

CLIENT ALERT

Winston Files Amicus Brief in *SEC v. Ripple Labs Inc. et al.* on Behalf of Valhil Capital, LLC in Support of Defendants' Motion for Summary Judgment

NOVEMBER 21, 2022

On November 18, 2022, Winston & Strawn filed an amicus brief in *Securities and Exchange Commission v. Ripple Labs Inc. et al.*, No. 1:2020cv10832 (S.D.N.Y. 2020), on behalf of Valhil Capital, LLC in support of defendants' motion for summary judgment.

On December 20, 2020, the U.S. Securities and Exchange Commission (SEC) brought suit in the Southern District of New York against Ripple Labs, Inc. and certain of its officers alleging that by issuing and distributing the digital token XRP, defendants engaged in the unlawful issuance and sale of unregistered securities in violation of Sections 5(a) and 5(c) of the Securities Act of 1933. Defendants argue that under *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946), XRP constitutes a digital currency, not a security. Therefore, defendants claim, XRP is properly exempt from the registration requirements of the Securities Act and outside the SEC's regulatory purview. Both the SEC and Ripple have filed motions for summary judgment which is currently pending before the court.

Winston & Strawn filed a motion for leave to file an amicus brief on behalf of Valhil Capital LLC, in support of defendants' motion for summary judgment. On November 14, 2022, the court granted the motion. The brief offers the perspective of third-party participants in the digital assets market. First, the brief highlights the consumptive uses of XRP and its unique role in the digital economy pointing to the way market participants, such as Valhil, have integrated XRP in their day-to-day operations and invested in projects that rely on XRP's and XRPL's functions separately from any efforts or representations made by Ripple Labs. Second, the brief describes the perspective of market participants regarding the drastic shift in the regulatory landscape applicable to XRP. The brief explains that Valhil and other market participants specifically relied on guidance from federal agencies and officials in forming and acting upon a good-faith belief that XRP, consistent with its apparent function, enjoys legal status as a currency.

[Read the full brief here.](#)

The Winston team includes Partners George Mastoris, Kerry Donovan, Jeffrey Steinfeld, and Senior Associate Thania Charmani.

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