

RECENT FEDERAL COURT DECISION CAUSES A *RIPPLE* IN THE CRYPTO INDUSTRY: XRP FOUND NOT TO BE A SECURITY WHEN SOLD TO RETAIL INVESTORS

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On July 13, 2023, Southern District of New York Judge Analisa Torres issued an [Order](#) in response to cross-motions for summary judgment in *SEC v. Ripple Labs, Inc.* that many crypto insiders are considering a critical win for the industry.

The SEC alleged that Ripple Labs had issued unregistered securities to investors, but Ripple contended that its token, XRP, was not a security as it was not an investment contract under the so-called *Howey* test.

Judge Torres' Order provided three key holdings regarding the question of whether a transaction of XRP is an investment contract, and therefore a security under *Howey*:

- First, the sales by Ripple of XRP to institutional investors were unregistered offers and sales of securities;
- Second, sales by Ripple XRP to public buyers “programmatically” in blind bid/ask transactions did not constitute the offer and sale of securities; and
- Third, Ripple’s distributions of XRP to employees as compensation and to third parties as part of Ripple’s initiative to develop new applications for XRP and the XRP Ledger also did not constitute the offer and sale of securities.

Judge Torres' Order deals a significant blow to many of the SEC's recent arguments that almost all cryptocurrencies are immutably securities, and that crypto exchanges are therefore unregistered securities exchanges. In remarks to the National Press Club on the Monday following the decision, SEC Chair Gary Gensler indicated that the SEC was still assessing the ruling but was disappointed with the retail aspect of the ruling relating to programmatic sales on exchanges. He indicated that the SEC will also continue with its ongoing litigation with other crypto platforms and with bringing enforcement actions and working to get crypto companies registered.

Read our full post describing Judge Torres's Order at [SEC v Ripple: A Critical Industry Win](#).

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