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# Ripple Ruling Blurs Definition of Cryptocurrencies as Securities

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*Cornell University's Eswar Prasad and Cornell Tech's Ari Juels say the Supreme Court's SEC v. Ripple ruling has given both sides a partial victory, but it muddies the contours of cryptocurrency regulation in the US.*

Ripple Inc. describes itself as “a real-time gross settlement system, currency exchange, and remittance network.” The company’s objective is certainly worthwhile—reducing the pain points in cross-border payments, which are expensive, time-consuming, and difficult to track in real time. Ripple uses blockchain technology to enable instantaneous cross-border payments and settlement.

To enable such payments, Ripple uses a native digital token called XRP on its blockchain. The SEC argued in its district court case against Ripple that XRP constitutes a security and that this gave the SEC purview over its issuance. The SEC charged Ripple with not complying with SEC regulations as required of issuers of securities.

US District Judge Analisa Torres of the Southern District of New York ruled that the XRP token constitutes a security when sold directly to institutions, but not when offered directly to the public on cryptocurrency exchanges. This Solomonian ruling has allowed both sides to claim victory—while causing some disappointment at not being able to register a clear win—and occasioned some head-scratching as well.

The split ruling represents a partial vindication of claims made by the cryptocurrency industry about the nature of the products and services it offers, and a significant setback to the SEC’s efforts to corral the industry. The decision to some extent accepts the cryptocurrency industry’s claims that its products and services don’t constitute securities or other typical financial products, and therefore shouldn’t be regulated as such.

The ruling will make it harder for the SEC to bring various parts of the cryptocurrency industry under its purview and might force it to take a less expansive view of its regulatory powers. But the decision also gives the SEC the ability to hone its regulatory efforts in some ways, although its objective of protecting retail investors from the ostensible machinations of crypto purveyors now becomes more challenging.

The notion that the SEC could have its regulatory powers clipped will give some momentum to the cryptocurrency ecosystem, which had feared increasingly tight and possibly stifling regulatory oversight. Prices of most crypto assets jumped briefly in the aftermath of the ruling.

However, the ruling muddies the waters by taking the position that the definition of certain cryptocurrency-related products hinges on the ultimate buyers or users, rather than on the nature of the product itself. The industry still lacks the regulatory certainty it desires—although what the industry probably wants is enough regulation to give it legitimacy, but not so much that it’s intrusive.

Various types of cryptocurrencies have subtle differences, and parsing the implications of the ruling for each of them will be a complicated task. Bitcoin is in principle a decentralized cryptocurrency with no issuing company or agency behind it, so the ruling shouldn’t lead to its being defined as a security.

At the other end of the spectrum, issuers of fiat currency-backed stablecoins such as Circle’s USD Coin, whose issuance and governance are centralized, now face the same quandary as XRP—about whether their products constitute securities in general, or whether that depends on who acquires the securities and through what channel.

Cryptocurrencies such as XRP that fall in the middle of this spectrum between decentralization and centralization bear the brunt of this uncertainty.

Torres' decision will, if anything, intensify the war between cryptocurrency proponents, who see themselves as disruptors improving the working of financial markets, and regulators, who see risks to financial stability and investor protection. Whether the ruling has shifted the battlefield in any meaningful way remains to be seen.

The case is SEC v. Ripple Labs Inc., S.D.N.Y., 20-cv-10832, 7/13/23.

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