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REPORT

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RIPPLE, TERRAFORM, AND THE REACH OF THE FEDERAL SECURITIES LAWS TO DIGITAL ASSET TRANSACTIONS ON SECONDARY TRADING PLATFORMS

By Alexander C. Drylewski, Stuart D. Levi, Daniel Michael, Shaud G. Tavakoli and Holly Gwydir

Alexander Drylewski, Stuart Levi and Daniel Michael are partners in the New York office of Skadden, Arps, Slate, Meagher & Flom LLP. Shaud Tavakoli is a counsel and Holly Gwydir is an associate in the New York office of Skadden, Arps, Slate, Meagher & Flom LLP.

I. INTRODUCTION

The Securities and Exchange Commission (SEC) has taken an active approach to policing the digital asset industry. The agency formed a Crypto Assets and Cyber Unit within the Division of Enforcement and dedicated trial lawyers to pursue alleged digital asset-related violations. Central to the SEC's litigation offensive is its contention that vast swaths of digital asset transactions comprise "investment contracts" (and thus "securities") subject to regulation under the federal securities laws. Private plaintiffs have adopted this view and are likewise pursuing expansive putative class actions against digital asset issuers, promoters and trading platforms under theories reliant on the classification of digital asset transactions as "securities."

Despite this wave of litigation in an industry with roots spanning more than a decade, a foundational question remains: Can digital asset transactions on secondary trading platforms constitute "investment contracts" subject to the federal securities laws? In July 2023, not one, but two judges in the Southern District of New York weighed in with decisions that, while fact- and context-dependent, appear to conflict.

First, Judge Analisa Torres held on summary judgment in *SEC v. Ripple Labs Inc.* that Ripple's sales of digital token XRP on secondary platforms were not "investment contracts" subject to the Securities Act's registration requirements.[1] Under *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244, 163 A.L.R. 1043 (1946), a transaction may qualify as an "investment contract" only where, among other things, the buyer is "led to expect profits" from the "efforts" of others. Judge Torres concluded that Ripple's so-called "programmatic sales" of XRP on secondary platforms did not meet this test because buyers in blind bid/ask transactions did not know that Ripple was the seller. As such, they would not have reasonably expected that Ripple would use sales proceeds to generate profits for investors. According to Judge Torres, the same was not true for institutional

investors who bought XRP directly from Ripple. Those investors, the court held, could reasonably expect that Ripple would receive sale proceeds and, based on the facts presented, use those proceeds to generate returns on their behalf.

Less than three weeks later, Judge Jed Rakoff denied a motion to dismiss in *SEC v. Terraform*, holding that the SEC had plausibly alleged that transactions in various "crypto-assets" on secondary trading platforms qualified as investment contracts.[2] In so doing, Judge Rakoff expressly declined to follow *Ripple*, refusing to draw a distinction between tokens based on the characterization of the purchasers or the manner of sale. The court reasoned that, under *Howey*, the question is only whether a reasonable individual would objectively view the defendants' actions and statements as evincing a promise of profits based on their efforts. The court held that the SEC had met that threshold in *Terraform* at the pleading stage, where it was required to accept the SEC's allegations as true. Specifically, the SEC alleged that the defendants assured investors that sales from purchases of all Terraform-related crypto assets—even those taking place on secondary trading platforms—would be "fed back" into the Terraform ecosystem and would thus generate additional profits for all crypto asset holders.

On their face, *Ripple* and *Terraform* appear to create an intra-Circuit split that could be the subject of appellate review. They also inject further uncertainty into an already murky landscape of decisions applying *Howey* in the digital asset context. But there is a potential way to reconcile the two holdings: The alleged promotional efforts by the defendants in *Terraform* were intended to and did reach *all* purchasers. That allegation, accepted as true, was central to Judge Rakoff's ruling that the SEC had adequately pleaded that buyers on exchanges would have a reasonable expectation of profits derived from the defendants' efforts. The marketing efforts by Ripple, by contrast, were directed only to institutional buyers. That fact drawn from the record on summary judgment, Judge Torres held, "cut against" a finding that the reasonable expectation prong was satisfied in *Ripple*. At a minimum, these new decisions serve as a reminder that the *Howey* analysis is inherently fact-dependent and that no two cases are the same.

II. LEGAL FRAMEWORK: THE SECURITIES ACT AND THE *HOWEY* TEST

Section 5 of the Securities Act of 1933 (Securities Act) prohibits the purchase or sale of a "security" unless a registration statement is in effect or has been filed with the SEC for the sale of the security to the public. To prove a violation of Section 5, the SEC must show: (i) that no registration statement was filed or in effect as to the transaction, (ii) that the defendant directly or indirectly offered to sell or sold the securities and (iii) through interstate commerce.[3]

An "investment contract" is a type of security as defined by the Securities Act and therefore subject to federal securities laws and requirements. Neither side in *Ripple* or *Terraform* disputed the fact that no registration statement was filed for any transaction at issue, or that offers and sales took place through interstate commerce. Therefore, the sole question for purposes of Section 5 of the Securities Act was whether the transactions were investment contracts.

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Courts evaluate whether a transaction constitutes an investment contract under the *Howey* test set forth by the U.S. Supreme Court more than 75 years ago: An investment contract exists where a person (i) "invests his money," (ii) "in a common enterprise" and (iii) "is led to expect profits solely from the efforts of the promoter or a third party."[4]

III. SEC ENFORCEMENT ACTIVITY AND PRIVATE SECURITIES LITIGATION IN THE DIGITAL ASSET INDUSTRY

In recent years, commentators and participants have asserted that the digital asset industry has been impacted by uncertainty as to how the *Howey* test applies to digital assets and digital asset transactions. Despite repeated calls for regulatory clarity from industry members, lawmakers and even SEC commissioners, many have complained that little progress has been made to clarify the application of the *Howey* test.

The current Chair of the SEC has taken the position that "the vast majority of crypto tokens are securities," thus falling within the jurisdiction of the SEC and must be regulated to protect investors.[5] The agency brought 30 crypto-related enforcement actions in 2022 and 24 between January and early June 2023.[6] In the majority of these cases, the SEC has alleged that defendants engaged in unregistered securities offerings.[7] The number of crypto-related enforcement actions in 2022 and 2023 represents a substantial increase from the 20 cases brought in 2021 and 77 cases total brought between 2013 and 2020.[8] Private plaintiffs have also taken the cue. Putative digital asset purchasers brought 23 cryptocurrency-related securities class actions in 2022 and 11 in the first half of 2023.[9] That represents an uptick from 11 cases brought in all of 2021 and 28 in the period from 2019 to 2021.[10]

To be sure, several courts have applied the *Howey* test in the context of digital assets.[11] Those cases, however, generally arose from initial coin offerings (ICOs) or other direct sales by issuers. None expressly address how *Howey* applies to transactions on secondary trading platforms where the identity of the seller is unknown to the buyer. Enter *Ripple* and *Terraform*.

IV. *SEC V. RIPPLE LABS*

A. BACKGROUND

Ripple develops and manages a digital asset exchange network that operates on the XRP Ledger blockchain. When the XRP Ledger launched, its source code generated a fixed supply of 100 billion XRP.[12] As alleged, Ripple's three founders retained 20 billion XRP and provided 80 billion to Ripple.[13] The XRP Ledger is based on open-source software.[14] "[A]nyone can use the ledger, submit transactions, host a node to contribute to the validation of transactions, propose changes to the source code, or develop applications that run on the ledger."[15]

Ripple sold and transferred XRP in three ways. First, Ripple, through wholly owned subsidiaries, sold XRP directly to counterparties—primarily institutional buyers, hedge funds and "on demand liquidity" customers—pursuant to written contracts (the Institutional Sales).[16] Second, Ripple sold XRP on digital asset trading platforms "programmatically," or through trading algorithms (the Programmatic Sales).[17] Lastly, Ripple distributed XRP to individuals and entities, including employees and third parties, as a

form of payment for services (the Other Distributions).[18] Ripple did not file a registration statement for any sales or distributions. Nor did Ripple file any financial statements or other periodic reports with the SEC for Ripple or XRP.

In 2018, the SEC sued Ripple as well as former executive Bradley Garlinghouse and current executive Christian Larsen, alleging that their XRP sales and distribution activities constituted unregistered sales of securities in violation of Section 5 of the Securities Act.

B. DECISION

The parties cross-moved for summary judgment. At the outset, Judge Torres noted that "XRP, as a digital token, is not in and of itself a 'contract, transaction[,] or scheme' that embodies the *Howey* requirements of an investment contract."[19] As such, the court must "examine[] the totality of circumstances surrounding Defendants' different transactions and schemes involving the sale and distribution of XRP."[20]

Judge Torres proceeded to analyze separately three categories of transactions in which Ripple engaged:

Institutional Sales were investment contracts. The court held that the Institutional Sales constituted the unregistered offer and sale of investment contracts in violation of Section 5 of the Securities Act.[21] First, the court found that the investment prong of Howey was met because the institutional investors paid money to Ripple.[22] Second, the court found that the "common enterprise" prong of Howey was met based on "horizontal commonality"—*i.e.*, the investors' assets were pooled and their fortunes were tied to the success of the enterprise and each other.[23] Third, the court found, "[b]ased on the totality of circumstances," that the institutional investors had a reasonable expectation of profits derived from Ripple's efforts.[24] The court explained that, "[f]rom Ripple's communications, marketing campaign, and the nature of the Institutional Sales, reasonable investors would understand that Ripple would use the capital received from its Institutional Sales to improve the market for XRP and develop uses for the XRP Ledger, thereby increasing the value of XRP."[25]

Programmatic Sales were not investment contracts. Critically, the court held that the Programmatic Sales—Ripple's sales on digital asset trading platforms—did not constitute unregistered offerings.[26] The court identified a key distinction between Programmatic Sales and Institutional Sales: Because Programmatic Sales occurred on secondary trading platforms that match buyers and sellers without disclosing the identity of either, purchasers could not have known if their payments went to Ripple or another seller. As such, the "expectation of profits" prong of Howey was not met because buyers in Programmatic Sales could not reasonably expect that Ripple would use the capital it received from its sales to improve the XRP ecosystem and thereby increase the price of XRP.[27]

The court also held that the Programmatic Sales lacked other factors present in the Institutional Sales: (i) the sales were not made pursuant to contracts containing lockup provisions, resale restrictions, indemnification clauses, or statements of purpose; (ii) Ripple did not circulate XRP promotional materials "broadly to the general public," or to "purchasers on digital asset exchanges"; and (iii) unlike the institutional buyers, the programmatic buyers were not

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sophisticated entities, and there was no evidence that they "would have been aware of Ripple's marketing campaign and public statements connecting XRP's price to Ripple's own efforts."[28]

The court held that sales of XRP by the individual defendants did not constitute unregistered offerings for the same reason: both sold their units of XRP through blind transactions on digital asset exchanges.[29]

Other Distributions were not investment contracts. The court also held that the Other Distributions did not constitute unregistered offerings. Judge Torres found that these transfers did not satisfy the "investment of money" prong of the *Howey* test because there was no evidence that the recipients of these distributions paid money or other consideration for the distributions.[30]

V. *SEC V. TERRAFORM LABS*

A. BACKGROUND

As alleged by the SEC, Terraform Labs and its founder, chief executive officer and majority shareholder, Do Kwon, created the Terraform blockchain.[31] Terraform and Kwon also marketed and sold five crypto assets that formed the basis of the SEC's complaint in *Terraform*: (i) the Terra USD cryptocurrency, or "UST coin," (ii) the LUNA coin, (iii) the wLUNA coin, (iv) mAssets and (v) an "MIR" token.[32] The UST coin is a "stablecoin" with its price algorithmically pegged to the U.S. dollar.[33] A UST coin could be swapped for $1.00 worth of the LUNA coin, and vice versa.[34] The Terraform blockchain enabled transactions using the UST Coin and LUNA coin.[35] The wLUNA coin "allowed holders of LUNA to use LUNA coins in transactions on other, non-Terraform blockchains."[36] "mAssets functioned as 'security-based swaps' the value of which 'mirrored' the price of securities exchanged on stock exchanges."[37] mAssets were designed to enable traders to gauge the risk of investing in the underlying security without the "burdens" of owning or transacting in the security.[38]

Terraform also launched the "Anchor Protocol" and the "Mirror Protocol" to allegedly create investment opportunities for holders of its digital assets. The Anchor Protocol was an investment pool that allowed owners of UST coins to deposit their coins and earn a share of the profits the pool generated.[39] Terraform and Kwon allegedly advertised rates of return of 19-20% and touted the "deep relevant experience" of the Terraform team.[40] The Mirror Protocol was a program through which Terraform issued mAssets for a fee.[41] The MIR token allowed holders to share in fees generated by the Mirror Protocol.[42]

Terraform and Kwon allegedly sold approximately 200 million LUNA coins to institutional investors and loaned nearly 100 million LUNA coins to a U.S. trading firm.[43] Terraform and Kwon also allegedly directly offered and sold MIR tokens, mAssets and LUNA tokens on secondary digital asset platforms.[44]

Terraform did not file registration statements for any sales or distributions. Nor did Terraform file any financial statements or other periodic reports with the SEC for Terraform or any of its coins.

The SEC filed suit against Terraform and Kwon in February 2023, alleging that they failed to register the offer and sale of Terraform assets as required under the securities laws. The SEC also alleged that defendants defrauded investors

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through the development, promotion and sale of the Terraform assets in violation of Sections 17(a) and 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.[45]

Defendants moved to dismiss on several grounds, including that none of the assets at issue were "securities" subject to regulation under the federal securities laws.

B. DECISION

The court held that the SEC adequately pleaded that the Terraform digital assets either were themselves "investment contracts" or conferred a right to "subscribe or purchase" another security.[46]

At the outset, the court made two key observations. First, "there need not be . . . a formal common-law contract between transacting parties for an 'investment contract' to exist."[47] "By stating that 'transaction[s]' and 'scheme[s]'—and not just 'contract[s]'—qualify as investment contracts, the Supreme Court made clear in *Howey* that Congress did not intend the term to apply only where transacting parties had drawn up a technically valid written or oral contract under state law."[48]

Second, the court need not "restrict its *Howey* analysis to whether the tokens themselves—apart from any of the related various investment 'protocols'—constitute investment contracts."[49] Judge Rakoff reasoned that "courts deciding whether a given transaction or scheme amounts to a[n] 'investment contract' under *Howey* must analyze the 'substance'—and not merely the 'form'—of the parties' economic arrangement and decide if, under the 'totality of the circumstances,' that transaction or scheme meets the three requirements of *Howey*."[50] Accordingly, Judge Rakoff "decline[d] to erect an artificial barrier between the tokens and the investment protocols with which they are closely related for the purposes of [the court's] analysis."[51] Instead, accepting the SEC's allegations as true, the court evaluated "whether the crypto-assets and the 'full set of contracts, expectations, and understandings centered on the sales and distribution of [these tokens]' amounted to an 'investment contract' under federal securities laws."[52]

With that backdrop, the court assessed whether the Terraform crypto assets constituted investment contracts under *Howey*. Defendants did not dispute that the SEC had pleaded the first *Howey* prong, *i.e.*, that each purchaser made an investment of money. The court applied the second and third *Howey* prongs with respect to each coin and concluded that, at the pleading stage, the SEC had plausibly alleged that transactions in each were "investment contracts."

I. COMMON ENTERPRISE.

UST. The court held that the SEC adequately pleaded horizontal commonality with respect to UST based on the investment opportunity presented by the Anchor Protocol.[53] In particular, "the defendants marketed the UST coins as an asset that, when deposited into the Anchor Protocol, could generate returns of up to 20%."[54] Deposited UST were allegedly pooled together in the Anchor Protocol "and, through the managerial efforts of the defendants, were expected to generate profits that would then be re-distributed to all those who deposited their coins into the Anchor Protocol—in other words, on a pro-rata basis."[55] These allegations plausibly pleaded a common enterprise for the "large majority of

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UST investors who deposited their coins in the Anchor Protocol."[56]

LUNA and wLUNA. The court held that the SEC adequately pleaded horizontal commonality with respect to LUNA and wLUNA "by alleging that the defendants 'pooled' the proceeds of LUNA purchases together and promised that further investment through these purchases would benefit all LUNA holders."[57] The court applied this same reasoning to UST not deposited in the Anchor Protocol: "[T]he UST coins, because they could be converted to LUNA coins, were also investment contracts."[58]

MIR tokens. The court also held that the SEC pleaded a "plausible claim" of horizontal commonality with respect to MIR investors because "proceeds from sales of the MIR tokens were 'pooled together' to improve the Mirror Protocol" and profits derived were "fed back to investors based on the size of their investment."[59]

mAssets. Lastly, the court held that the SEC had pleaded commonality with respect to mAssets purchases because "the mAssets on their face were intended to reflect the fortunes of the existing securities they mirrored."[60]

II. REASONABLE EXPECTATION OF PROFITS BASED ON THE EFFORTS OF OTHERS.

The court also held that the SEC adequately pleaded that investors were led to believe that the efforts of the defendants could earn them a return on their investment based on allegations specific to each crypto asset:

UST. The court held that "the complaint adequately alleges that the defendants—through social media posts, at investor conferences, in monthly investor reports, and at one-on-one meetings with investors—repeatedly touted the profitability of the Anchor Protocol and encouraged UST coin purchasers to unload their tokens into that investment vehicle."[61] The profits from the Anchor Protocol, the SEC alleged, would derive from the defendants' investing and engineering experience.[62]

LUNA and wLUNA. The defendants allegedly induced purchases of LUNA by publicly stating that "profits from the continued sale of LUNA would be fed back into further development of the Terraform ecosystem [through the defendants' efforts], which would, in turn, increase the value of the LUNA."[63]

MIR tokens and mAssets. The SEC alleged a "nearly identical" scheme with respect to MIR tokens and mAssets, except that the defendants "linked the [worth of these assets] to the growth and development of the Mirror Protocol, rather than to the Terraform blockchain network more generally."[64]

Perhaps the most notable aspect of the *Terraform* expectation of profits holding is that, in contrast with *Ripple*, the court "decline[d] to draw a distinction between coins based on their manner of sale, such that coins sold directly to institutional investors are considered securities and those sold through secondary market transactions to retail investors are not."[65] Judge Rakoff reasoned that whether a purchaser bought coins directly from the defendants or in a secondary 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."[66]

As applied, the defendants allegedly publicly stated "that sales from purchases of *all* crypto-assets—no matter where the coins were purchased—would be fed back into the Terraform blockchain and would generate additional profits for all crypto-asset holders."[67] These representations "would presumably have reached individuals who purchased their crypto-assets on secondary markets."[68] As such, Judge Rakoff held that purchasers on secondary markets had "every bit as good a reason" to expect profits from the efforts of defendants as direct purchasers such as institutional investors.[69]

VI. RECONCILING *TERRAFORM* AND *RIPPLE*

Although *Terraform* on its face "reject[ed]" the holding in *Ripple* that the manner of a transaction can impact the *Howey* analysis, the two decisions may be harmonized. In *Terraform*, the defendants allegedly engaged in a public campaign to encourage both retail and institutional investors to buy their crypto assets by touting the profitability of the assets and the managerial and technical skills that would allow defendants to maximize returns on the investors' digital assets. As part of this campaign, the defendants asserted that the sales of all assets would be used to advance the Terra blockchain and generate additional profits for asset holders. In *Ripple*, on the other hand, the court held that the record at summary judgment did not reflect such assertions made to secondary market purchasers.

Nonetheless, *Terraform* does not explain how purchasers of LUNA on secondary platforms could have reasonably expected that defendants could use the "capital contributions" from these sales to improve the Terra ecosystem or blockchain. Indeed, as articulated in *Ripple* and left unaddressed in *Terraform*, these purchasers could not have even known that defendants were the sellers (and, in most transactions, defendants likely were not). Purchasers of Terra-related assets on secondary platforms who in fact used their tokens to invest through the defendants' so-called "protocols" may have a stronger argument that their purchases were driven by the expectation of profits based on the defendants' efforts in managing the protocols. That is because, in Judge Rakoff's view, they plausibly took part in a holistic "scheme" that constitutes an investment contract.[70] Not so for investors who did not avail themselves of the protocols. Whether and to what extent courts require allegations and proof that purchasers believed their funds would go directly to the defendants to drive the price of the digital assets sold remains an open question.

VII. IMPLICATIONS AND TAKEAWAYS

Ripple and *Terraform* are the first judicial decisions directly addressing whether digital asset transactions on secondary trading platforms constitute securities transactions, and for that reason may have broader implications in other digital asset-related litigation—including, for example, in recent enforcement actions brought by the SEC against large digital asset trading platforms themselves. The holdings raise a series of potential areas for factual development and legal argument in cases where the SEC or private plaintiffs assert claims that purport to encompass transactions on secondary trading platforms, including:

- whether the defendant's marketing efforts extended to the public at large, including buyers on secondary platforms, or were

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directed only to institutional and other direct purchasers;

- the extent to which digital asset purchasers had the ability to use their digital products to take advantage of other investment opportunities that could render their purchases part of a "scheme";
- the manner in which sales proceeds from transactions on secondary trading platforms went to the defendant and/or "fed into" an "ecosystem" in which the digital assets trade, and whether that was communicated to secondary purchasers; and
- whether there must be a direct connection between the buyer and seller akin to contractual privity for an "investment contract" to be formed under the *Howey* test.

Notably, *Ripple* and *Terraform* are both SEC enforcement actions against digital asset issuers rather than secondary trading platforms. Because those who act as a broker-dealer or an exchange for securities may be required to register with the SEC, the treatment of secondary market sales under the *Howey* test will likely have profound implications for many digital asset trading platforms.

For two reasons, we can expect more rulings on these questions. First, due in part to the significant number of enforcement actions recently filed by the SEC against digital asset trading platforms, there will be opportunities in multiple districts for litigants to present these arguments and gauge courts' receptivity to them. Second, the SEC has already requested leave to file an interlocutory appeal to the Second Circuit in *Ripple*. Even if that motion is unsuccessful, the SEC is likely to pursue an appeal down the road if the case proceeds given that the *Ripple* decision is fundamentally at odds with the reasoning underlying a major aspect of the SEC's enforcement efforts in the digital asset space.

In the meantime, litigants are faced with an uncertain regulatory regime and apparently conflicting rulings that leave the door open to creative legal and factual arguments.

ENDNOTES:

[1]*Securities and Exchange Commission v. Ripple Labs, Inc.*, Fed. Sec. L. Rep. (CCH) P 101631, 2023 WL 4507900 (S.D. N.Y. 2023) (rejected by, Securities and Exchange Commission v. Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023)).

[2]*Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[3]15 U.S.C.A. §§ 77e(a), (c), (e).

[4]*Howey*, 328 U.S. at 298-99.

[5]SEC, Testimony of Chair Gary Gensler, House Financial Services Committee (Apr. 18, 2023), https://www.sec.gov/news/testimony/gensler-testimony-house-financial-services-041823.

[6]*See* Simona Mola, Cornerstone Research, SEC Cryptocurrency Enforcement- June 2023 Update, https://www.cornerstone.com/insights/research/sec-cryptocurrency-enforcement-june-2023-update/.

[7]Specifically, among the cases brought in 2022 and the first half of 2023, the SEC alleged that defendants engaged in unregistered securities offerings in 35 proceedings. *Id.*

[8]*Id.*

[9]*See* Cornerstone Research and Stamford Law School Securities Class Action Clearinghouse, *Securities Class Action Filings, 2023 Midyear Assessment*, https://securities.stanford.edu/research-reports/1996-2023/Securities-Class-Action-Filings-2023-Midyear-Assessment.pdf

[10]*Id.*

[11]*See, e.g.*, *Friel v. Dapper Labs, Inc.*, No. 21 CIV. 5837 (VM), 2023 WL 2162747, at *9 (S.D.N.Y. Feb. 22, 2023) (purchases of NFTs from defendant); *Audet v. Fraser*, 605 F. Supp. 3d 372, 375 (D. Conn. 2022) (purchases of various digital products from defendant); *U.S. Securities and Exchange Commission v. Kik Interactive Inc.*, 492 F. Supp. 3d 169 (S.D. N.Y. 2020); *Securities and Exchange Commission v. Telegram Group Inc.*, 448 F. Supp. 3d 352, Fed. Sec. L. Rep. (CCH) P 100769 (S.D. N.Y. 2020); *Balestra v. ATBCOIN LLC*, 380 F. Supp. 3d 340, Fed. Sec. L. Rep. (CCH) P 100396 (S.D. N.Y. 2019); *see also SEC v. LBRY, Inc.*, No. 21-cv-260-PB, — F.Supp.3d —, 2022 WL 16744741, at *3 (D.N.H. Nov. 7, 2022) (not distinguishing between direct sales and sales made on digital exchange for purposes of Howey analysis).

[12]*Ripple*, 2023 WL 4507900, at *1.

[13]*Ripple*, 2023 WL 4507900, at *2.

[14]*Securities and Exchange Commission v. Ripple Labs, Inc.*, Fed. Sec. L. Rep. (CCH) P 101631, 2023 WL 4507900 (S.D. N.Y. 2023) (rejected by, Securities and Exchange Commission v. Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023)).

[15]*Securities and Exchange Commission v. Ripple Labs, Inc.*, Fed. Sec. L. Rep. (CCH) P 101631, 2023 WL 4507900 (S.D. N.Y. 2023) (rejected by, Securities and Exchange Commission v. Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023)).

[16]*Securities and Exchange Commission v. Ripple Labs, Inc.*, Fed. Sec. L. Rep. (CCH) P 101631, 2023 WL 4507900 (S.D. N.Y. 2023) (rejected by, Securities and Exchange Commission v. Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023)).

[17]*Securities and Exchange Commission v. Ripple Labs, Inc.*, Fed. Sec. L. Rep. (CCH) P 101631, 2023 WL 4507900 (S.D. N.Y. 2023) (rejected by, Securities and Exchange Commission v. Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023)).

[18]*Ripple*, 2023 WL 4507900, at *3.

[19]*Ripple*, 2023 WL 4507900, at *8 (citing *Telegram*, 448 F. Supp. 3d at 379).

[20]*Securities and Exchange Commission v. Ripple Labs, Inc.*, Fed. Sec. L. Rep. (CCH) P 101631, 2023 WL 4507900 (S.D. N.Y. 2023) (rejected by, Securities and Exchange Commission v. Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023))

[21]*Ripple*, 2023 WL 4507900, at *11.

[22]*Ripple*, 2023 WL 4507900, at *8.

[23]*Ripple*, 2023 WL 4507900, at *9.

[24]*Ripple*, 2023 WL 4507900, at *10.

[25]*Securities and Exchange Commission v. Ripple Labs, Inc.*, Fed. Sec. L. Rep. (CCH) P 101631, 2023 WL 4507900 (S.D. N.Y. 2023) (rejected by, Securities and Exchange Commission v. Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023)).

[26]*Ripple*, 2023 WL 4507900, at *12-13.

[27]*Ripple*, 2023 WL 4507900, at *11.

[28]*Ripple*, 2023 WL 4507900, at *12.

[29]*Ripple*, 2023 WL 4507900, at *14.

[30]*Ripple*, 2023 WL 4507900, at *13.

[31]*Terraform*, 2023 WL 4858299, at *1-2.

[32]*Terraform*, 2023 WL 4858299, at *1.

[33] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023) .

[34] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[35]*Terraform*, 2023 WL 4858299, at *2.

[36]*Terraform*, 2023 WL 4858299, at *1.

[37] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[38] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[39]*Terraform*, 2023 WL 4858299, at *2.

[40] *Securities and Exchange Commission v.*

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Terraform Labs Pte. Ltd., 2023 WL 4858299 (S.D. N.Y. 2023).

[41] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[42]*Terraform*, 2023 WL 4858299, at *1.

[43]*Terraform*, 2023 WL 4858299, at *2.

[44]*Terraform*, 2023 WL 4858299, at *3.

[45] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[46]*Terraform*, 2023 WL 4858299, at *10.

[47]*Terraform*, 2023 WL 4858299, at *11.

[48] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[49] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[50] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[51]*Terraform*, 2023 WL 4858299, at *12.

[52] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[53]*Terraform*, 2023 WL 4858299, at *13.

[54] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[55] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[56] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[57] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[58]*Terraform*, 2023 WL 4858299, at *12.

[59]*Terraform*, 2023 WL 4858299, at *14.

[60]*Terraform*, 2023 WL 4858299, at *15.

[61] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[62] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[63] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[64] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[65]*Terraform*, 2023 WL 4858299, at *15.

[66] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[67] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[68] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[69] *Securities and Exchange Commission v. Terraform Labs Pte. Ltd.*, 2023 WL 4858299 (S.D. N.Y. 2023).

[70]*See, e.g.*, *id.* at *12 (noting that "the orange groves in Howey would not be considered securities if they were sold apart from the cultivator's promise to share any profits derived by their cultivation").

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