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November 22, 2023

VIA CM/ECF

Patricia S. Dodszuweit, Clerk
Office of the Clerk
U.S. Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *In re Coinbase, Inc.*, No. 23-1779 (3d Cir.)

Dear Ms. Dodszuweit:

To the extent the Court considers the latest letter filed by Respondent the Securities and Exchange Commission, Dkt. 37, Petitioner Coinbase, Inc. respectfully requests that the Court also consider this brief response.

On Monday of this week, the Court instructed Coinbase to file its proposed response to the Commission's October 11 status report "no later than" Tuesday. The Commission, apparently anticipating imminent action by the Court, submitted its own surreply yesterday providing no additional information about its progress but promising to submit a further "status report" on December 15, 2023.

The SEC’s unsolicited response is revealing for two reasons. First, it illustrates that only an order by this Court will make the Commission *act*. Although the agency’s fear of a court ruling spurred it to do *something*, its proffer of another “report”—as it continues to hedge and delay—confirms that only mandamus will impel the Commission to fully, finally acknowledge that Coinbase’s petition for rulemaking was pocket-vetoed long ago.

Second, the Commission’s submission comes just a day after filing another lawsuit against a crypto exchange, *SEC v. Payward, Inc. (d/b/a Kraken)*, 23-cv-06003 (N.D. Cal.), a suit illustrating again that the SEC’s asserted need for more time to make up its mind is a mirage. The *Kraken* action was necessarily approved by the Commission and (like previously commenced suits against Coinbase and others) is further evidence that the Commission sees no need for regulatory clarity. Its course is determined, and the Court should reject this latest empty gesture.

Respectfully submitted,

/s/ Eugene Scalia
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