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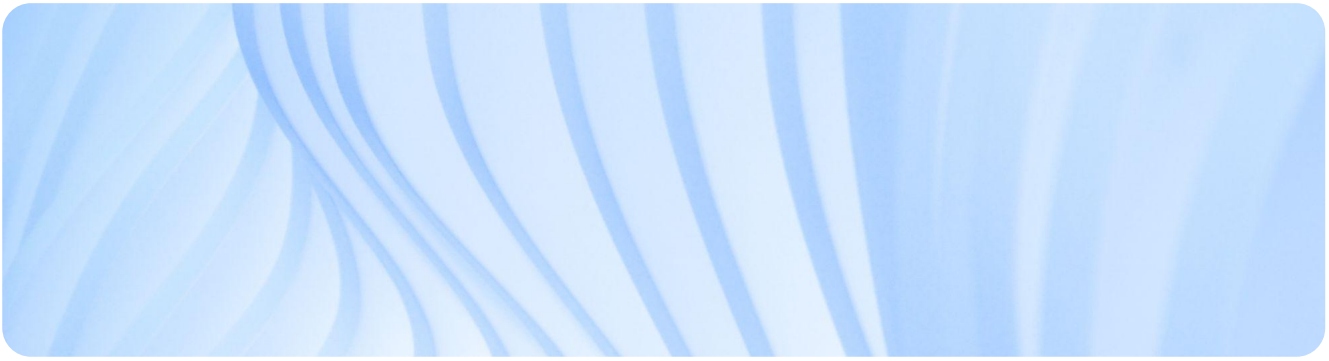
SEC vs. Ripple Fact Sheet



Background

In December 2020, the U.S. Securities and Exchange Commission (SEC) filed a case against Ripple alleging that Ripple's sales and distributions of the digital token XRP constituted an investment contract and thus were subject to registration under the Securities Act of 1933. The ruling hinged on whether the digital token XRP is a security under securities laws; and therefore, if Ripple's sales or distributions of XRP were securities transactions.

On July 13, 2023, Judge Analisa Torres of the U.S. District Court of the Southern District of New York issued her opinion ruling that XRP, in and of itself, is not a security. In the decision, Judge Torres turned to the application of the Howey test, established by the U.S. Supreme Court in SEC v. W.J. Howey Co. At its core, the question posed by Howey is: Do the facts and circumstances surrounding the sale of something that is not a security involve promises to the purchaser that constitute a security because they form an "investment contract?"

The ruling is a clear demonstration that there is a limit to the SEC's authority with respect to digital asset regulation. The oft-repeated statement that all crypto tokens except Bitcoin are securities, and are therefore subject to the SEC's jurisdiction, has been debunked.

Key Takeaways

- XRP is **not** in and of itself a security
- Ripple's sales of XRP on exchanges are **not** securities
- Ripple's sales of XRP by executives are **not** securities
- A wide range of other Ripple's XRP distributions to developers, to charities, and to employees are **not** securities
- Certain Ripple sales pursuant
- Certain Ripple sales pursuant to written contracts **were** investment contracts and therefore securities

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Facts About The Ruling

Myth: The decision said that XRP is sometimes a security and sometimes not a security.

Fact: The decision says that XRP itself is never a security.

XRP itself is never a security. As the Court said, "XRP, as a digital token, is not in and of itself... an investment contract" and thus, not a security. While XRP (just like an orange grove or a gold bar)—when coupled with promises can be sold as an investment contract—XRP (or the orange grove or the gold bar) itself does not magically transform into a security in those situations.

Whether or not something is an "investment contract" requires an analysis of each transaction to determine whether an investment of money was made in a common enterprise and the buyer is led to expect profits based on the efforts of the seller or a third party.

The statement that the same "thing" can be sold to buyer "A" as part of a simple buy/sell transaction and also sold to buyer "B" as part of an investment contract is a non-controversial fact of the law.

Myth: The ruling leaves retail purchasers of XRP without any consumer protection under the law.

Fact: The Court did not say that only sophisticated institutions should be protected and not retail buyers.

The Court ruled on the reach of the SEC's jurisdiction, which stops once there are no securities to regulate. Where there is no investment contract, there is no security; and where there is no security, there is no role for a securities commission. As such, the Court did not reach the question of what protections retail purchasers of exchange traded XRP might be entitled to because that question was not before the judge. The only question before the Court was whether such sales constituted securities offerings, which the judge ruled they did not.

Consumers need protection, but not all roads lead to the SEC. If the SEC's overreach has exposed a regulatory gap, that gap is not for a court to fill. Protecting retail crypto traders is an important policy goal that is best addressed through thoughtful legislation. Several bills introduced in this Congress and the last have proposed a regulatory framework for digital assets in which jurisdiction would be clearly divided between the SEC and Commodity Futures Trading Commission (CFTC), with each commission enforcing distinct consumer protections against regulated entities under their respective jurisdiction. The ruling in SEC v. Ripple Labs is not inconsistent with such a framework.

Myth: The recent decision in the SEC v. Terraform Labs case throws into question the Ripple decision.

Fact: The ruling in the Terraform case changes nothing about the ruling in SEC v. Ripple case.

The ruling in the Terraform case changes nothing about the Ripple ruling that XRP is not a security. The decision in Terraform comes at the very beginning of the case on a "motion to dismiss" where the Judge has to accept all the SEC's allegations as true. The Judge specifically noted that the SEC had alleged that the Terraform tokens were marketed the same to institutional buyers and secondary market traders. The Judge had to accept that as true at this stage of the pleadings. The Judge in SEC v. Ripple determined that the facts and circumstances surrounding Ripple's sales of XRP to institutional buyers and secondary market traders were different, and that sales to secondary market purchasers of exchange-traded XRP did not involve promises constituting an investment contract.

Myth: The SEC v. Ripple ruling was a split decision.

Fact: The decision was NOT a split decision.

This case has always been about getting clarity about the regulatory status of XRP in the U.S. Ripple has stated—since day one—that XRP is not a security, and the Court vindicated that position. In doing so, the Court laid the groundwork for others to determine that other tokens, in and of themselves, are not securities. The decision is a resounding win for Ripple and the industry more broadly.