisputed* facts (*e.g.*, Order at 23 (Programmatic Sales are “blind bid/ask transactions”)) present a legal question—can an issuer’s offers and sales on crypto asset trading platforms create a reasonable expectation of profits based on the efforts of others? This legal question is at issue in a number of pending cases, and a Second Circuit ruling will have “precedential value.” *Rio Tinto*, 2021 WL 1893165, at *2. The pending cases may involve different crypto asset securities, but the same legal disputes at issue in the Order’s rulings—whether issuer offers and sales over trading platforms and/or in exchange for noncash consideration satisfy *Howey*’s requirements—will likely be critical in those actions as well.

If Defendants were correct, no interlocutory appeal would ever be proper with respect to cases applying *Howey* to particular offers or sales, all of which naturally present their own unique facts. But that is simply not the law, and the Second Circuit has had no trouble reviewing an interlocutory order to determine whether a particular transaction involved securities under Supreme Court precedent. In *Pollack*, for example, the court heard an interlocutory appeal to determine whether an instrument was a “note” and therefore a “security” and, in doing so, made the *legal* determination of whether particular “factors alter the reasonable expectations of investors.” 27 F.3d at 814. The district court had certified interlocutory review after concluding (as this Court has) that the holding that “the investments at issue were not ‘securities’” was a purely legal question. *Pollack v. Laidlaw Holdings, Inc.*, 1993 WL 254932, at *2 (S.D.N.Y. June 25, 1993). And it reached that conclusion even though its own ruling on the merits had, unremarkably, involved “[a]pplying the facts of this case to *Howey*.” *Pollack v. Laidlaw Holdings, Inc.*, 1993 WL 17302, at *6 (S.D.N.Y. Jan. 21, 1993) *rev’d* 27 F.3d at 814 (holding the instruments were securities under a test other than *Howey*). The Court should do the same here.³

B. Substantial Grounds for Difference of Opinion Exist.

The second Section 1292(b) factor is satisfied if “there is conflicting authority on the issue” raised for interlocutory review and it “has not been squarely addressed by the Second Circuit.” *Rio Tinto*, 2021 WL 1893165, at *2 (citations omitted). Here, there can be no dispute that the Second Circuit has not had occasion to apply *Howey* to issuer offers or sales of crypto assets. This second prong is further plainly satisfied because this Court and the court in *Terraform* have come out on opposite sides of the legal question underlying the Programmatic

³ Defendants state that they may seek to appeal the question of whether there can be “investment contracts” in the absence of certain contractual provisions. D.E. 889 at 1 n.2. This illustrates the point—whether such contracts exist in this case or in another case first presents a *factual* question with respect to which, if that issue is undisputed, a court may then make a *legal* ruling.

Sales ruling. *See, e.g., Glatt v. Fox Searchlight Pictures Inc.*, 2013 WL 5405696, at *2 (S.D.N.Y. Sept. 17, 2013) (certifying 1292(b) appeal where “[t]he intra-district split ... clearly show[s] a substantial basis exists for difference of opinion”); *Wang v. Hearst Corp.*, 2013 WL 3326650, at *2 (S.D.N.Y. June 27, 2013) (same result where intra-district split “clearly provide[s] fodder for different opinions and have spawned them”); *see also Vidal v. Nielsen*, 2018 WL 10127043, at *2 (E.D.N.Y. Apr. 30, 2018) (same result for issue “that has divided courts ... and that has not been squarely addressed by the Second Circuit”).

But courts also routinely certify for interlocutory review legal issues “without first awaiting development of contradictory precedent” if “fair-minded jurists might reach contradictory conclusions” as to that issue. *In re Trump*, 874 F.3d 948, 952 (6th Cir. 2017) (quoting *Reese v. BP Exploration, Inc.*, 643 F.3d 681, 688 (9th Cir. 2011)) (both certifying review under Section 1292(b)). Here, the SEC respectfully submits that various cases applying *Howey*, including in the crypto asset context, show that reasonable jurists (in addition to the *Terraform* court) may reach conclusions contrary to the Order’s Programmatic Sales and Other Distributions rulings, further showing a substantial ground for difference of opinion.

1. There is a Substantial Ground for Difference of Opinion on Whether Issuer Offers and Sales over Crypto Asset Trading Platforms Can Give Rise to an Investment Contract under *Howey*.

Section 5 prohibits unregistered offers and sales made “directly or indirectly” by issuers, control persons or intermediaries. 15 U.S.C. § 77e. Courts have accordingly found Section 5 violations where unregistered crypto asset transactions occur not between the issuer and the investor, but through intermediaries, including on trading platforms. *E.g., Terraform*, 2023 WL 4858299, at *15-16 (sales on crypto asset trading platforms); *SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 352, 380-81 (S.D.N.Y. 2020) (sales through underwriters); *SEC v. LBRY, Inc.*, 2022 WL 16744741, at *3 (D.N.H. Nov. 7, 2022) (sales on crypto asset trading platforms); *Balestra v.*

ATBCOIN LLC, 380 F. Supp. 3d 340, 356 n.14 (S.D.N.Y. 2019) (“Purchasers’ ability to resell ATB Coins on other exchanges also supports the conclusion that the coins are securities”); *see generally Jobanputra v. Kim*, 2022 WL 4538201, at *8 n.8 (S.D.N.Y. Sept. 28, 2022) (“courts in this district have applied the *Howey* test to determine that cryptocurrency tokens intended to be sold on a blockchain *or in the general market* were securities within the meaning of the Securities Act,” noting the lack of any “case to the contrary”) (emphasis added)).

The above cases show that reasonable jurists could reach conclusions contrary to the Order’s ruling that investors’ reasonable expectations may turn on the issuer’s choice of how it offers and sells or on the existence of intermediaries between the issuer and the investor. In the opinion of the *Terraform* court, for example, the inquiry turns on *what* the issuer objectively invites investors to understand, and not on *the method* of carrying out the transaction. Nor does it turn on investors’ knowledge that they are buying their asset from the issuer or on a particular determination that each investor saw all the same information. This is so because a defendant’s “public campaign ... would presumably have reached individuals who purchased their crypto-assets on secondary markets—and, indeed, motivated those purchases—as much as it did institutional investors. Simply put, secondary-market purchasers had every bit as good a reason to believe that the defendants would take their capital contributions and use it to generate profits on their behalf.” *Terraform*, 2023 WL 4858299, at *15; *see also Zakinov v. Ripple Labs, Inc.*, 2023 WL 4303644, at *4-5 (N.D. Cal. June 30, 2023) (“Because the *Howey* test is an objective one ... whether XRP is a security will be the same for all class members, regardless of each member’s individual expectations, plaintiff’s status as a day trader will not affect the analysis”).

The Order also reasoned that purchasers who bought XRP on crypto asset platforms (as opposed to institutional purchasers) had no reasonable basis to expect that Ripple would use the

capital it received from its sales to improve the ecosystem and thereby increase the price of XRP, in part because those public purchasers could not know that their money went to Ripple or a third-party entity XRP reseller. *See* Order at 24-25. Here, too, there is a substantial ground for difference of opinion. *E.g.*, *Terraform*, 2023 WL 4858299, at *15 (“But *Howey* makes no such distinction between purchasers ... That a purchaser bought the coins directly from the defendants or, instead, in a secondary resale transaction has no impact on whether a reasonable individual would objectively view the defendants’ actions and statements as evincing a promise of profits based on their efforts”); *see also Telegram*, 448 F. Supp. 3d at 371, 374 (analyzing expectations of initial sophisticated purchasers and those of the eventual investors in the market, noting that “[t]he inquiry is an objective one focusing on the promises and offers made to investors; it is not a search for the precise motivation of each individual participant ... The subjective intent of the Initial Purchasers does not necessarily establish the objective intent of a reasonable purchaser.”).⁴

Section 5 also expressly disallows unregistered “offer[s] to sell.” 15 U.S.C. § 77e. In construing the term “offer,” courts have held that sellers cannot avoid liability by using broad means of disseminating information or engaging in impersonal transactions. These cases further reflect that reasonable jurists could reach a different conclusion than the Order’s Programmatic

⁴ More generally, *Howey* speaks to what the issuer invites an objective investor to understand about the proffered investment and draws no distinction between the levels of sophistication of the offerees. Indeed, the investors in *Howey* were primarily tourists staying at a hotel in Florida. 328 U.S. at 296-97. *Howey*’s objective standard, moreover, presumes that all investors are aware of all information reasonably available to them. *See SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 353 (1943) (courts look to the “economic inducements held out” in promotional materials and issuer’s offerings are “judged as being what they were represented to be”); *Piambino v. Bailey*, 610 F.2d 1306, 1320 (5th Cir. 1980) (looking to “expectations of a ‘reasonable investor’ as prompted by [issuer’s] *standardized* presentation”) (emphasis added). Accordingly, in the *Terraform* court’s view, “[t]he SEC need not prove that each and every investor was personally led to think that profits would follow from their investment ... If an objective investor would have perceived the defendants’ statements and actions as promising the possibility of such returns, the SEC has satisfied *Howey*’s requirement.” 2023 WL 4858299, at *14.

Sales holding—and therefore a substantial ground for difference of opinion as to the Programmatic Sales ruling, under which broad, impersonal offers to sell do not establish liability.

Specifically, courts have held that online marketing efforts—like those Ripple engaged in as noted in the Order, *e.g.*, Order at 7—meet the broad definition of “offer,” including in the context of marketing crypto assets, because:

[t]echnology has opened new avenues for both investment and solicitation. Sellers can now reach a global audience through podcasts, social media posts, or, as here, online videos and web links ... A seller cannot dodge liability through his choice of communications—especially when the [Securities] Act covers “any means” of “communication.” [15 U.S.C. § 77e(a)(1)]. We decline to adopt an interpretation that both contradicts the text and allows easy end-runs around the Act.

Wildes v. BitConnect Int’l PLC, 25 F.4th 1341, 1346 (11th Cir. 2022); *see also Pino v. Cardone Capital, LLC*, 55 F.4th 1253, 1258 (9th Cir. 2022) (explicitly following *Wildes*).

Wildes aligns with various cases where issuers offer their securities, including crypto assets, through online promotions. *See, e.g., SEC v. Edwards*, 540 U.S. 389, 392, 394-97 (2002) (offers occurred via issuer’s website); *SEC v. SG Ltd.*, 265 F.3d 42, 44-45 (1st Cir. 2001) (same); *Balestra*, 380 F. Supp. 3d at 355 (same); *United States v. Zaslavskiy*, 2018 WL 4346339, at *2 (E.D.N.Y. Sept. 11, 2018) (same); *Friel v. Dapper Labs, Inc.*, 2023 WL 2162747, at *4-6 (S.D.N.Y. Feb. 22, 2023) (same); *Audet v. Fraser*, 605 F. Supp. 3d 372, 381-82 (D. Conn. 2022) (same). And it is in line with the Second Circuit’s own analysis that investors reasonably expect profits from the issuer’s efforts where the investors were “lacking in requisite expertise, so numerous, or so dispersed that they become utterly dependent on centralized management.” *United States v. Leonard*, 529 F.3d 83, 90-91 (2d Cir. 2008).

Defendants argue that there is no substantial ground for difference of opinion between the Order and *Terraform* because both cases applied *Howey* and both cases held that the asset underlying an investment contract transaction is not itself a security. D.E. 889 at 3. That

argument is spurious. The SEC did not argue here or in *Terraform* that the asset underlying those investment contracts were necessarily a security (and the SEC does not seek appellate review of any holding relating to the fact that the underlying assets here are nothing but computer code with no inherent value). *See also Telegram*, 448 F. Supp. 3d at 379 (“While helpful as a shorthand reference, the security in this case is not simply the Gram, which is little more than alphanumeric cryptographic sequence”). Nor does the different procedural posture of the two cases matter. *See* D.E. 889 at 3. Just as the facts in *Terraform* were treated as true—essentially undisputed—for purposes of that motion, the facts here were *in fact* undisputed.

2. There Is a Substantial Ground for Difference of Opinion as to Whether Distributing an Asset in Exchange for Services Constitutes an Investment of Money.

In *International Brotherhood of Teamsters v. Daniel*, the Supreme Court held that “a person’s ‘investment,’ in order to meet the definition of an investment contract, [did not need to] take the form of cash only, rather than of goods and services.” 439 U.S. 551, 560 & n.12 (1974). All that is required is that the buyer provide “some tangible and definable consideration in return” for the security. *Id.* at 560. It is thus “well established that cash is not the only form of contribution or investment that will create an investment contract.” *Uselton v. Commercial Lovelace Motor Freight, Inc.*, 940 F.2d 564, 574 (10th Cir. 1991).

Courts, including at least one in the crypto space, have held that issuers sold investment contracts in exchange for non-cash consideration such as labor, services, or other assets. *E.g.*, *LBRY*, 2022 WL 16744741, at *2 (crypto asset issuer “used more than 142 million LBC to incentivize users, software developers, and software testers, as well as compensate employees and contractor”); *see also Uselton*, 940 F.2d at 574-75 (employee labor constituted “investment of money” where “plaintiffs contributed their legal right to a portion of their wages to [employer] CL in return for the right ... to participate in CL’s profit-sharing plan”); *Hector v. Wiens*, 533

F.2d 429, 432-33 (9th Cir. 1976) (farmer’s provision of promissory notes backed by grain he harvested constituted “investment of money”); *Frazier v. Manson*, 484 F. Supp. 449, 452 & n.5 (N.D. Tex. 1980) (“investment of money” where plaintiff “received his limited partnership interests as compensation for...managerial services”).⁵

The Order, by contrast, held that Other Distributions could not be investment contracts because Ripple did not receive money or “payments from these XRP distributions.” Order at 26. There was no factual dispute that the Other Distributions recipients received XRP as employment “compensation” or in exchange for services to “develop new applications for XRP and the XRP Ledger,” *id.*, and that Ripple “recognized revenue of \$609 million” for these distributions, *id.* at 5. This shows substantial grounds for difference of opinion—if not an outright conflict—with the above cases as to the Order’s Other Distributions ruling.

C. Certifying the Appeal Would Materially Advance the Ultimate Termination of this Litigation.

Section 1292(b)’s final factor looks to “‘the institutional efficiency of both the district court and the appellate court.’” *Rio Tinto*, 2021 WL 1893165, at *2 (citations omitted). The “critical requirement is that it (an interlocutory appeal) have the potential for substantially accelerating the disposition of the litigation.” *Duplan Corp.*, 591 F.2d at 148 n.11 (citations omitted). This factor is satisfied if an interlocutory Second Circuit reversal means “the parties could resolve all actionable claims at one trial,” which “would be more efficient than seeking appellate review following trial, after which a second trial might be necessary.” *Rio Tinto*, 2021 WL 1893165, at *3 (citations omitted). This prong similarly is met where “immediate interlocutory appeal will ‘remove a cloud of legal uncertainty’ over these proceedings and may

⁵ *LBRY* does not conduct an “investment of money” analysis, but its holding that investment contracts were nevertheless sold in exchange for non-cash consideration shows that reasonable jurists *may* disagree with the Order’s investment of money holding as to Other Distributions.

‘significantly affect the parties’ bargaining positions and may hasten the termination of this litigation through settlement.’” *Id.* (citations omitted).

Interlocutory review would materially advance the ultimate termination of this litigation, in the most efficient manner possible, by significantly reducing the risk of two extensive remedies phases and possibly two trials. This case’s current posture calls for at least one remedies phase for Ripple, relating to the Institutional Sales, that, for the reasons set forth above, promises to be heavily litigated and include at a minimum *Daubert* motion practice and “additional fact and expert discovery on the issue of disgorgement.” D.E. 471. That phase could also include remedies as to Garlinghouse and Larsen should the SEC decide to proceed to trial on the currently remaining aiding and abetting claims.

Even if interlocutory certification is denied, the SEC will have to decide—after entry of final judgment—whether to appeal on an issue on which this Court and the *Terraform* court have disagreed. Defendants have also already expressed that they may appeal certain aspects of the Order. D.E. 889 at 1 n.2. If the Second Circuit reverses as to some or all of the rulings in the Order, this Court will have to oversee a second remedies phase for Ripple (and possibly Garlinghouse and Larsen), to determine the scope of appropriate relief as to the violations arising from the Programmatic Sales and Other Distributions. It would also potentially mean a second trial for Garlinghouse and Larsen, to decide whether they aided and abetted Ripple’s Programmatic Sales and Other Distributions.

Allowing the Second Circuit to define the contours of Defendants’ Section 5 liability now means this Court would likely conduct only a single remedies phase and no more than one trial. Moreover, an appellate finding that Defendants’ offers and sales over crypto asset trading platforms violated Section 5 could eliminate the need for a trial altogether. To that end, should

the Second Circuit find that Garlinghouse and Larsen violated Section 5 in their own XRP offers and sales, the SEC would evaluate whether to proceed to trial on its aiding and abetting claims.

Finally, a Second Circuit reversal vis-à-vis the XRP offers and sales on which the Order granted Defendants summary judgment could increase the likelihood of resolving “this litigation through settlement.” *Rio Tinto*, 2021 WL 1893165, at *3 (citations omitted). An appellate ruling and its accompanying precedential value on these controlling questions of law could make a negotiated resolution easier for the parties to achieve.

D. The Court Should Stay Remedies and Pretrial Proceedings.

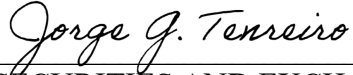
The SEC is mindful that the court has entered a pretrial order and directed the parties to adhere to the schedule set forth therein. D.E. 884, 891. Given Section 1292(b)’s emphasis on courts’ “institutional efficiency,” *Rio Tinto*, 2021 WL 1893165, at *2, however, the SEC respectfully asks the Court to stay any remedies litigation and any pretrial proceedings while this interlocutory certification request and any appeal are pending. *See, e.g., Wang*, 2013 WL 3326650, at *2–3 (“The underlying case will be stayed during the pendency of this [Section 1292(b)] motion and if the appeal is granted the stay will continue to the date of the Circuit’s decision.”); *Chem. Bank v. Arthur Andersen & Co.*, 552 F. Supp. 439, 458 (S.D.N.Y. 1982) (certifying under Section 1292(b) whether instruments were securities and “stay[ing] further proceedings pending the outcome of the appeal”), *rev’d on other grounds*, 726 F.2d at 938-40.

CONCLUSION

The Court should grant the SEC’s motion, and certify an interlocutory appeal for the summary judgment rulings that Defendants’ XRP offers and sales on crypto asset trading platforms, and offer and sales in exchange for non-cash consideration, did not violate Section 5 of the Securities Act. The Court should also stay the remainder of these proceedings during the pendency of this motion and any forthcoming appeal.

New York, N.Y.
August 18, 2023

Respectfully submitted,



SECURITIES AND EXCHANGE
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EXHIBIT A

Crypto Means Business

Discover How



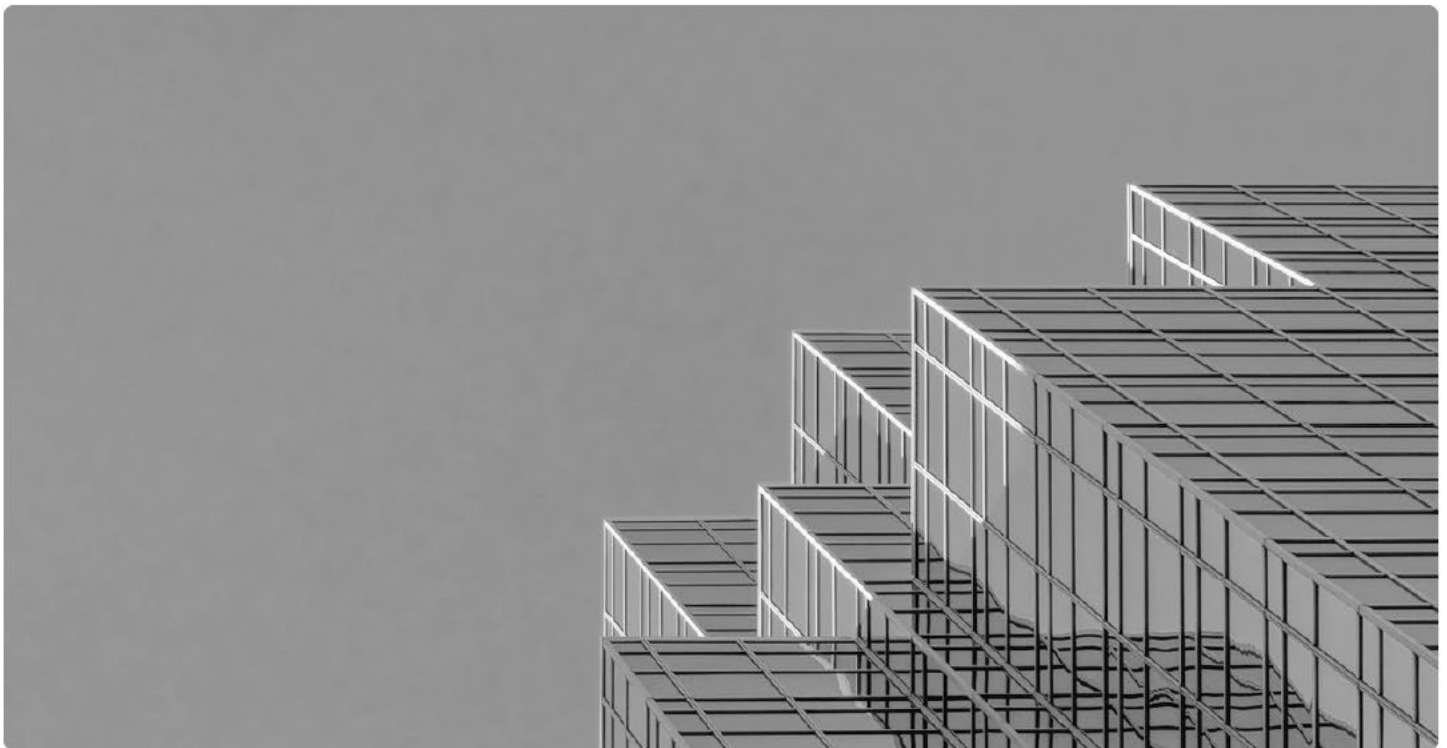
Insights

Q1 2023 XRP Markets Report

Team Ripple

APR 27, 2023

INSIGHTS XRP



Ripple publishes the quarterly XRP Markets Report to voluntarily provide transparency and regular updates on the company's views on the state of crypto markets, including its quarterly XRP sales, relevant XRP Ledger and XRP-related announcements, and commentary on market developments over the previous quarter.

As an XRP holder, Ripple believes proactive communication and transparency are part of being a responsible stakeholder. Moreover, Ripple urges others in the industry to build trust, foster open communication and raise the bar industry-wide.

Notable Takeaways

- Total XRP sales by Ripple in Q1 2023, net of purchases, were \$361.06M v. \$226.31M the previous quarter.
- XRP Ledger on-chain activity remained strong, with decentralized exchange volumes increasing 34% to \$115M in Q1 2023 versus Q4 2022. XRP Average Daily Volume (ADV) on centralized exchanges jumped 46% in Q1 to \$1B from \$698M.
- The EU, UK and UAE proposed new regulatory regimes for crypto focused on licensing and activity-based frameworks.
- Developers proposed a new interoperability standard (XLS-38d) for the XRP Ledger that would enable users to transfer digital assets and data between blockchains regardless of underlying protocol or programming language.

Crypto Market Summary

There was no shortage of important events in crypto and broader financial markets in Q1. While initially global inflation expectations slowed, macro turbulence revealed cracks in parts of the economy. Critical blows were dealt to Silvergate, Silicon Valley Bank (SVB), Signature and Credit Suisse, among others. Despite the turmoil, crypto markets including XRP, remained resilient.

While Silvergate's fall unfolded over the course of several months, the speed of the bank run on SVB caught many off guard. Exacerbated by social media, SVB's lack of basic asset-liability-management on the back of rate hikes ignited concerns of other regional banks failing to match their liabilities effectively. The resulting panic saw other institutions such as First Republic and Charles Schwab experience deep sell-offs. Credit Suisse's collapse shortly thereafter – while due to largely unrelated factors – was spurred by the larger market anxiety. While the Swiss government's intervention quelled initial fears, it raised questions as to the extent to which a sovereign can overrule established law. This unprecedented set of events highlighted the extent of the opacity and interconnectedness across our global financial and crypto markets.

With the fall of SVB and unexpected shutdown of Signature Bank, much of the crypto world found itself de-banked in the US overnight. While a deposit backstop by the FDIC and Federal Reserve relieved immediate fears, the subsequent closures of the three main banks servicing crypto companies meant that the fiat rails to these banks, utilized by the bulk of the industry to move money in and out of crypto, needed to be rebuilt and new partners to be found. Another casualty in the process was USDC, which had a short-term liquidity driven de-peg down to \$0.85 on some exchanges. USDC recovered to \$1 within a few days, but market confidence in important on-off ramps was shaken.

This combination of events – with previous actions such as the Fed denying the application of crypto-focused bank Custodia for membership, and the Fed, FDIC and OCC issuing a joint statement on liquidity risks to banks servicing the fiat deposits of crypto clients – continued to fuel sentiment that regulators are attempting to dissuade banks from allowing legal operating entities within crypto to have bank accounts in the US. Some have referred to this as “Operation Choke Point 2.0.”

Despite broader financial turmoil, in Q1, volumes in XRP markets were up 46% QoQ, likely due to a combination of a subsequent recovery in markets as well as large volatile events which tend to spike volumes (Source: CCData). BTC and ETH spot volumes were up 12% and down 12% respectively QoQ. However, derivatives volumes tell a different story with BTC and ETH up 14% and 20% respectively QoQ. This divergence between spot and derivatives volumes could point towards a significant leverage-driven rally with an additional volume boost stemming in part from reassurance with the successful Ethereum Shanghai upgrade, which allowed ETH validators the ability to withdraw 18 million staked tokens that were previously locked up.

Heading into Q2, it is clear that macro uncertainty will continue. Nevertheless, we expect that those who build on a battle-tested foundation of prudent risk management and real-world utility will continue growing once the world emerges from the current climate.

Global Regulation

Several countries are moving forward with new legislation and licensing regimes to provide clarity for crypto. Specifically, in the EU, the final vote on the Markets in Crypto Assets regulation (MiCA) – which will result in the implementation of a new licensing regime in the 27 member states – passed on April 20. The UK government introduced comprehensive regulatory proposals for a new regulatory regime for crypto, building on prior proposals focusing on stablecoins and financial promotion of tokens. As a result, many in the industry lauded Europe's efforts to regulate crypto responsibly.

In the Middle East, the UAE passed a new law governing virtual assets, setting up the country's initial regulatory regime for cryptocurrencies at the federal level. Additionally, in Dubai, the Virtual Assets Regulatory Authority (VARA) published their regulatory regime for crypto, consisting of activities-based rulebooks. This also opens up the way for companies to be authorized by VARA and conduct crypto activity within Dubai (rather than in the international free zones). Australia's central bank and Treasury held private meetings with international crypto industry executives on the future of crypto and regulation in the nation. Finally, Hong Kong and Australia opened public consultations on proposed requirements for virtual asset trading platform operators and token mapping respectively.

The US's approach to crypto regulation continued to focus on regulation by enforcement instead of rulemaking, as Coinbase and Paxos received Wells notices from the SEC alleging various securities laws violations and lack of registration. SEC Chair Gensler issued a broad warning to yield-earning crypto platforms to come into compliance after Kraken shuttered its staking service, to which Commissioner Peirce denounced her own agency's actions. The SEC also filed a lawsuit against Justin Sun, affiliated firms and celebrity promoters, alleging market manipulation and sales of unregistered securities. The CFTC sued Binance, CEO Changpeng Zhao and Chief Compliance Officer Samuel Lim, for allegedly violating US trading and derivatives laws.

Update on the SEC Lawsuit Against Ripple

On March 6, the Court issued a 57 page opinion deciding which opinions of the SEC's and Ripple's experts can be considered on summary judgment (and, if needed, at trial) and which opinions need to be "stricken." Specifically, the SEC's expert's testimony regarding the "reasonable expectations of an XRP purchaser" was struck from the record, along with their expert who attempted to determine what "caused" the price of XRP to change. Ripple expects a decision on summary judgment in 2023 though timing is ultimately up to the Court.

XRPL On-chain Activity

On-Chain Activity	Q1 2023	Q4 2022	Q3 2022
Transactions	116,341,516	106,429,153	103,039,261
XRP Burned for Transaction Fees	140,993	101,968	146,433
Avg cost per transaction (in XRP)	0.00121	0.00096	0.0014
Average XRP Closing Price (in USD)	0.40	0.42	0.36
Avg cost per transaction (in USD)	0.000484	0.0004032	0.000504
Volume on DEX (in USD)	114,567,441	85,772,947	117,372,932
Trustlines	8,317,321	8,731,628	9,115,964
Number of New Wallets	140,558	228,143	125,225

(Source: XPMarket.com and CoinMarketCap)

On-chain activity on XRPL remained strong this quarter, as transactions increased 9% to 116M, versus 106M from the previous quarter. NFTs continue to drive activity and over 1 million assets have been minted on the Ledger since XLS-20 went live on mainnet. This strong activity is also reflected in DEX volumes, which increased 34% versus last quarter to \$115M. Note: the average cost per transaction in USD has been corrected on this table (for this and previous quarters) and continues to be more advantageous for users, compared to other blockchains.

On-Demand Liquidity (ODL)

Bitso, the leading crypto exchange in Latin America, announced last quarter it surpassed more than \$3.3 billion in transactions between the US and Mexico in 2022 through its institutional crypto solutions utilizing Bitso's strategic partners, such as Ripple and its On-Demand Liquidity (ODL) product. This partnership illustrates the institutional use of cryptocurrency as a cross-border payment solution and an example of the utility of blockchain and crypto.

The big news of the quarter was the banking crisis and the negative impact to crypto liquidity, which also led to some disruption to liquidity available for ODL, though customer flows recovered quickly. ODL remains robust and continues to serve customer flow to facilitate cross-border payments in a low-cost, timely and reliable method thanks to redundancy and sustainability planning. While there is no denying the industry is facing strong headwinds, Ripple continues to be laser focused on minimizing the impact of the banking crisis on our partners, and providing the best experience for its customers.

Disciplined, Responsible Stakeholders: Q1 Sales and Purchases

Last quarter, total XRP sales by Ripple, net of purchases, were \$361.06M vs. \$226.31M in the previous quarter. Ripple has continued to sell XRP only in connection with ODL transactions. Since 2020, Ripple has sourced XRP from the open market to ensure there is a sufficient supply of XRP available for our growing ODL business. We continually strive to minimize undue market impact with our purchases by, for example, limiting how much and from whom we purchase XRP.

Summary of Ripple's XRP Sales <i>(dollars in millions)</i>	Q1 2023	Q4 2022
Total ODL-related sales*	2,930.87	2,964.28
Total purchases	2,569.81	2,737.97
Net Sales	361.06	226.31
Global XRP volume	Q1 2023	Q4 2022
ADV XRP <i>(dollars in millions)</i>	1,020.42	698.45
Total XRP volume <i>(dollars in billions)**</i>	91.84	64.31
Net sales as % of total volume	0.44%	0.35%

**All ODL-related sales are attributed to the growth and adoption of ODL.*

***Note: Figures were compiled using the CCData API for daily TopTier aggregate volumes which reflects total XRP volume in dollars by exchanges that CCData lists in the TopTier.*

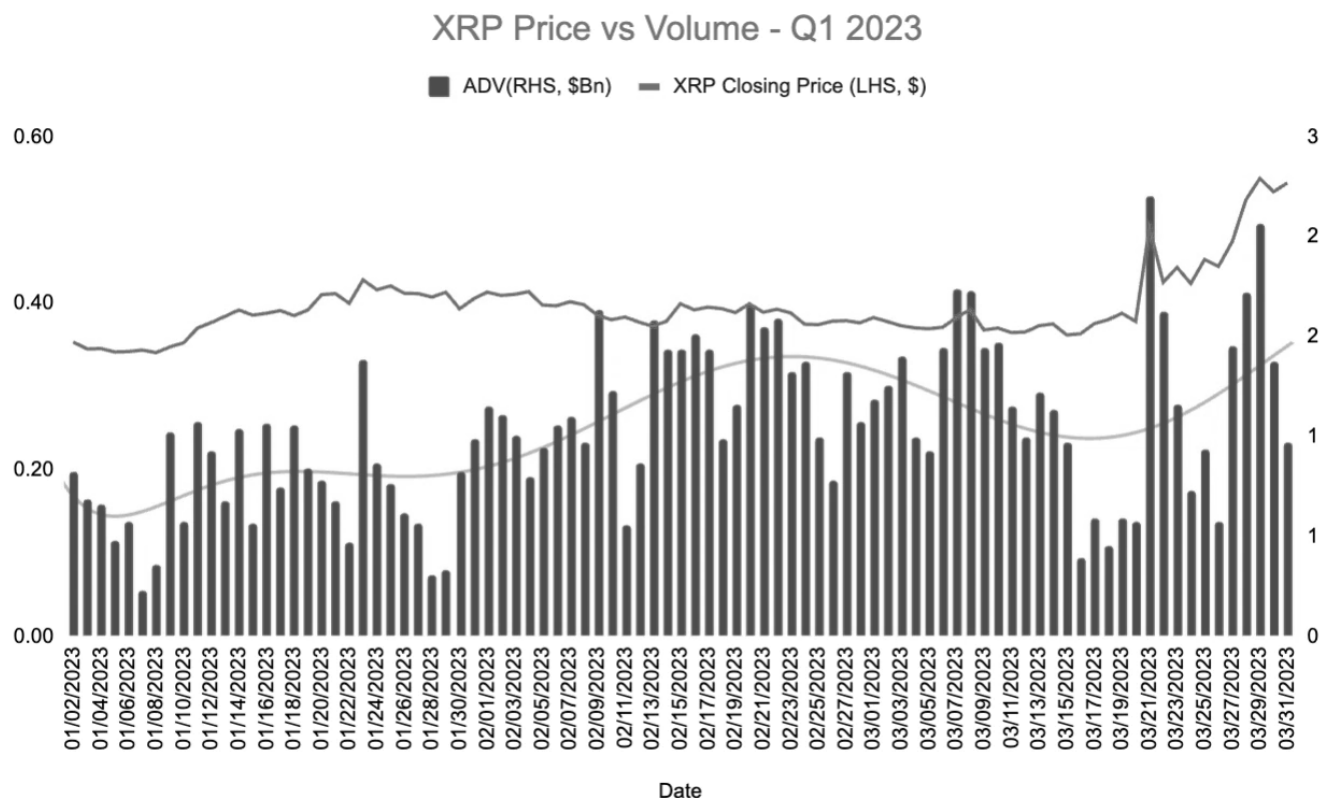
Total sales by Ripple, net of purchases, ended the quarter at 0.44% of global XRP volume according to CCData TopTier (CCTT) volumes. Due to the circumstances of the banking crisis, Ripple stopped purchasing XRP for several days due to

the disruption. This activity has since resumed and the company expects to continue to undertake purchases as ODL adoption grows.

Leases

Certain wallets used for XRP sales also provide short-term leases to market makers and participants. This is worth noting, given they are often incorrectly interpreted by market participants as sales. XRP associated with leases are ultimately returned to Ripple. The total amount of leases outstanding in Q1 2023 was 52 million XRP.

Reported Volume and Price



During Q1 of 2023, the price of XRP appreciated 24% with ADV on centralized exchanges also scaling up to an average of \$1.0B, up 46% from Q4 2022.

Escrow

In Q1 2023, three billion XRP were released out of escrow (one billion each month) in line with prior quarters and the official escrow arrangement. In total, 2.1 billion XRP were returned and subsequently put into new escrow contracts throughout the quarter. For more information on the escrow process, see [here](#). Note: All figures are reported based on transactions executed during the quarter.

Building with the XRP Ledger (XRPL) Community

Messari Adds XRP Ledger to Coverage

Messari, a leading crypto analyst firm, wrote about the XRP Ledger in a [Protocol Overview](#), covering everything from how the Ledger processes transactions to unique capabilities of the DEX, what's being built by the community (EVM sidechain, Hooks, etc) and more.

Tokenization Projects

Since the mainnet launch of the NFT standard XLS-20 in Q4 2022, over 1.2M NFTs have been minted, making XRP Ledger among the top 10 chains for NFT volume and transactions. In addition, there are now 1,500+ apps/exchanges on the XRPL and 950+ public projects on GitHub related to XRPL.

Launch of XRPL Commons

XRPL Commons, a non-profit association focused on educating and empowering the global XRP Ledger community, launched last quarter. With a mission to support a vibrant XRP Ledger ecosystem, XRPL Commons aims to provide education, hands-on building programs, and resources for the XRPL community and developers worldwide. Its focus will encompass regenerative finance, financial inclusion, and intellectual property.

XRPL Labs Launches a Browser-Based DEX Accessing the Native XRPL DEX

This is the first desktop trading solution from XRPL Labs, the creators of Xumm, a noncustodial XRPL wallet. The Web DEX allows users across the globe to access the XRPL DEX securely and efficiently, bringing Xumm's applications to browsers worldwide.

XRPL Technical Updates

- Developers from Ripple proposed a new Interoperability standard (XLS-38d), for a cross-chain bridge that would enable interoperability between different blockchain networks on February 22. The proposed standard will enable users to transfer digital assets and data between blockchains, regardless of their underlying protocols or programming languages. It would allow tokens from one blockchain to be locked in an account on the XRP Ledger, while an equivalent amount of tokens is issued on another blockchain – increasing the use cases and adoption of the XRP Ledger.
- Sidechains and the Automated Market Maker (AMM) amendment are coming to a close and soon to undergo 3rd party security reviews. The research team also released a spec for native support of Decentralized Identity (XLS-40d) for community review.

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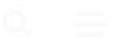
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EXHIBIT B

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XRP



Ripple publishes the quarterly XRP Markets Report to voluntarily provide transparency and regular updates on the company's views on the state of crypto markets, including its quarterly XRP sales, relevant XRP-related announcements, and commentary on market developments over the previous quarter.

As an XRP holder, Ripple believes proactive communication and transparency are part of being a responsible stakeholder. Moreover, Ripple urges others in the industry to build trust, foster open communication and raise the bar industry-wide.

Notable Takeaways

- On Demand Liquidity (ODL), Ripple's crypto-enabled cross-border payments solution, launched in France, Sweden and Africa, now available in nearly 40 payouts markets.
- Total XRP sales by Ripple, net of purchases, were \$226.31M vs. \$310.68M the previous quarter.
- Peersyst released the first phase of the Ethereum Virtual Machine (EVM) sidechain for the XRP Ledger (XRPL) on Devnet which allows DeFi applications like Uniswap, Aave and Compound to easily launch on the XRPL.

Crypto Market Summary

Q4 of 2022 was marked by immense headwinds for both crypto and the larger macro stage. Liquidity in crypto markets suffered due to the collapse of FTX, while risk assets broadly traded poorly due to continued global monetary tightening. While the outlook remains uncertain, the industry has entered a period of consolidation where companies that build solutions with real world utility will gain the upper hand and survive and thrive through the crypto winter.

Many retail and institutional participants fled to self-custody via on-chain wallets. During this period, Binance remained a large portion of the market by way of liquidity and volumes, and faced several withdrawal cascades (some accounts estimated this at >\$12B). However, institutional treasuries, funds and market-makers that traditionally relied on centralized exchange liquidity, sought new venues such as prime brokers, third party custodians and other credit-underwriting parties in order to continue to trade and hold assets in a trustworthy and risk-managed manner. This shift requires exchanges to be far more transparent about their financial stability, and a sufficient reporting mechanism remains to be developed (while some exchanges provided Proof of Reserves, unfortunately those attestations often left more questions than answers due to insufficient disclosures). Market sentiment across all exchanges – whether audited or unaudited – is tied to questions of trust. As such, market participants have drastically reduced balances posted to exchanges, increased withdrawal frequency and shortened horizons for most trading strategies, all culminating in a heavy drag on liquidity coupled with volatile prices.

By the end of Q4 2022, XRP spot markets experienced a general downtrend by way of average daily volumes (ADVs) currently at roughly \$700M, down from \$1.1B in Q1 2022 (Source: [CryptoCompare](#)). This is consistent with crypto more broadly, where in the derivatives market, open interest for BTC was down 15% from Q3 2022 and 30% from Q4 2021 while open interest for ETH was surprisingly more resilient, down less than 10% from Q3 2022 and 25% from Q4 2021. No single centralized exchange has benefitted from this flight to self-custody which underscores just how uncertain the landscape has become. While there were some Decentralized Exchanges (DEXs) that have capitalized on this migration, volumes still remained far below their bull-market highs (down >50%) (Source: [Dune Analytics](#)).

While the market will likely remain fragmented, the industry will see investment activity with a focus on improving core crypto primitives such as payments, custodial services, DEXs and cross-chain user experiences.

Global Regulation

The collapse of FTX is putting pressure on regulators globally to perform greater due diligence and move toward providing regulatory guidelines to the industry. While several jurisdictions, such as the UAE, UK, Switzerland and Singapore, have provided regulatory frameworks for crypto, the US continues to remain distantly behind. Regulatory clarity is required for the industry to grow sustainably and scalably – something Ripple has long advocated for.

The SEC continued its campaign of regulation by enforcement without providing clarity to the market. Most recently, the SEC charged Genesis and Gemini with allegedly selling unregistered securities related to their yield products. US banking regulators issued warnings to banks that dealing with cryptocurrencies could expose them to risks such as contagion and fraud due to the lack of oversight and due diligence in the sector. Coinbase settled a case with the New York Department of Financial Services and agreed to pay a \$50M fine and invest another \$50M in its compliance efforts. In addition, the New York Attorney General filed a lawsuit against Alex Mashinsky, former CEO and co-founder of Celsius, for defrauding investors.

In the EU, the final vote for the Markets in Crypto Assets (MiCA) bill was postponed to April 2023 and Coinbase was granted approval by the Central Bank of Ireland to operate as a Virtual Asset Service Provider (VASP). Brazil President Jair Bolsonaro signed into law the country's first crypto regulatory framework and Hong Kong reaffirmed its pro-crypto stance as it aims to become a crypto hub.

Ripple released its UK policy whitepaper outlining its regulatory ambitions to propel the UK toward global crypto hub status by driving consumer protections, assessing crypto assets according to different risk profiles, and ultimately growing the industry in the UK.

In 2023, stablecoin regulation will likely be top priority and, in the US, Ripple expects major bills from last term to be reintroduced (e.g., RFIA and DCEA) as Congress seeks to impose tighter controls in the wake of FTX's demise.

Update on the SEC Lawsuit Against Ripple

On December 2, Ripple's reply brief in support of its motion for summary judgment where the company asked the court to grant judgment in the company's favor was made public. After two years of fighting this lawsuit on behalf of the entire crypto industry and American innovation, the case is fully briefed and Ripple is proud of its defense and feels more confident than ever as it awaits the Judge's decision. Decision timing is in the Judge's hands but the company is hopeful to see a ruling in 2023.

XRPL On-chain Activity

On-Chain Activity	Q4 2022	Q3 2022	Q4 2021
Transactions	106,429,153	103,039,261	130,833,193
XRP Burned for Transaction Fees	101,968	146,433	365,701
Avg cost per transaction (in XRP)	0.00096	0.0014	0.0028
Average XRP Closing Price (in USD)	0.42	0.36	1.02
Avg cost per transaction (in USD)	0.000000004	0.000000004	0.000000008
Volume on DEX (in USD)	85,772,947	117,372,932	N/A
Trustlines	8,731,628	9,115,964	N/A
Number of New Wallets	228,143	125,225	624,368

(Source: XPMarket.com and CoinMarketCap)

Despite a broader market slowdown, on-chain activity on the XRPL stayed relatively buoyant. As trading volumes across the broader market slowed, the number of transactions on the ledger increased by over three million, spurred primarily by NFT activity once the XLS-20 amendment passed on November 2, 2022. Although the number of transactions increased, XRP burned due to transaction fees declined by 33%, and the average cost of a transaction in USD remained virtually zero. During that same period of time, the average transaction fee on the Ethereum network was \$2.75 and on the Bitcoin network was \$1.23.

XRPL Interoperability

In Q4, Peersyst announced the release of the first phase of the Ethereum Virtual Machine (EVM) sidechain for the XRPL on Devnet. This milestone means more developers can easily access the XRPL's feature set (such as its speed, sustainability and low-cost transactions) while being able to code Solidity-based smart contracts. Additionally this opens the door for successful DeFi applications like Uniswap, Aave and Compound, to easily launch on the XRPL.

Global Growth of On-Demand Liquidity Reached Record Highs

Ripple remains one of the few crypto firms well capitalized and ready to meet robust customer demand in 2023 head-on by continuing to hire strategically, invest in attractive opportunities and build a platform that can allow traditional institutions to access crypto innovation on the XRPL in a safe and secure fashion.

Ripple wrapped up 2022 with its strongest year to date focusing on crypto utility and scaling its ODL product. As RippleNet continues to grow, despite a tumultuous market, Ripple experienced the highest amount of demand from both new and existing customers adopting ODL. Today, Ripple's crypto-powered payment solution is available in nearly 40 payout markets, up from just three markets in 2020.

Last quarter, ODL was launched in France and Sweden in partnership with payments providers Lemonway and Xbaht respectively, and in Africa via MFS Africa, a leading payments gateway in the region. Additionally, Ripple expanded its customer base to corporates that are looking to experience the benefits of crypto-enabled cross-border payments for their business.

Ripple has processed nearly \$30B worth of volume and 20M transactions since RippleNet was first launched. In 2022, approximately 60% of those payments were sent through ODL.

Disciplined, Responsible Stakeholders: Q4 Sales and Purchases

Last quarter, total XRP sales by Ripple, net of purchases, were \$226.31M vs. \$310.68M in the previous quarter. Ripple has continued to sell XRP only in connection with ODL transactions.

Summary of Ripple's XRP Sales <i>(dollars in millions)</i>	Q3 2022	Q4 2022
Total ODL-related sales*	2,819.63	2,964.28
Total purchases	2,508.95	2,737.97
Net Sales	310.68	226.31
Global XRP volume	Q3 2022	Q4 2022
ADV XRP <i>(dollars in millions)</i>	789.72	698.45
Total XRP volume <i>(dollars in billions)**</i>	72.65	64.31
Net sales as % of total volume	0.42%	0.35%

*All ODL-related sales are attributed to the growth and adoption of ODL.

**Note: Figures were compiled using the CryptoCompare API for daily TopTier aggregate volumes which reflects total XRP volume in dollars by exchanges that CryptoCompare lists in the TopTier.

Ripple has been a buyer of XRP in the secondary market and expects to continue to undertake purchases as ODL continues to gain global momentum.

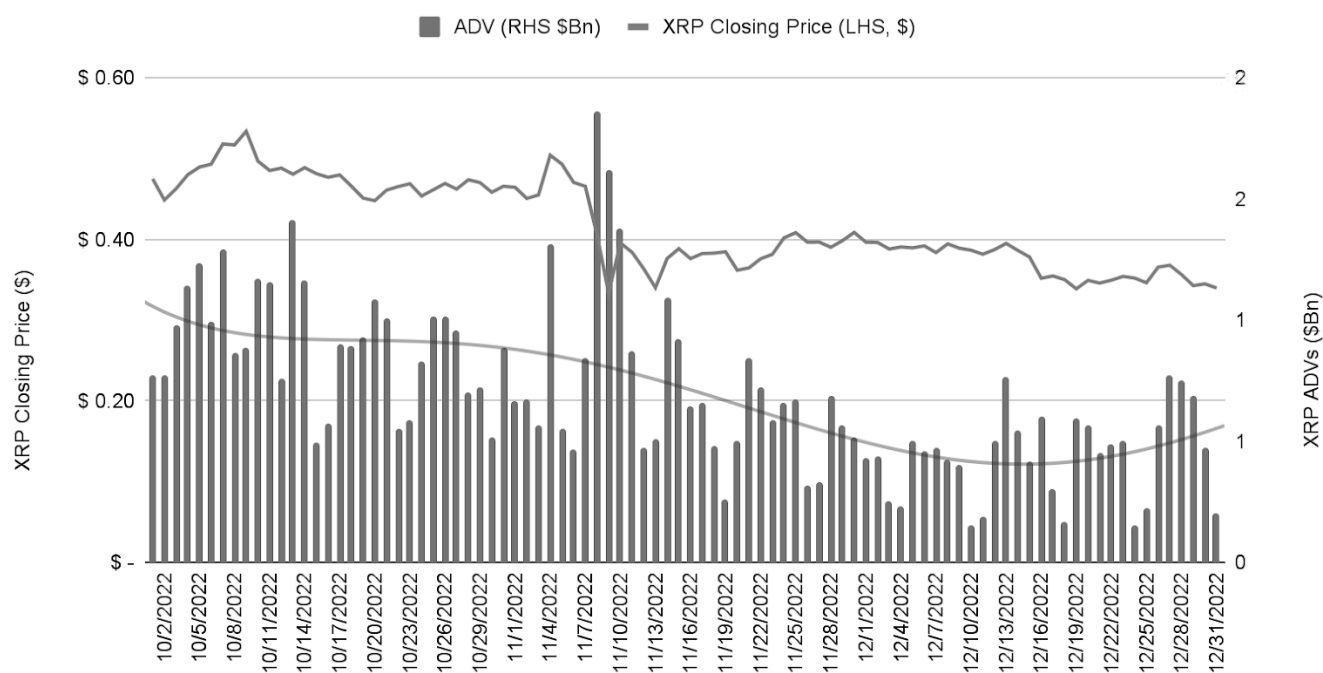
Total sales by Ripple, net of purchases, ended the quarter at 0.35% of global XRP volume according to CryptoCompare TopTier (CCTT) volumes.

Leases

Certain wallets used for XRP sales also provide short-term leases to market makers and participants. This is worth noting, given they are often incorrectly interpreted by market participants as sales. XRP associated with leases are ultimately returned to Ripple. The total amount of leases outstanding in Q4 2022 was 57.7 million XRP.

Reported Volume and Price

XRP price vs volume



During Q4 of 2022, the price of XRP declined 30% along with volumes which declined roughly 40%. ADVs were \$689M, down 13% from Q3 2022 and down 64% from Q4 of 2021.

Escrow

In Q4 2022, three billion XRP were released out of escrow (one billion each month) in line with prior quarters and the official escrow arrangement. In total, 2.1 billion XRP were returned and subsequently put into new escrow contracts throughout the quarter. For more information on the escrow process, see [here](#). Note: All figures are reported based on transactions executed during the quarter.

Building with the XRP Ledger Community

Time Magazine Names XRP Ledger Project Best Innovation in 2022

Last year, the Colombian government's National Land Agency launched a national land registry on the XRP Ledger to store and authenticate Colombian property titles. Developed with Peersyst, the registry recorded its first property in July, and Time Magazine recognized this initiative as one of the 'Best Innovations in 2022.' This unique use case for non-fungible tokens (NFTs) demonstrates the range of utility possible with the XRPL.

XLS-20 is Now Enabled on the XRP Ledger

Last quarter, XLS-20 went live on the XRP Ledger Mainnet. This represents a considerable milestone for developers and builders utilizing the XRPL for their native NFTs projects and apps, which can represent assets that are each unique along with operations to enumerate, transfer and hold such tokens.

XRPL-based NFTs were designed with efficiency in mind. Significant transaction expenses are a fundamental problem for developers minting NFTs on other leading layer-1 blockchain solutions. Gas fees can add hundreds of dollars to the final price of an NFT and vary based on a given network's user traffic and congestion.

NFTs on the XRPL also include automatic royalties which standardize royalty enforcement as one of the benefits of the ledger's built-in DEX. For creators, NFT transfer fees provide them a share of the revenue when the NFT is bought and sold. They can also designate a third party who mints and sells the tokens on their behalf.

Community projects like xDude, Pixel Ape Rowboat Club (PARC), X-Tokenize and XRP Junkies are proof of the excitement and NFT use cases made possible with the XRPL's low transaction cost and high transaction volume. Since going live, more than 800K NFTs have been minted with 410.6K transacted bringing XRP volume to 12.9 million.

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As an XRP holder, Ripple believes proactive communication and transparency are part of being a responsible stakeholder. Moreover, Ripple urges others in the industry to build trust, foster open communication and raise the bar industry-wide.

Crypto Market Summary

Digital asset markets extended their downturn in Q2 2022, shedding an additional \$1T dollars in market capitalization due to macroeconomic headwinds and the crypto credit crisis. The specter of out-of-control inflation, combined with the growing effects of the war in Ukraine, led to a broad-based sell-off in a wide range of tradable assets. With whispers of an impending recession, panic and fear likely drove many asset correlations to record highs. According to data from Skew.com, BTC's 30-day correlation with the S&P 500 rose to a new 4-year high of 82% during this period, breaking previous highs of 77%.

Given this bearish macroeconomic backdrop, the crypto credit crisis that followed had a severe impact on markets. There was a domino effect, sparked by the UST depeg in May, followed by the large scale liquidity crisis involving stETH, and the eventual insolvency of hedge fund Three Arrows Capital and lender Celsius. This ultimately led to a more than 50% drop in total crypto market capitalization.

Markets reacted to concerns over contagion when BlockFi and Voyager announced they were impacted by the collapse, as well as rumors of insolvency of institutions such as Tether and Huobi plagued headlines. Although recent bailouts from industry players such as FTX and Binance helped markets regain some footing, new cases of insolvency have cropped up every week and the extent of the interconnectedness of the leverage in the space is still being discovered.

Although the industry was (and still is) in the midst of a crypto market correction, projects rooted in long-term utility gained momentum and sustained interest. Several crypto companies raised funds and touted large valuations – Magic Eden raised \$130M in Series B funding with a valuation of \$1.6B and gaming investment firm Animoca Brands announced its investment portfolio is worth over \$1.5B. Notably, developers continued to build on the XRP Ledger (XRPL) with a strong focus on NFTs and metaverses in anticipation of the XLS-20 amendment vote.

NFT Spotlight

The NFT market slowed down alongside broader crypto markets, but total volumes still surpassed \$12B. In June, Uniswap announced the acquisition of Genie, the first NFT marketplace aggregator, expanding its products to include both ERC-20s and NFTs, and allowing users to buy NFTs across all major marketplaces. OpenSea added support for Solana NFTs to accommodate collectibles from the second largest NFT ecosystem outside of Ethereum.

Ethereum Name Service ("ENS") was in the spotlight as a frenzy for three and four digit domains caused ENS to surpass Bored Ape Yacht Club in trading volume in April. The launch of 10K Club, an exclusive web3 social club for holders of 000-9999 domains, made headlines after 000.eth, one of the original ENS domains minted two years ago, was sold for an astonishing 300 ETH.

The XRP Ledger (XRPL) in the NFT Space

Last quarter, French luxury fashion house Balmain announced a global partnership with mintNFT to kick start its brand in the metaverse. Together, they are bringing the first fashion NFTs to the carbon neutral XRPL. In addition, iconic British performance car brand Lotus partnered with NFT PRO to bring automotive NFTs to XRPL. The partnership marks the car brand's debut in the Web3 space by creating a community that merges Lotus customers, automotive enthusiasts, NFT collectors, and crypto fans.

Creator Fund Momentum, Wave Two Open for Submission

Through Ripple's Creator Fund, creators building NFTs on the XRPL can receive the technical, financial and co-marketing support to engage with their communities. To date, creators have received funding for NFT projects spanning across gaming, metaverses, entertainment, art, and more. These projects demonstrated clear utility, and creators who received funding included Zion Clark, a wrestler, elite wheelchair racer, and Netflix documentary star; Jessica Ragzy, a contemporary artist, entrepreneur and LEGO Master; Women Helping Women, an advocacy group that prevents gender-based violence and empowers survivors; and Chef Cecy, a PancakeSwap designer and artist.

For those who want to get involved with Ripple's Creator Fund, the application process for Wave 2 is now open.

XLS-20 Update

Ripple upgraded its servers to version 1.9.1 of rippled, the reference implementation of the XRP Ledger (XRPL) protocol, and configured its four validators to *vote in favor* of activating the XLS-20 amendment on XRPL Mainnet.

In line with the company's previous comments on performance and scalability, Ripple conducted extensive testing to ensure that the proposed NFT code is stable, scalable and performant in the face of the additional transaction volume anticipated by native, on-ledger support for NFTs. As a result, Ripple believes that the XRPL can support the extra transaction load at scale.

Ripple proposed XLS-20 to introduce native NFT support to the XRPL and provide developers access to NFT minting, trading and burning functionalities. XLS-20 would also bring advanced features like automatic royalties, co-ownership of assets and more—without the need for smart contracts.

While Ripple is supportive of XLS-20, the outcome of enabling XLS-20 is up to the collective XRPL validators.

Project Clio

Concurrently, the XRP Ledger Foundation and Ripple released version 1.0.0 of Project Clio which can be used to help scale the XRPL and its load capacity, while providing additional stability. This XRP Ledger API Server is designed to offer the rippled API at scale. This will allow for countless XRPL apps and projects to query the ledger and access the data they need to run their businesses without negatively impacting the performance of the core ledger. This will become increasingly important as the XRPL developer and user bases grow over time.

XRPL Interoperability

Last quarter saw the expansion of a number of independent interoperability initiatives. Multichain continued to play a key role, partnering with Sologenic, Aesthetes and OnXRP.com to expand bridging services across chains.

Q2 also saw the launch of onAVAX.com, the first cross-chain DeFi platform for XRPL and Avalanche native assets. onAVAX leverages the Avalanche protocol in collaboration with Multichain to bridge assets between chains. This allows XRPL asset holders to bridge onto the EVM-compatible AVAX chain and set their XRPL assets to work within onAVAX's varied DeFi applications. Similarly, Apex, a Node-as-a-service provider, announced that it will build a bridge from Avalanche to XRPL which is expected to launch in August 2022. The bridge will be open to all DEXs and DeFi protocols through API kits to the XRPL to ensure seamless integration of its dApps.

FLUF World, XRPL, and the Root Network

FLUF World announced a partnership with Ripple to build the Root Network, a brand new blockchain network that will be integrated into the XRPL. To conduct transactions on the Root Network, the digital asset XRP will be used as the gas token, or fee to perform functions on the network. Node validators can then receive these gas tokens as a reward for producing blocks.

FLUF has already established itself as a key metaverse and NFT player with an active community of over 100K members. The FLUF World is a robust metaverse ecosystem with 14 collections and counting, over 195,000 NFTs minted, and over 340,000 transactions, including the popular NFT collections of Flufs, Party Bears, Thingies, Burrows, Eggs and Rayguns along with the Seekers, Altered State Machine and the AIFA All-Stars.

This partnership marks a significant milestone for several reasons:

- **Novel XRPL Use Case:** The Root Network and XRPL will be closely linked and XRP will be the gas token on the Root Network. Since FLUF plans to migrate all of its collections and metaverses to the Root Network, this 100K+ community will have the opportunity to interact with the XRPL.
- **Ethereum Virtual Machine (EVM) Capabilities:** The Root Network will support EVM smart contracts. XRPL developers will be able to build more programmability into their projects.

- **Interoperability:** The architecture of the Root Network will allow XRPL NFTs and tokens to seamlessly transit between the Root Network with all of its applications, and XRPL and its native DEX.

Global Regulation

There's no doubt that market volatility was front and center this month showing signs of extreme distress. Off the heels of Terra's collapse in May, news of Celsius and Three Arrows Capital's troubles exacerbated the market crisis, putting crypto in the hot seat with regulators and policymakers.

Financial watchdogs zeroed in on stablecoins as policymakers around the world look to develop frameworks and regulate the industry. Japan's Financial Services Agency passed a bill that defined the legal status of stablecoins as digital currencies, imposing a mandatory link with the Yen and enshrining the right to redeem them at face value. The UK government announced its intent to regulate stablecoins under laws governing electronic payments as well as amend existing rules to manage the failure of stablecoins that may pose a systemic risk. In the U.S. the Responsible Financial Innovation Act (RFIA), a bill introduced by Senators Lummis and Gillibrand, would require, among other things, that issuers of stablecoins maintain reserves fully backing their digital assets, calling into question the future of algorithmic stablecoins.

In addition, the RFIA would also give authority to the CFTC to oversee digital asset spot markets, pointing to a larger discussion of U.S. government agency jurisdiction over crypto assets. The SEC and CFTC have been most active in regulating this space, yet jurisdictional limits are not clear. The SEC announced its intention to double its crypto unit team, but Chair Gensler experienced industry backlash with the SEC's decision to reject every proposed bitcoin ETP, including those by Grayscale and Bitwise, resulting in Grayscale filing a lawsuit against the SEC in federal appellate court challenging the decision. CFTC Commissioner Pham and SEC Commissioner Peirce called for both agencies to collaborate and hold public roundtables on how to regulate the crypto market.

Lastly, the Monetary Authority of Singapore issued in-principle approvals to three firms to provide digital payments token services, the New York State legislature passed a bill that puts a two-year moratorium on new permits for power plants involved in bitcoin mining (which Governor Hochul has yet to commit to signing into law) and the EU reached a provisional agreement on anti-money laundering rules for crypto that would require crypto firms to verify that an unhosted wallet is owned by their customer in case of transfers above \$1000 as well as a regulatory framework for crypto assets, and crypto asset issuers and service providers.

Update on the SEC Lawsuit Against Ripple

On July 12, Judge Netburn denied the SEC's attorney-client privilege claims relating to drafts of a June 2018 speech by former SEC director William Hinman, which included remarks on why he did not consider offers and sales of bitcoin and ether to be securities transactions. The SEC has indicated it will appeal Judge Netburn's decision.

Hinman's infamous speech given four years ago was taken seriously by the industry as there was (and still is) no clear guidance from the SEC on how they classify digital assets. Responsible industry players have asked for a workable regulatory framework, but the road to regulatory clarity for crypto in the US is still murky at best. When the SEC sued Ripple in December 2020, it was clear that it was an attack on the entire crypto industry and American innovation, and that the SEC was engaging in "regulation by enforcement." That campaign continues.

Most recently, the SEC's "regulation by enforcement" campaign took the form of an enforcement action against a former Coinbase employee and two alleged co-conspirators, whom the SEC claimed committed securities fraud in connection with certain digital asset trades, even after the DOJ brought criminal charges against those individuals, yet *declined* to charge securities fraud on the very same conduct. What the SEC did, in effect, was put Coinbase on trial for trading unregistered securities without suing Coinbase or explaining why it decided that a subset of digital assets were "securities" when others were not. This creates havoc.

The inconsistent application of undefined rules hurts consumers, markets and innovators. Coinbase highlighted the need for clarity in its petition asking the SEC to begin rulemaking on digital asset securities. A current CFTC Commissioner also

said the SEC's case was a "striking example of 'regulation by enforcement'" and urged a transparent ruling process; as she put it, "regulatory clarity comes from being out in the open, not in the dark."

We continue to push hard for a speedy resolution of the SEC lawsuit against Ripple and look forward to proving that Ripple did not violate securities laws. That is important not just for Ripple, but as we said from day one, it is important for the entire industry.

FINCI Leverages On-Demand Liquidity (ODL), Ripple Enters New Market

Ripple announced a partnership with FINCI, a Lithuanian money transfer provider, to deliver instant and cost-effective retail remittances and business to business (B2B) payments using ODL, which leverages XRP for crypto-enabled cross-border payments.

FINCI is Ripple's first customer in Lithuania and the partnership represents the opening up of a new market for ODL enabling FINCI's customers to make seamless payments between Europe and Mexico.

Q2 2022 was a record quarter for On-Demand Liquidity as volume grew considerably with over 9x YoY growth. Customers continued to expand the use of ODL for use cases beyond traditional remittances or individual payments, with treasury flows and bulk payments accounting for more volume on the network.

Disciplined, Responsible Stakeholders: Q2 Sales and Purchases

Last quarter, total XRP sales by Ripple, net of purchases, were \$408.9M vs. \$273.27M USD the previous quarter. Ripple has continued to engage in sales solely related to ODL and these volumes have ramped up substantially as Ripple's ODL business expanded globally.

Sales Summary (<i>dollars in millions</i>)	Q1 2022	Q2 2022
Total ODL-related sales*	1,354.29	2,125.92
Total purchases	1,081.02	1,717.02
Sales (<i>net of purchases</i>)	273.27	408.90
Global XRP volume	Q1 2022	Q2 2022
ADV XRP (<i>dollars in millions</i>)	1,105.29	862.59
Total XRP volume (<i>dollars in billions</i>)**	96.83	78.50
Net sales as % of total volume	0.29%	0.47%

*All ODL-related sales are attributed to the growth and adoption of ODL

**Note: Figures were compiled using the CryptoCompare API for daily TopTier aggregate volumes which reflects total XRP volume in dollars by exchanges that CryptoCompare lists in the TopTier.

Ripple has been a buyer of XRP in the secondary market and expects to continue to undertake purchases at future market prices as ODL continues to gain global momentum.

Total sales by Ripple, net of purchases, ended the quarter at 0.47% of global XRP volume according to CryptoCompare TopTier (CCTT) volumes.

Leases

Certain wallets that are being used for XRP sales also provide short-term leases to market makers and participants. This is worth noting given they are often incorrectly interpreted by market participants as sales. Leases are ultimately returned to Ripple. The total amount of leases outstanding in Q2 2022 was 115.3 million XRP.

Reported Volume and Price

XRP Price and Volume



XRP price and volume declined due to broader macroeconomic cues and idiosyncratic developments mentioned in the crypto market summary above.

Volumes have declined 22% QoQ to an ADV of \$862M down from \$1.1B.

Escrow

In Q2 2022, three billion XRP were released out of escrow (one billion each month) in line with prior quarters and the official escrow arrangement. In total, 2.3 billion XRP were returned and subsequently put into new escrow contracts throughout the quarter. For more information on the escrow process, see [here](#). Note: All figures are reported based on transactions executed during the quarter.

The Stand is Finally Out of Tacos

On July 17, Jed McCaleb sold the last of his XRP in his “tacostand” wallet. For context, he originally owned 9 billion units of XRP in 2012 when the XRP Ledger was created. Read more about Jed’s ownership of XRP and the distribution of one of the largest individual holdings of the digital asset.

Building with the XRP Ledger Community

Last quarter, there were a total of 114.6M transactions on the XRP Ledger with \$58.3B via 126.5 billion XRP in volume. The community continued to create and advance more projects and apps to address a variety of use cases.

Update on the XRPL Grants Program

Last quarter, 36 new awardees were selected in Wave 3 of the XRPL Grants program. Ripple saw a record number of applications—with more than 175 received from 30+ countries globally—with awarded projects receiving nearly \$3M in total funding. Projects covered a wide span of categories including a free version of an AI/ML risk engine via API, geolocation mapping, e-commerce, coupons, tipping, online payment solutions, and NFTs and gaming. Please see the full list of attendees of XRPL grant awardees.

Applications were reviewed and finalists participated in interviews with a committee of 18 judges from around the world, experts in blockchain and their respected fields, including judges from Ripple partners, Forte, Coil, Gatehub, and academics from University Blockchain Research Initiative (UBRI) partners. The program plans to open applications for Wave 4 in August 2022.

Spotlight: Peersyst Technology Partners with Colombia

Last quarter, Peersyst Technology inked a deal with the Colombian Government to record and register land registry rights in Colombia. Property title searches are still a cumbersome process and mostly paper-based. By putting the registry on the blockchain, it will greatly accelerate property transactions, spurring the domestic economy.

Peersyst is bringing white-label blockchain products and services to the region, and has selected the XRPL for building out these solutions. The first use case will be a Digital Asset Notarization software built on the XRPL and will be the registry of land awards for the Colombian Government. Peersyst Technology was an awardee of a Wave 2 XRPL grant for a separate NFT project.

Ripple Commits \$100M to Carbon Markets

Ripple announced its commitment of \$100M to carbon markets. The funding will accelerate carbon removal activity and help modernize carbon markets through investments in innovative carbon removal companies and climate-focused fintechs. In addition, the funding will continue to support new functionality and developer tools that enable carbon credit tokenization as core NFTs on the XRP Ledger. Ripple has already partnered with field-leading carbon removal companies and carbon market makers including Xange.com, a climate-focused fintech (backed by the UN), which is building its carbon credit verification, tokenization and exchange functionality on XRPL.

This post was updated on July 29, 2022 from its original version.

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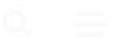
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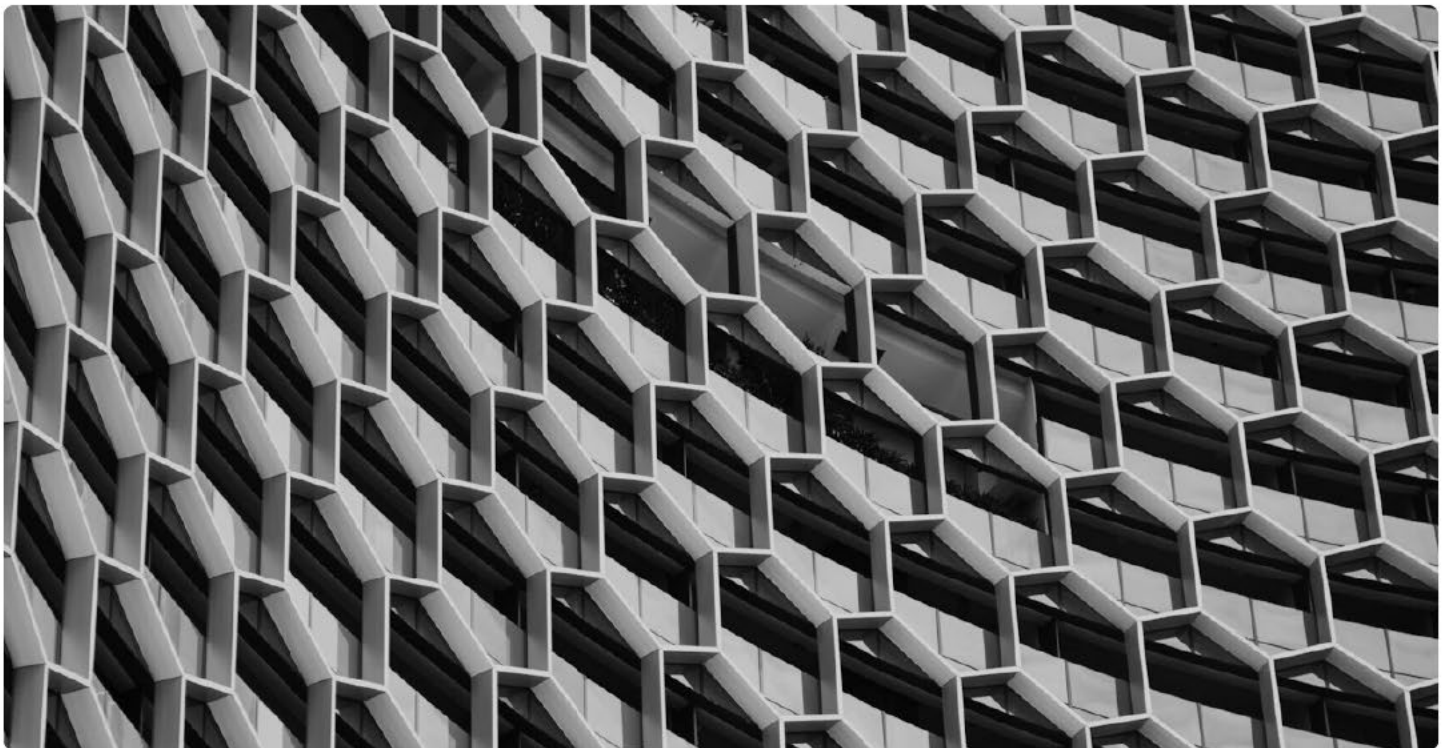
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XRP



Ripple publishes the quarterly XRP Markets Report to voluntarily provide transparency and regular updates on the company's views on the state of crypto markets such as quarterly XRP sales, relevant XRP-related announcements and commentary on market developments over the previous quarter.

As an XRP holder, Ripple believes proactive communication and transparency are part of being a responsible stakeholder. Moreover, Ripple urges others in the industry to build trust, foster open communication and raise the bar, industry-wide.

Crypto Market Summary

At the start of Q4 2021, crypto markets grew aggressively, fueled by the SEC's approval of the first ever BTC futures ETF in the United States. The ProShares Bitcoin Strategy ETF, which began trading on October 19th, drew a record \$1B in assets in just 2 days. Its success was a reflection of strong institutional demand for BTC exposure. This was a watershed moment for the crypto industry, and the total market cap grew from \$2T to \$3T in the span of a month.

In the end, however, the steep trajectory of growth was unsustainable. Not only had the market moved too far too fast, but the levels of leverage in the derivative markets became precariously high. BTC open interest peaked at \$28B, surpassing the previous record of \$27.2B set in Q2 2020. By the end of 2021, total crypto market cap had returned back to the \$2T mark, with many digital assets ending the quarter below where they started.

With that said, not all digital assets performed the same way. Metaverse-related projects grabbed market attention in Q4 with various high profile fundraises and partnerships. Sandbox, one of the more publicized Metaverse projects, raised \$93M in a round led by SoftBank and announced a digital land acquisition by Adidas. Its native token \$SAND was one of the top performing assets in Q4, gaining more than 600% in the quarter.

Buyers not only flocked to purchase the fungible tokens, but also bought virtual real estate in different metaverses. In one instance, a particular plot of digital land in Decentraland sold for over \$2.43M. Although most of this activity is starting on Ethereum, just like with DeFi and NFTs, it will likely start to shift to more efficient blockchains. With the launch of XLS-20d on NFT-Devnet this month, XRP Ledger (XRPL) developers are well positioned to take advantage of this shift.

Another unique market activity in Q4 was the proliferation of airdrops for token distribution. Airdrops happened across several blockchains, including Cosmos, Ethereum, Solana, Avalanche, and XRPL. On the XRPL, there were over 31 million trustline transactions and more than 50 different tokens were airdropped in Q4. The Sologenic airdrop was one of the more high profile airdrops on XRPL, establishing more than 340,000 trustlines.

Interoperability was also a big theme this quarter, with bridges driving a lot of market activity. In fact, total value locked in bridges increased from \$11.5B to \$26.5B in the span of just three months, as users looked to move assets across chains. XRPL saw a similar trend with a number of bridging solutions announced including WXP and Allbridge.

NFT Spotlight

After hitting record highs in August, NFT trading cooled down in Q4. OpenSea remained the number one NFT marketplace, but volume share slipped from 95% to under 80%. The industry continues to see Solana-based marketplaces chip away at Ethereum's dominance as high gas fees plague both creators and traders.

Q4 saw heightened interest in launching NFTs on the XRPL as projects issued IOUs on the XRPL that would later be redeemed for NFTs. With the release of XLS-20d on NFT-Devnet in January 2022, a standard that provides access to XRPL-native NFT capabilities, developers have an accessible and reliable environment to experiment with NFTs on the XRP Ledger.

Unfortunately, NFT scams – across blockchains – continued to be a concern. This underscores the importance of due diligence as there are no white listed standards for NFT projects. One platform, OnXRP.com has proposed a set of listing requirements for NFT projects on their platform, including KYC & Global ID.

The State of Global Regulation

The industry continues to see more global regulators take a public stance on crypto, with many calling for thoughtful regulation to outright bans of this technology. Ripple released a policy framework, designed to offer an immediate and pragmatic way forward that accounts for the dynamic capabilities of cryptocurrency and digital assets.

In the U.S., crypto executives testified in front of the U.S. House Committee on Financial Services in December 2021, and SEC Commissioner Hester Peirce expressed her disappointment over the absence of crypto on SEC Chair Gary Gensler's regulatory agenda. The SEC also continued its pattern of delaying or denying spot Bitcoin ETF proposals, much to the frustration of industry officials, some of whom may be preparing to file suit against the SEC over its position. Finally, the U.S. continued to take a close look at stablecoins, with the President's Working Group on Financial Markets, together with the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC), issuing a report recommending that Congress require stablecoin issuers be FDIC-insured banks.

Globally, Australian lawmakers proposed significant reform of digital asset regulations, citing core principles from Ripple's policy framework. These recommendations were accepted by the Treasury, and the consultations on the regulatory changes are expected in 2022. India and Thailand also intend to consult the industry on regulatory frameworks for digital assets in 2022. South Africa and Nigeria touted the need for regulation as crypto adoption increases, while the Bank of England looked to tighten its oversight of crypto. The Dubai government announced that the Dubai World Trade Centre will become a comprehensive free zone and regulator for digital assets and crypto.

Q4 (and part of Q1 2022) Update on the SEC Lawsuit against Ripple

December 22 marked the one year "anniversary" of the SEC lawsuit against Ripple – and the company continues to seek clear regulatory guidance within the U.S. Notably, the *Wall Street Journal* published a Letter to the Editor from Ripple CEO Brad Garlinghouse in response to former SEC Chairman Jay Clayton touting the promise of crypto technologies and the need for additional U.S. regulation, stating Clayton's change of heart was "staggeringly ironic."

The expert discovery deadline has been extended to February 28 due to COVID and personal matters. On January 13, the court ordered the SEC to surrender several documents to Ripple, including emails about and drafts of former SEC Corporation Finance Director Hinman's June 2018 speech in which he stated ETH is not a security, as well as notes taken by SEC attorneys during meetings with third parties in the digital asset space.

RippleNet EOY Momentum

2021 was RippleNet's most successful and lucrative year to date as global momentum skyrocketed with customer demand despite the headwinds from the SEC. The number of transactions on RippleNet more than doubled, with a payment volume run rate of over \$10B. This is a testament to the product considering Ripple parted ways with Moneygram, its largest customer, immediately after the SEC filed its lawsuit against Ripple. With over 20 payout markets for On-Demand Liquidity (ODL), most recently adding the Middle East, RippleNet continues to see more global demand for the product. Most notably, APAC continues to be one of the largest contributors of ODL volume on RippleNet, more than doubling in 2021.

Disciplined, Responsible Stakeholders: Q4 Sales and Purchases

Last quarter, total XRP sales by Ripple, net of purchases, were \$717.07M vs. \$491.74M USD the previous quarter. Ripple continued to engage in sales to improve the ODL experience of certain customers, eliminating the need for pre-funding at exchanges and enabling instant global payments. As has been the case since Q4 2019, Ripple did not conduct programmatic sales in Q4.

Sales Summary (<i>dollars in millions</i>)	Q3 2021	Q4 2021
Total ODL-related sales*	491.74	1,039.04
Total purchases	0.0	321.97
Sales (<i>net of purchases</i>)	491.74	717.07

Global XRP volume	Q3 2021	Q4 2021
ADV XRP (<i>dollars in millions</i>)	2,075.89	1,830.89
Total XRP volume (<i>dollars in billions</i>)**	189.53	168.41
Net sales as % of total volume	0.26%	0.43%

**All ODL-related sales are attributed to the growth and adoption of ODL*

***Note: Figures were compiled using the CryptoCompare API for daily TopTier aggregate volumes which reflects total XRP volume in dollars by exchanges that CryptoCompare lists in the TopTier.*

Ripple has been a buyer of XRP in the secondary market and expects to continue to undertake purchases in the future at market prices as ODL continues to gain global momentum.

Total sales by Ripple, net of purchases, ended the quarter at 43 bps of global XRP volume according to CryptoCompare TopTier (CCTT) volumes.

Leases

Certain wallets that are being used for XRP sales also provide short-term leases to market makers. This is worth noting given they are often incorrectly interpreted by market participants as sales. Leases are ultimately returned to Ripple. Total leases outstanding in Q4 2021 were 88 million XRP.

Reported Volume

XRP volumes peaked on November 10th, as the crypto market cap hit new all time highs. Overall volumes declined 12% QoQ.

Escrow

In Q4 2021, three billion XRP were released out of escrow (one billion each month) in line with prior quarters and the official escrow arrangement. In total, 2.4 billion XRP were returned and subsequently put into new escrow contracts throughout the quarter. For more information on the escrow process, see [here](#). Note: All figures are reported based on transactions executed during the quarter.

XRP Infrastructure Update

Digivault was the first fully UK Financial Conduct Authority (FCA) registered crypto asset firm to launch support for XRP, fostering the growth of Digivault compliant and risk-focused custody solutions for corporates and high net worth individuals. In addition, Delta Exchange became the first CeFi exchange globally to launch XRP options.

Interoperability

Tokensoft's launch of Wrapped XRP (\$WXR) created another avenue for XRP holders to access the Ethereum blockchain, in addition to the upcoming Flare Network and existing Wanchain bridge. In January 2022, Binance announced support for WXR deposits and withdrawals, so users could frictionlessly switch between networks. Finally, XRPL will soon be integrated with Allbridge, linking the XRPL to 12 different blockchains including Solana, Terra, Avalanche and Polygon. This integration allows XRP to transfer seamlessly onto these chains, as well as making it possible for assets like SOL, LUNA, and USDC to be transferred onto XRPL.

Building with the XRP Community

XRP Ledger On-Chain Activity, Grants and Hackathon

Last quarter, there was a dramatic increase in activity on the network with a total of 130M transactions on the XRP Ledger with \$113B transacted via 114 billion XRP in volume.

Sponsored by RippleX and supported by an independent judging committee, XRPL Grants support the independent developer community building projects of all types on the XRP Ledger and accelerating the Internet of Value. Last quarter, XRPL Grants collected over 100 new applications, with a focus on Federated Sidechains, from the XRPL community. These projects are currently being evaluated, with awardees to be announced in Q1 2022. Meanwhile, prior grantees continued building their projects and contributing to open-source projects. Grantees with notable progress this quarter include Bithomp, Trustline app and ZerpCraft.

More broadly, the community continues to see more projects and apps to address a variety of use cases including Nerian, a network that consolidates data available about a user, and Ridworld, a NFT card game. In addition, an XRPL Hackathon on Devpost inspired a number of software developers to build innovative new projects including:

- Nautilus Wallet provides a digital asset wallet for the digitally excluded
- XRPL Hook Library for AssemblyScript provides definitions for the XRPL Hooks API integration into a new AssemblyScript project
- XRPL Hooks Rust leverages Rust Zero-Cost Abstractions when writing XRPL Hooks
- EstateUp is an XRPL-powered digital will solution

Stability Issues

On November 3, the XRP Ledger halted for approximately 15 minutes in response to several validators experiencing issues. Unlike some other blockchains, the XRPL network recovered automatically and without any human intervention, as it is designed to do, resuming operation albeit under a higher-than-normal load. This resulted in elevated transaction fees and a large transactions queue. That said, elevated fees were still minuscule by comparison to other blockchain fees, remaining at fractions of a penny (0.000240 XRP) versus regular levels (0.000012 XRP).

Together with community members and infrastructure operators, developers worked 24/7 to identify several bugs and develop key optimizations, improving both performance and stability. As server operators upgraded to version 1.8.2 of the XRPL server software, the transaction queue backlog was worked through, transaction fees returned to normal levels and the network stabilized.

Going Green with XRPL

In December, Xange.com announced it will develop a carbon credit solution on the XRPL given its performance, scalability and inherently green attributes. The XRP Ledger was built with sustainability in mind and is one of the first major carbon-neutral blockchains. Due to its Federated Consensus algorithm, the XRPL is significantly more energy-efficient compared to proof-of-work blockchains and ensures low-cost transactions.

Global CBDC Momentum

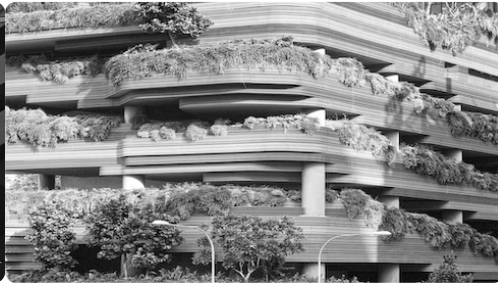
Ripple joined the Digital Pound Foundation to focus on the development and implementation of a digital Pound in the United Kingdom, and continued to engage central banks globally on technical and policy queries related to CBDCs. In addition, Ripple partnered with the Republic of Palau to explore developing strategies for cross-border payments and a USD-backed stablecoin directly on the public XRP Ledger. This could see the implementation of the world's first government-backed national stablecoin, leveraging the XRPL's built-in DEX and tokenization advantages.

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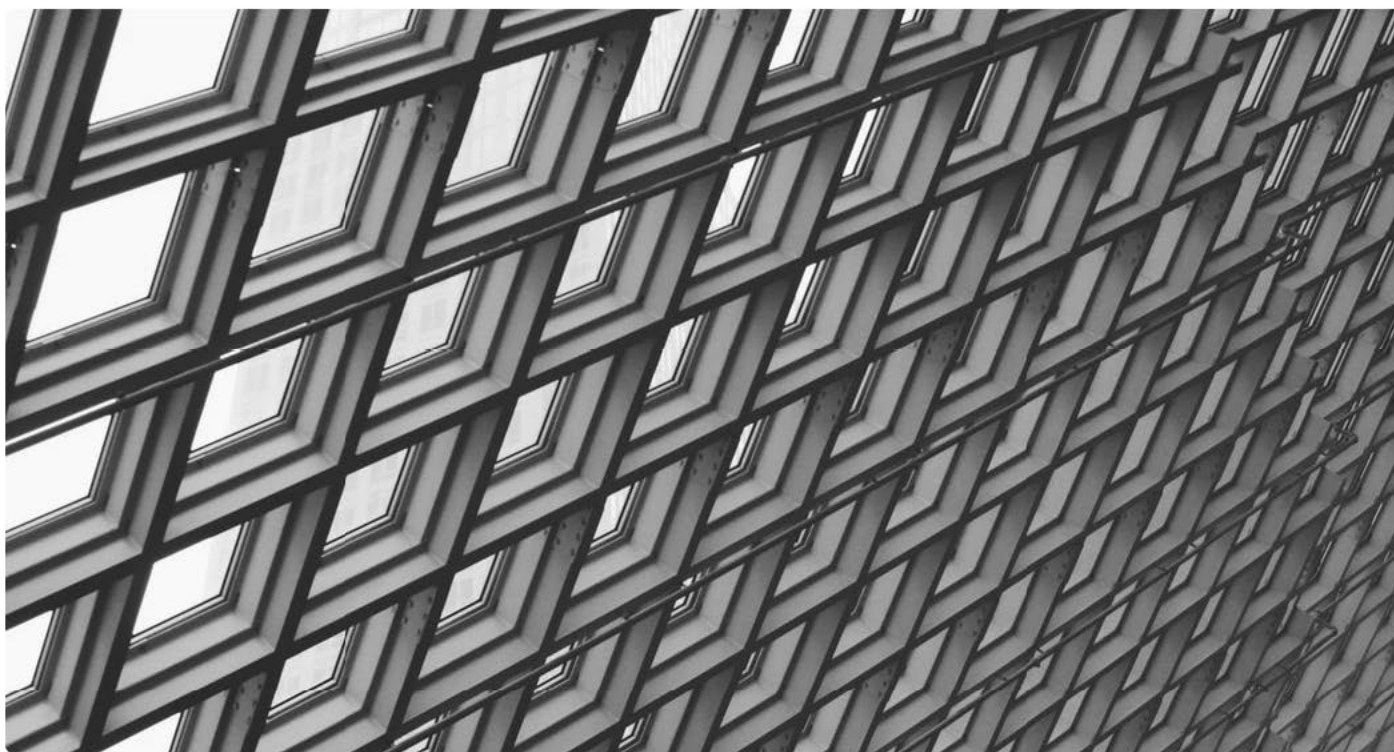
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Ripple publishes the quarterly XRP Markets Report to voluntarily provide transparency and regular updates on the company's views on the state of crypto generally including the XRP market, such as quarterly sales updates, relevant XRP-related announcements and commentary on previous quarter market developments.

As an XRP holder, Ripple believes proactive communication and transparency are part of being a responsible stakeholder. Moreover, Ripple urges others in the industry to build trust, foster open communication and raise the bar, industry-wide.

Executive Summary

There was no shortage of events that were reported to contribute to market volatility in Q2 — notably ransomware attacks, environmental concerns, Elon Musk's tweets and regulatory scrutiny, among others. The second quarter of 2021 saw significant increases in crypto market capitalization followed by a steady decrease. During the larger market period, which lasted 396 days (Feb 2020 – April 2021), total crypto market capitalization increased 15-fold. However, beginning April 22, prices eventually decreased by over 20%.

Some countries took sweeping action firmly supporting or denouncing the use of cryptocurrencies. On one hand, El Salvador passed a law making bitcoin legal tender, making it the first country to do so. Chinese regulators, on the other hand, reportedly shut down mining operations across the country citing concerns over environmental impact and tightened restrictions on financial institutions from providing crypto-related services. These actions resulted in a drop in hashrate and increased bearish sentiment.

Although the jury is still out on whether “price follows hashrate” or “hashrate follows price”, there is correlation between the two. During the most recent bear market, bitcoin's hashrate dropped 50% from its highs which correlated to the decrease in bitcoin price over the period.

Finally, markets were also impacted by growing fears of inflation. Just in June, the U.S. consumer price index increased 5.4% which was the biggest monthly gain since August 2008.

The State of Regulatory Clarity

Last quarter, the U.K. Financial Conduct Authority extended its end date of a temporary licensing regime for existing crypto businesses to March 2022. The extension allows crypto firms to operate while the regulator continues to assess and approve applications. Similarly, several top crypto players have been operating under a grace period in Singapore while license applications are being processed under a clear licensing regime through the Monetary Authority of Singapore.

Meanwhile, in the U.S., many pointed out the need for consumer protection and clarity to drive healthy markets, but regulators continued to fail to provide clear guidance for market participants as the popularity for cryptocurrencies skyrocketed.

Update on the SEC Lawsuit against Ripple

The case is in the discovery phase — the process of exchanging information, including documents and taking deposition testimony. Fact discovery is currently scheduled to be completed on August 31 followed by expert discovery which is scheduled to close on October 15, 2021. Ripple opposed the SEC's request to extend these dates 60 days from the original deadlines and will continue to do everything it can to move the case along as expeditiously as possible.

Key milestones include in Q2:

- The Court agreed — for the third time — that Ripple is entitled to certain internal SEC documents.
- The Court denied the SEC's request that it be granted access to Ripple's privileged communications with its attorneys. The Court found that the proper focus of Ripple's “fair notice defense” is on “the SEC's failure to provide fair notice to the market about the Commission's state of mind as to whether XRP qualified as a security.” The Judge's full opinion can be found [here](#).

Disciplined, Responsible Stakeholders: Q2 Sales and Purchases

Last quarter, total XRP sales by Ripple, net of purchases, were \$157.92M vs. \$150.34M (USD) the previous quarter. Ripple continued to engage in sales to improve the On-Demand Liquidity (ODL) experience of certain customers, eliminating the need for pre-funding at exchanges and enabling instant global payments.

Total sales by Ripple, net of purchases, ended the quarter at 4 bps or 0.04% of global XRP volume according to CryptoCompare TopTier (CCTT) volumes. This is compared to total sales in the previous quarter of 7 bps according to CCTT.

Sales Summary (<i>dollars in millions</i>)	Q1 2021	Q2 2021
Total ODL-related sales*	150.34	157.92
Total purchases	0.0	0.0
Sales (<i>net of purchases</i>)	150.34	157.92
Global XRP volume	Q1 2021	Q2 2021
ADV XRP (<i>dollars in millions</i>)	2,264.26	4,492.16
Total XRP volume (<i>dollars in billions</i>)**	203.78	408.80
Net sales as % of total volume	0.07%	0.04%

*ODL-related sales include OTC and XRP sales to support ODL (including Line of Credit) and key infrastructure partners.

**Note: Figures were compiled using the CryptoCompare API for daily TopTier aggregate volumes which reflects total XRP volume in dollars by exchanges that CryptoCompare lists in the TopTier. Ripple continues to evaluate its benchmarks given challenges, such as fake volume, that continue to persist in the industry.

Leases

Certain wallets that are being used for XRP sales also provide short-term leases to market makers. This is worth noting given they are often incorrectly interpreted by market participants as sales. Leases are ultimately returned to Ripple. Total leases outstanding in Q2 2021 were 57.7M XRP.

Reported Volume

CCTT's reported daily volume for XRP increased significantly in Q2 2021 from Q1 2021. The average daily volume reported doubled to \$4.49B in Q2 vs. \$2.26B in the previous quarter. Notably, XRP volumes posted four of the highest volume days ever recorded.



Volatility

XRP's standard deviation of daily returns over Q2 was 11.5% and was more volatile than BTC (5.0%) and ETH (7.3%) due largely to XRP's volatility in early April.

Escrow

In Q2 2021, three billion XRP were released out of escrow (one billion each month) in line with prior quarters, and the official escrow arrangement. In total, 2.7 billion XRP were returned and subsequently put into new escrow contracts throughout the quarter. For more information on the escrow process, see [here](#). Note: All figures are reported based on transactions executed during the quarter.

XRP Market Infrastructure and Liquidity Update

Last quarter, Swissborg, a blockchain-based platform, launched an XRP smart yield wallet for holders to earn yield on XRP as it does for bitcoin, ETH and other cryptos. In addition, Swissborg listed XRP to enable its holders to trade XRP with 16 crypto and 15 fiat currencies. Lastly, crypto trading platform Liquid announced holders can earn yield on XRP through Liquid Earn.

As Swissborg, Liquid and other third-parties integrate XRP into their offerings, these integrations contribute to healthy XRP markets.

A Tokenized Future

The widespread use of digital assets to represent ownership of assets on a blockchain — or, tokenization — is transforming how people buy, sell, track and manage assets of all kinds from art and real estate to intellectual property, equities and supply chain goods. With over 5,000 tokens issued since its inception, the XRP Ledger was designed with a decentralized exchange and characteristics to handle all types of currencies or assets efficiently, sustainably and at low cost.

RippleX Eyes NFTs

Ripple announced its investment in Mintable, an NFT marketplace that allows users to seamlessly create, buy, and sell digital items using fiat or cryptocurrency. NFTs have the long-term potential to accelerate the creator economy, inspire new business models and open access to broader participation in the modern financial system. The gaming industry is ahead of the curve. In 2020 alone, gaming saw consumers spend a collective \$54 billion on virtual goods to own, trade and sell — and this is only the beginning. With plans for XRP Ledger integration, Mintable is unlocking mass consumer adoption of crypto and allowing potentially billions of NFTs to be minted, bought and transferred in a sustainable, cost-effective way. In addition, RippleX proposed functionality that would provide enhanced NFT support on the XRP Ledger at lower cost and allow developers to leverage auction functionality on its decentralized exchange.

RippleNet Prepares Enterprise for Crypto

As Europe continues to be a key market, Ripple announced its appointment of Sendi Young as managing director of Europe. A quarter of Ripple's current customers are based in Europe, and year to date, European ODL transactions grew by 250% in comparison to 2020, making up over 40% of all ODL transactions year to date.

In addition, APAC continues to trend positively with the announcement of Novatti's use of ODL for instant, cross-border payment focused on remittances between Australia and the Philippines through the country's largest non-bank, Filipino-owned remittance service provider, iRemit.

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