September 25, 2021

The Honorable Patrick Toomey  
U.S. Senate Committee on Banking, Housing and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Toomey:

Ripple Labs Inc. (Ripple) welcomes the opportunity to respond to your request for feedback on clarifying laws around cryptocurrency and blockchain technologies. Ripple has been consistent in its position that regulation by enforcement, the preferred approach by regulators within the United States, has served only to wreak havoc and confusion in the cryptocurrency marketplace and ultimately hurt consumers, markets and innovation. Clear regulatory frameworks are needed to allow innovation to flourish and enhance consumer and market protections. We highlight some ways in which Congress can achieve these aims below.

Introduction to Ripple

Using blockchain technology, Ripple allows financial institutions to process payments instantly, reliably, cost-effectively, and with end-to-end visibility anywhere in the world. Our customers are financial institutions that want tools to effect faster and less costly cross-border payments, as well as eliminate the uncertainty and risk historically involved in moving money across borders using interbank messaging alone. All this is done in compliance with AML/BSA regulations.

Some customers, in addition to deploying Ripple’s “blockchain” solution (RippleNet), leverage a digital asset known as XRP. Just as Bitcoin is the native asset to the open-source Bitcoin ledger, and Ethereum is the native asset to the open-source Ethereum ledger, XRP is the native asset to the open-source XRP Ledger. XRP, given its unique design, can serve as a near instantaneous bridge between fiat currencies (or any two representations of value), further reducing the friction and costs for commercial financial institutions to transact across multiple global markets.

Although Ripple utilizes XRP and the XRP Ledger in its product offerings, XRP is independent of Ripple. The XRP Ledger is decentralized, open-source, and operates on what is known as a “consensus” protocol. While there are well over a hundred known use cases for XRP and the XRP Ledger, Ripple leverages XRP for use in its product suite because of XRP’s suitability for cross-border payments. Key characteristics of XRP
include speed, scalability, energy efficiency, and cost efficiency, all of which benefits the consumer and helps reduce friction in the market for cross-border payments.

**Innovation sandboxes should be fostered and encouraged in the cryptocurrency space**

To determine if different tokens in the cryptocurrency space are “investment contracts” (i.e., securities), the SEC purports to be applying the Supreme Court’s 1946 *Howey* case. But rather than simply applying *Howey*, the SEC issued guidance in April 2019. That guidance has been criticized by many, including SEC Commissioner Peirce who compared it to a Jackson Pollock work insofar as it “splash[ed] lots of factors on the canvas without any clear message.” Even Securities and Exchange Commission (SEC) Chair Gary Gensler, while at MIT, stated that while he held certain views about the regulatory status of various tokens, it was not his opinion that mattered and the issue was deserving of a “worthy public debate.” He went on to add that for XRP and other “big market cap” tokens “there needs to be clarity in the market.”

As a way forward, Commissioner Peirce has proposed for consideration a “safe harbor” under which network developers would be exempt for three years from the registration provisions of federal securities laws, during which time they would be allowed to launch their products and develop their networks through token transactions. At the conclusion of the three-year period, token transactions would not trigger securities registration requirements if it is determined that “network maturity” has been achieved. Fraud, of course, would not be subject to any protections. While the proposal does not seek to solve for every regulatory problem in the cryptocurrency space, including how to deal with the hundreds of projects already in existence, it is a prime example of how public-private collaboration could form the basis of rational regulation through a sandbox approach.

**Public-private collaboration is essential to achieving optimal outcomes**

“Rather than regulate innovation and job creation out of this country, we should promote an active dialogue between regulators and market participants,” wrote House Financial Services Committee Ranking Member Patrick McHenry and House Agriculture Committee Ranking Member Glenn “G.T.” Thompson in a recent letter to SEC Chair Gensler and Commodity Futures Trading Commission (CFTC) Acting Chair Rostin Behnam. We agree. Public-private collaboration will lead to more tailored and effective

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3 SEC Commissioner Hester M. Peirce, *How We Howey* (May 9, 2019).
5 Id.
policy outcomes for industry and consumers alike. This is because “it is an opportunity to bring valuable evidence to the agency’s attention, to explain effects of a proposed rule that the agency may not have appreciated, and simply to bring a perspective that the agency itself otherwise would not have.”

Fostering this type of open dialogue is precisely the aim of H.R. 1602, the *Eliminate Barriers to Innovation Act*, which was introduced on a bipartisan basis by Rep. McHenry and Financial Technologies Task Force Chair Rep. Stephen Lynch. The bill, which requires the establishment of a collaborative working group consisting of appointees from the SEC and CFTC as well as representatives from fintech companies, financial firms, and small businesses, passed the House and remains pending in the Senate.

Yet, as Rep. McHenry and Rep. Thompson noted in their letter to Chair Gensler and Acting Chair Behnam, the SEC and CFTC have existing authority to establish a working group tasked with exploring “how to effectively use their current jurisdiction cooperatively.” This work, in turn, could provide Congress “with additional information and clarity” to protect against regulatory overreach and ensure proper market oversight mechanisms are in place. A collaborative forum that brings regulators and industry stakeholders together to build a rational, holistic framework for cryptocurrency and blockchain would prove a welcome change from incomprehensible guidance and sporadically filed enforcement actions that leave industry guessing as to regulators’ intent and actually end up hurting both consumers, innovation and markets because of their inherent uncertainty.

**Existing legislative efforts merit consideration by the Senate**

In addition to H.R. 1602, the *Eliminate Barriers to Innovation Act*, Ripple believes there are at least two other proposed bills that merit equal consideration by the Senate: the *Securities Clarity Act (SCA)* and the *Digital Commodity Exchange Act (DCEA)*.

The SCA (H.R. 4451), reintroduced on a bipartisan basis by Reps. Tom Emmer, Darren Soto, and Ro Khanna earlier this year, seeks to address ambiguities in the SEC’s application of *Howey* to digital tokens issued as part of an investment contract. Specifically, the bill proposes a new term - “investment contract asset” - and makes clear that such assets should be considered separate and distinct from the securities offerings they may have been a part of. That is, digital tokens are not transformed into securities merely because they were issued in connection with an investment contract. Rather, the bill clarifies that “[t]hese assets are in fact, and always were, commodities.”

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10 Id.
Of course, when securities laws do not apply to a digital token, other regulatory mechanisms are needed to ensure safe and orderly markets. During the last Congress, former Representative Mike Conaway, as well as Representatives Emmer, Soto, Dusty Johnson, Austin Scott, and David Schweikert sought to address this issue through the introduction of the DCEA (H.R. 8373), which has not yet been reintroduced in the current session. The DCEA, which is complementary to the SCA, seeks to create a federal definition of “digital commodity exchanges” and charges the CFTC with authority to register and oversee them, similar to the requirements in commodity derivatives markets. The framework permits digital commodity exchanges to “opt-in” to be regulated under federal jurisdiction, allowing them to operate throughout the entire United States rather than applying for different state money transmitter licenses, which are currently the only regulatory options available to digital commodity markets. The bill also requires customer digital commodity assets to be held in a Qualified Digital Commodity Custodian established under minimum standards set by the CFTC.

The existing federal commodity market regulatory framework for futures and swaps is well suited to regulate digital commodity markets. CFTC’s commodity market regulation is well established and widely-accepted, and provides robust customer protection including core principles, segregation of customer assets, and legal certainty within the federal bankruptcy regime. The DCEA would also require regulations that prohibit abusive trading practices, require public reporting of trading activity, and address conflicts of interest, governance standards, and cybersecurity. Notably, the DCEA would continue to preserve state law authority on fraud liability, which balances the need for regulatory clarity with consumer protection. Finally, the DCEA preserves the SEC’s authority over “pre-sold” tokens until such time as they are traded on CFTC-registered exchanges.

Both the SCA and DCEA seek to provide legal clarity to industry, markets and consumers in a way that an ad hoc, regulation by enforcement approach simply cannot. Moreover, these bills are an implicit acknowledgement that laws drafted for our legacy financial system cannot simply be overlaid on cryptocurrency and blockchain - rather, a tailored, flexible approach designed to address and remedy the specific challenges presented by this space is required. Ripple encourages the Senate to consider both the SCA and DCEA as they work to provide the certainty that is needed to keep industry within the United States while also maintaining the strong consumer and investor protections that have made American capital markets the best in the world.

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Ripple appreciates having had this opportunity to respond to Senator Toomey’s request for feedback. Should you wish to discuss any of the comments raised in this letter, please do not hesitate to contact Susan Friedman, Director of Public Policy, at sfriedman@ripple.com.
Sincerely,

Ripple Labs Inc.