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March 20, 2023

VIA ECF

Hon. Analisa Torres
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

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

Dear Judge Torres:

Defendants Ripple Labs Inc. (“Ripple”), Bradley Garlinghouse, and Christian A. Larsen respectfully submit this notice of supplemental authority relevant to their Opposition to the SEC’s Motion for Summary Judgment (ECF No. 675).

On March 11, 2023, Judge Michael Wiles of the U.S. Bankruptcy Court for the Southern District of New York issued a ruling in *In re Voyager Digital Holdings, Inc.*, No. 22-10943 (MEW) (Bankr. S.D.N.Y. March 11, 2023), ECF No. 1170 (“Op.”), attached hereto as Exhibit A. This ruling provides further support for Defendants’ fair notice defense.

Voyager concerned the bankruptcy of Voyager Digital, a digital asset brokerage company. Under the proposed bankruptcy plan, Voyager would sell its assets—including a digital asset called VGX—to the exchange Binance.US. The SEC objected to the plan, arguing that VGX had “aspects of a security” (without specifying what those aspects were). *Op.* at 9-10. It further objected that Binance.US was an unregistered securities exchange (without specifying why the SEC’s Staff thought so). *Id.* Judge Wiles rejected the SEC’s objections and approved the bankruptcy plan. *See id.* at 13-14, 49. His bases for rejecting those objections endorse many of the arguments Defendants have raised here.

First, Judge Wiles “rebuked the SEC attorneys for the vagueness” of their objections, noting that the SEC had not “offered any guidance at all as to just what it was that the Debtors

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allegedly were supposed to prove” in order to show that VGX was not a security. *Id.* at 9; *see also id.* at 10 (“I reject the contention that the Court, and the Debtors, somehow were supposed to figure out for themselves just what ‘aspects’ of the VGX token might be considered to be aspects of a ‘security.’”). He also emphasized “the limited guidance that the SEC has provided” generally to market participants. *Id.* at 11.

Second, just as Defendants have highlighted in connection with their fair notice defense, *see* ECF No. 675 at 43, 45-46 & n. 29, Judge Wiles found that cryptocurrency market participants operate “in a regulatory environment that at best can be described as highly uncertain,” in which “[r]egulators themselves cannot seem to agree as to whether cryptocurrencies are commodities that may be subject to regulation by the CFTC, or whether they are securities that are subject to securities laws, or neither, or even on what criteria should be applied in making the decision”—an “uncertainty [that] has persisted despite the fact that cryptocurrency exchanges have been around for a number of years.” *Op.* at 6.

Copies of the March 11 opinion and relevant hearing transcript in *Voyager*, along with a copy of Judge Wiles’s order denying the government’s motion for a stay of the March 11 decision pending appeal, are attached as Exhibits A-C for the Court’s convenience. We thank the Court for its consideration of this matter.

Respectfully submitted,

/s/ Michael K. Kellogg
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