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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TETRAGON FINANCIAL GROUP LIMITED, Plaintiff, v. RIPPLE LABS INC., Defendant.	C.A. No. 2021-0007-MTZ **PUBLIC VERSION FILED:** January 7, 2021

VERIFIED COMPLAINT FOR SPECIFIC PERFORMANCE AND INJUNCTIVE RELIEF

Tetragon Financial Group Limited,[1] by its undersigned counsel, brings this action against Defendant Ripple Labs Inc. ("Ripple"), and hereby alleges as follows:

NATURE OF THE ACTION

1. Tetragon brings this action to enforce its contractual right to require Ripple, one of the world's largest blockchain companies, to redeem Tetragon's holdings of Ripple Series C preferred stock.

2. When Tetragon invested in the Series C stock in December 2019, it bargained for the right to require Ripple to redeem the Series C stock if the SEC

[1] Tetragon Financial Group Limited is the "Lead Purchaser" under the Stockholders' Agreement. Collectively, as stated below in ¶ 19, Tetragon Financial Group Limited and certain of its affiliates currently own Series C preferred stock in Ripple valued at approximately $175 million. For ease of reference, we refer to Tetragon Financial Group Limited and its affiliates jointly as "Tetragon."

determined that XRP—the cryptocurrency used by Ripple in its payment system—is a "security." At that time, the SEC had not yet made such a determination, but Tetragon understood the SEC's Division of Enforcement was investigating XRP's status and it, along with the other Series C investors, recognized the possibility that the SEC could—rightly or wrongly—determine that XRP is a security. And notwithstanding the fact that no other securities regulator around the world had (or has since) treated XRP as a security, Ripple recognized this risk and agreed to this special redemption right "if XRP is determined on an official basis . . . by the U.S. Securities and Exchange Commission," or any equivalent regulator, "to constitute a security on a current and going forward basis." At the time, Tetragon was of the view that such a determination could create uncertainties for Ripple in the short- to medium-term that, from Tetragon's perspective, would be mitigated by Tetragon having the option of promptly receiving back its investment, plus payable-in-kind dividends.

3. The SEC's determination has now occurred. As of no later than mid-October 2020, the SEC determined that Ripple is a security. The SEC sent Ripple a "Wells Notice" advising it that the SEC intended to bring enforcement proceedings based on that determination. In light of the SEC's determination that XRP is a security, Tetragon sent Ripple a redemption request, which triggered a sixty-day period for Ripple to redeem Tetragon's holdings.

4. Ripple rejected the redemption request, asserting that a Wells Notice, which the SEC typically issues after an investigation and represents the final step before an enforcement action is brought, is merely a "preliminary determination" (although the contract did not require finality) and does not constitute "official" SEC action (although a Wells Notice plainly is "official"). In an attempt to make sense of its position, Ripple admitted that a member of SEC Staff is "an official of the U.S. Securities and Exchange Commission," but asserted that such an official cannot make an "official" determination within the meaning of the parties' agreement. Ripple is incorrect.

5. Regardless, Ripple's protestations were rendered moot when, shortly after the Wells Notice, the SEC filed an enforcement action against Ripple in federal district court. In that action, necessarily authorized by a vote of the SEC Commissioners adopting the preliminary determination of the Staff members who issued the Wells Notice, the SEC asserts that XRP is a security and seeks, among other things, to permanently enjoin Ripple from selling XRP without complying with SEC regulations governing securities.

6. Ripple has nevertheless persisted in its refusal to redeem. In response to a further notice from Tetragon pointing out that the filing of the enforcement action removed any possible doubt on whether the SEC had "officially" determined that XRP is a security, Ripple continued to deny the position, asserting that even an

enforcement action authorized by the highest officials of the SEC (the Commissioners) does not reflect an "official" determination by the SEC that XRP is a "security." In fact, the entire premise of the enforcement action, brought by the agency that regulates the *securities* markets, is its determination that XRP is "a security subject to the registration requirements of the federal securities laws," Ex. B (SEC Complaint) ¶ 206, and on that basis, that Ripple and its executives "violated, are violating, and unless enjoined, will continue to violate Securities Act 5(a) and 5(c) [15 U.S.C. §§ 77e (a), (c)]" by offering XRP, *id*. ¶ 399.

7. Regardless of whether the SEC is correct—a matter Tetragon is not required to establish to redeem its shares—the SEC has unquestionably determined that XRP is a security. Ripple's senior executives have conceded as much. Its CEO, Brad Garlinghouse, stated publicly on the day the SEC filed its enforcement action (in a press release headed "The SEC's Attack on Crypto in the United States"), "[t]o be clear, this is all based on [the SEC's] illogical claim that XRP **is**, in their view, somehow the functional equivalent of a share of stock"—*i.e.*, a security. This admission, and other public statements by Ripple management (including its General Counsel's acknowledgement that, in suing cryptocurrency companies, "the SEC has chosen to regulate the [crypto] space by enforcement"), leave no doubt that Ripple understands perfectly well that the SEC has determined that XRP is a security.

8. Ripple is free to fight the SEC's determination, and Ripple may very well win that fight in the end. But Ripple's insistence that Tetragon cannot redeem unless and until Ripple litigates the SEC's enforcement action all the way through to a final, unsuccessful conclusion is not in accord with the deal it signed. Under the parties' agreement, Tetragon is ***not*** required to wait out a lengthy court process, with its inherent uncertainties and the adverse consequences Ripple may experience in the meantime (some of which are already accruing by way of XRP's diminution in value and market positioning). To the contrary, Tetragon bargained specifically to avoid those risks, negotiating express contractual language allowing it to redeem if *the SEC*—not a federal district or appellate court—determines that XRP is a security. Given that the risks to Ripple arose immediately upon the SEC's determination and suit, Tetragon will lose the benefit of its bargain unless Ripple is required to redeem now, as it promised to do. Ripple's continuing failure to do so constitutes irreparable harm, as the parties' agreement expressly stipulates.

9. The time to honor Tetragon's redemption demand passed on December 18, 2020 (the contractually prescribed 60-day deadline from receipt of Tetragon's October 19, 2020 redemption demand). Ripple is now in breach of contract. While its redemption breach continues, Ripple also continues to breach its promise to use legally available funds "for no other purpose" until Tetragon's stock is redeemed in full. Under the Stockholders' Agreement, Ripple is required to "apply ***all*** of its

available cash and other liquid assets," including XRP, to fund the redemption "and for ***no other purpose***." Tetragon specifically bargained for this promise, which protects Tetragon's redemption right by giving it priority over other stakeholders or potential recipients of legally available funds, and which ensures Tetragon's quick exit via redemption. But despite its clear promise, Ripple has been spending its legally available funds for non-redemption purposes, including repurchasing XRP.

10. Ripple could redeem today if it wanted (or is ordered) to do so. It has not claimed that it lacks sufficient legally available funds, or the means to raise them. Nor could Ripple plausibly make such a claim—it continues to sit on hundreds of millions of dollars in cash, as it has done consistently throughout the period of Tetragon's Series C investment just over a year ago. Ripple also continues to hold ~55 billion XRP, with a value at today's prices of approximately $10-15 billion. It could, and indeed it is contractually required to, convert its XRP into cash to satisfy its redemption obligation.

11. Ripple's ongoing breaches are causing Tetragon immediate, ongoing and irreparable harm by depriving it of its protective contractual rights and subjecting Tetragon to the very risks it bargained to avoid. Tetragon's right to avoid these risks will be lost unless the Court acts. The Court should preliminarily and permanently enjoin Ripple from using its legally available funds for any purpose

other than redeeming Tetragon's stock. And the Court should specifically enforce the contract as written.

PARTIES

12. Plaintiff Tetragon is a Guernsey entity with a principal place of business at Mill Court, La Charroterie, St. Peter Port, Guernsey, GY1 1EJ, Channel Islands.

13. Tetragon is an investment company that invests in a broad range of assets, including public and private equities and credit, convertible bonds, real estate, venture capital, infrastructure and bank loans. Tetragon is a minority investor in Ripple, holding less than 2% of Ripple's overall shares, but is a majority holder of Ripple's Series C preferred stock.

14. Upon information and belief, Defendant Ripple is a Delaware corporation with a principal place of business at 315 Montgomery Street, San Francisco, California 94104.

15. Ripple holds itself out as an enterprise blockchain company that uses a cryptocurrency called XRP in its payment network and provides an open-source platform called RippleNet to facilitate global payment transactions utilizing XRP.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action because Tetragon seeks equitable relief, 10 *Del. C.* § 341, and because Tetragon asks the

Court to "interpret, apply, [and] enforce" the provisions of the Stockholders' Agreement, which creates rights in Ripple's stock, 8 *Del. C.* § 111(a)(2).

17. Ripple is subject to this Court's jurisdiction under the forum-selection clause of the Stockholders' Agreement. In Sections 8.11(b) and (c) of the Stockholders' Agreement, Ripple agreed "not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware or the United States District Court for Delaware" and "waive[d], and agree[d] not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts[.]"

18. Venue is proper in this Court pursuant to 6 *Del. C.* § 2708. In addition, in Section 8.11(c) of the Stockholders' Agreement, Ripple "waive[d], and agree[d] not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim . . . that the suit, action or proceeding is brought in an inconvenient forum, [or] that the venue of the suit, action or proceeding is improper[.]"

STATEMENT OF FACTS

I. Tetragon's Purchase of Series C Stock and Redemption Right

19. In December 2019, Tetragon purchased $150 million of Ripple Series C preferred stock. That investment stands at approximately $175 million today as payable-in-kind dividends continue to accrue.

20. At the same time as it obtained its Series C preferred stock, Tetragon entered a Stockholders' Agreement (dated December 20, 2019). A copy of the Stockholders' Agreement is attached as Exhibit A and incorporated by reference herein. Tetragon is "Lead Purchaser" under the Stockholders' Agreement and holds a majority of the outstanding shares of Series C preferred stock.

21. Ripple has always maintained that XRP is a currency, not a security, and therefore is not subject to regulation as a security. Nevertheless, as cryptocurrencies gained greater market acceptance over the past several years, they have also drawn greater regulatory scrutiny.

22. When Tetragon invested in Ripple's Series C preferred stock in December 2019, the SEC had not determined that XRP is a security. But the risk that the SEC could do so was well recognized. At the time Tetragon made its investment, the SEC had already commenced enforcement proceedings asserting that other cryptocurrencies were "securities." And the SEC highlighted its focus on the crypto space in its 2019 annual report, published just weeks before Tetragon's

Series C investment. *See* Annual Report (Nov. 6, 2019), at 12 ("The Division investigated and recommended a number of cases involving distributed-ledger technology and digital assets this year.").

23. The possibility that the SEC could—rightly or wrongly—determine XRP to be a security posed risks to Tetragon's investment. Such a determination could provide the SEC a basis to begin proceedings against Ripple or to take other regulatory actions that could affect Ripple (and Tetragon's investment). The mere announcement of prior SEC investigations involving cryptocurrencies had led to a precipitous decline in the value of the cryptocurrency in question, and the companies that back it.[2] As Ripple's General Counsel recently acknowledged, moreover, "the SEC has chosen to regulate [the cryptocurrency] space by enforcement."[3]

24. Tetragon was unwilling to take the risk that the SEC would determine XRP is a security on a current and going forward basis without having the optionality to exit its investment at that time. So Tetragon bargained for protection.

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[2] *See, e.g.*, Timothy B. Lee, *Ether plunges after SEC says "dozens" of ICO investigations underway*, ArsTechnica (Mar. 18, 2018), *available at* https://arstechnica.com/tech-policy/2018/03/ether-plunges-after-sec-says-dozens-of-ico-investigations-underway/.

[3] *See* Phillip Bantz, *Ripple GC Stu Alderoty Airs His Grievances With the SEC, Lack of Regulatory Clarity*, Law.com (Nov. 18, 2020), *available at* https://www.law.com/corpcounsel/2020/11/18/ripple-gc-stu-alderoty-airs-his-grievances-with-the-sec-lack-of-regulatory-clarity/.

25. Most importantly, Tetragon obtained the right to require Ripple to redeem its Series C preferred stock immediately upon an official determination by the SEC that XRP is a security. The Stockholders' Agreement denotes that event a "Securities Default," a term defined as follows:

> A "**Securities Default**" means if XRP is determined on an official basis (including without limitation by settlement) by the U.S. Securities and Exchange Commission (or (1) another governmental authority or (2) a governmental agency of similar stature and standing) to constitute a security on a current and going forward basis (and not, for the avoidance of doubt, a determination that XRP was a security in the past).

Ex. A (Stockholders' Agreement) § 5.4.

26. Section 5.1 of the Stockholders' Agreement provides that upon the occurrence of a Securities Default, Tetragon is entitled to demand immediate redemption of the Series C, and prescribes the redemption procedure and price. Specifically:

> Within sixty (60) days after the receipt by the Company from the holders of not less than a majority of the then outstanding shares of Series C Preferred Stock of both (i) a written notice of the occurrence of (A) a Securities Default (as defined below) . . . and (ii) a written request that all . . . of the then outstanding shares of Series C Preferred Stock be redeemed (a "**Redemption Request**"), the Company shall, to the extent not expressly prohibited by Delaware law, redeem in a single installment (the payment date being referred to herein as a "**Default Redemption Date**") all . . . of the then outstanding shares of Series C Preferred Stock held by all holders of the then

> outstanding shares of such series of Preferred Stock, by paying in cash therefor a sum per share equal to the sum of (i) (x) the applicable Original Issue Price for shares of Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like) . . . and (ii) all accrued or declared but unpaid dividends on such shares (collectively, (i) and (ii) the "**Default Redemption Price**").

Id. § 5.1.

27. The Stockholders' Agreement prioritizes this mandatory redemption by forbidding Ripple to use "legally available" funds for any purpose other than redemption. Once it receives a Redemption Request, Ripple is required to apply available cash and other liquid assets (including XRP) to redeem the shares that are the subject of the request and is expressly prohibited from using these assets for any other purpose. Specifically:

> Upon receipt of a Redemption Request, the Company ***shall*** redeem the number of shares of Series C Preferred Stock specified in the Redemption Request at the Default Redemption Price, and the Company ***shall*** apply ***all of its available cash and other liquid assets (including any available XRP the Company may lawfully us*e)** to fund the payment of the redemption price in cash (***and for no other purpose***), except to the extent such redemption would violate Delaware law.

Id. § 5.1 (emphases added).

28. If Ripple lacks sufficient funds to honor the Redemption Request in full, it is required to redeem in part until it can redeem the balance, at which time it is required to do so.

> If the funds of the Company legally available for redemption of shares of Series C Preferred Stock on a Default Redemption Date are insufficient to redeem the total number of shares of Series C Preferred Stock to be redeemed on such date, ***those funds that are legally available will be used to redeem the maximum possible number of such shares ratably*** among the holders of such shares to be redeemed. ***At any time thereafter when additional funds of this corporation are legally available for the redemption of shares of Series C Preferred Stock, such funds will immediately be used to redeem the balance of the shares*** that the Company has become obliged to redeem on the Default Redemption Date but that it has not redeemed in accordance with the manner specified in the immediately preceding sentence.

Id. § 5.2(a) (emphases added).

29. Thus, upon a Securities Default and receipt of a Redemption Request, Ripple is required to use every dollar (or XRP token) that is "legally available" to satisfy the redemption request until full satisfaction—and for "no other purpose."

30. Further underscoring the importance of Tetragon's redemption rights, the Stockholders' Agreement prohibits Ripple from entering into any debt agreement that would restrict its ability to pay the Default Redemption Price:

> [Ripple] shall not, without the consent of the Lead Purchaser [Tetragon], enter into any credit facility or other arrangement for indebtedness that would impose any

> payment conditions or subordination terms that restrict or impair the Company's ability to pay the Default Redemption Price on account of the Series C Preferred Stock, as such payment is contemplated under this Agreement or the Restated Certificate, and that any arrangement to the contrary shall be deemed void *ab initio* and of no force or effect.

Id. § 5.4.

31. Moreover, Ripple was not permitted to sit on knowledge of a Securities Default, but instead was affirmatively required to "provide [Tetragon] with prompt notice of, and in any event no later than five business days following, a Securities Default[.]" *Id.*

32. The foregoing provisions thus protect Tetragon's investment by giving Tetragon a quick exit from Ripple as soon as the SEC made an official determination that XRP is a security. And they protect Tetragon's (and the other Series C investors') quick exit by giving it priority over any other lawful use of Ripple's liquid funds. Through this prioritization, Tetragon mitigated by contract the effect of an official determination, including an enforcement action, de-listing of XRP, negative publicity, and the whole host of consequences SEC enforcement entails.

33. Recognizing that the value of Tetragon's redemption right depends substantially on Ripple's immediate performance, Ripple acknowledged and agreed in the Stockholders' Agreement that irreparable damage would result from its

breach, and that Tetragon would be entitled to an injunction to prevent breaches and to specifically enforce the contract:

> Each party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Agreement are not performed by the parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that each of [Ripple] and the Stockholders [including Tetragon] shall be entitled to an injunction to prevent breaches of this Agreement, and to specific enforcement of this Agreement and its terms and provisions in any action instituted in any court of the United States or any state having subject matter jurisdiction.

Id. § 8.6.

II. The Securities Default and Ripple's Refusal to Redeem

34. The risk Tetragon foresaw, and bargained to avoid, has now come to pass. By no later than mid-October 2020, the SEC officially determined that XRP is a security—resulting in a Securities Default.

35. But Ripple broke its promise to notify Tetragon that a Securities Default had occurred. Then, Ripple broke its promise to redeem. And while Ripple's redemption breach remains ongoing, Ripple has also broken its promise not to use legally available funds for purposes other than redemption. These breaches are detailed below.

A. **The Wells Notice**

36. During mid-October 2020, Tetragon learned that Ripple had received a Wells Notice from the Staff of the Division of Enforcement of the SEC ("Staff").

37. Upon information and belief, the Wells Notice informed Ripple that the Staff determined XRP to constitute a security; that Ripple was therefore in violation of the securities laws, including those relating to registration and sale of securities; and that the Staff was recommending that the Commission bring an enforcement action against Ripple.

38. Wells Notices are issued by the Staff in the course of their official duties. According to the SEC's Enforcement Manual, "[a] Wells notice is a communication from the staff to a person involved in an investigation that," among other things, "informs the person the staff has made a preliminary ***determination*** to recommend that the Commission file an action or institute a proceeding against them[.]" *See* Enforcement Manual, at 19-20 (emphasis added).[4]

39. The Wells Notice issued to Ripple reflected that a "Securities Default" under the Stockholders' Agreement had occurred. Again, a Securities Default exists "if XRP is determined on an official basis" by the SEC (among others) "to constitute a security" on an ongoing basis. There is no question that a Wells Notice is issued

[4] *Available at* https://www.sec.gov/divisions/enforce/enforcementmanual.pdf.

by the SEC in an "official" capacity. And, by conveying a "determination" that a securities violation had occurred, the Wells Notice necessarily reflected that the SEC, in fact, "determined on an official basis" that XRP is a security.

40. Nevertheless, Ripple never provided notice to Tetragon that a Securities Default occurred, despite its express obligations under the Stockholders' Agreement. *See* Ex. A § 5.4.

41. Promptly upon learning of the Wells Notice, by letter dated October 19, 2020, Tetragon provided notice to Ripple of a Securities Default and demanded redemption.

42. In response, Ripple disputed that the Wells Notice reflected a Securities Default, arguing that a Wells Notice is merely "preliminary." Of course, the Stockholders' Agreement defines a Securities Default to include any "determination," and neither requires a "final" determination nor excludes a "preliminary" one. Ripple also argued that even though the SEC was threatening enforcement action on the basis of XRP's classification as a "security," and issued a Wells Notice to that effect, the SEC had not "determined on an official basis" that XRP is a security.

43. Tetragon pointed out to Ripple that its excuses for refusing to redeem were without basis. But Ripple refused to redeem anyway. It also continued to

spend legally available surplus on other, non-redemption purposes, including to repurchase $45 million in XRP in November 2020.

B. The Enforcement Proceeding

44. Subsequent events only further undermined Ripple's refusal to redeem, while imposing on Tetragon the very harms it had bargained to avoid—harms that continue today.

45. On December 22, 2020, the SEC instituted an enforcement action (the "Enforcement Proceeding") in the Southern District of New York against Ripple, its executive chairman (Christian Larsen), and its CEO (Bradley Garlinghouse). *See* Dkt. 1, S*ecurities & Exchange Comm'n v. Ripple Labs Inc. et al.*, No. 20-cv-10832 (S.D.N.Y. Dec. 23, 2020). The Complaint filed by the SEC in that case is attached hereto as Exhibit B.

46. According to SEC procedures, the Enforcement Proceeding was authorized by a vote of the SEC Commissioners, who have ultimate authority within the SEC. *See* Enforcement Manual at 22-23 ("The filing or institution of any enforcement action must be authorized by the Commission."); *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 512 (2010) ("The Commission's powers . . . are generally vested in the Commissioners jointly[.]").

47. The complaint in the Enforcement Proceeding (the "SEC Complaint") leaves no doubt that the SEC has "determined on an official basis" that XRP is a

security. The complaint repeatedly asserts that XRP is a security, asserting for example that "XRP was an investment contract and therefore a security subject to the registration requirements of the federal securities laws," Ex. B ¶ 206, and that Ripple and the individual defendants violated Sections 5(a) and 5(c) of the Securities Act of 1933 by offering "securities"—*i.e.*, XRP tokens—without filing registration statements, *id.* ¶¶ 1-3 (by selling XRP without complying with registration and other requirements, Ripple engaged in an "illegal securities offering").

48. The SEC's complaint also made clear that its determination was on a "current and going forward basis," and thus constituted a Securities Default. Ex. A § 5.4. The SEC's determination to that effect is the basis for its request for declaratory and injunctive relief, relief that would make no sense if the SEC's determination were exclusively backward-looking. Ex. B, Prayer for Relief; *see also id*. ¶¶ 1, 3 (describing "illegal securities offering" through "the present"); *id*. ¶¶ 396-399 (noting that unless enjoined, Ripple "will continue to violate" the federal securities laws); *id*. ¶ 404 (same). Indeed, Ripple's CEO, Mr. Garlinghouse, acknowledged as much, stating in a recent blog post, "[t]o be clear, this is all based on [the SEC's] illogical claim that XRP **is**, in their view, somehow the functional equivalent of a share of stock"—*i.e.*, a security.[5]

[5] Brad Garlinghouse, *The SEC's Attack on Crypto in the United States*, Ripple

49. In sum, both the Wells Notice and the SEC Complaint made clear that the SEC has determined, on an official basis, that XRP is a security. The SEC's official determination thus constituted a Securities Default entitling Tetragon to demand immediate redemption under Section 5.1 of the Stockholders' Agreement.

C. Ripple's Continuing Refusal to Abide by the Stockholders' Agreement

50. As alleged above, on October 19, 2020, Tetragon, as the Lead Purchaser under the Stockholders' Agreement and the holder of a majority of the presently outstanding Series C preferred stock, sent a letter formally notifying Ripple that a Securities Default had occurred and requesting redemption of all outstanding shares of Preferred Stock (the "Securities Default Notice").

51. Upon receipt of the Securities Default Notice, Ripple was obligated to use all available cash toward a redemption of the Series C preferred stock within 60 days of the date of the letter, *i.e.*, by Friday, December 18, 2020.

52. December 18 came and went, and Ripple did not redeem any of the Series C shares, let alone all of them.

53. Moreover, while its redemption obligations remain unfulfilled, Ripple was forbidden from using its legally available funds for any purpose other than

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Insights (Dec. 22, 2020), *available at* https://ripple.com/insights/the-secs-attack-on-crypto-in-the-united-states/ (emphasis added).

redeeming the Series C. *See supra* ¶¶ 27-29. Ripple remains in breach of this provision as well, as evidenced by, among other things, the November 2020 purchase of XRP noted above. *See supra* ¶ 43.

54. On December 24, 2020, following commencement of the Enforcement Proceeding, Tetragon again wrote to Ripple, demanding that Ripple redeem its Series C preferred stock, or, if Ripple still contested the occurrence of a Securities Default, to confirm in writing by that date that Ripple has (1) ceased to use its available cash or other liquid assets for any purpose other than its obligation to redeem and (2) placed in escrow amounts sufficient to pay in cash the Default Redemption Price, along with evidence of the escrowed amounts.

55. In response, Ripple refused even to acknowledge the existence of a Securities Default, let alone to perform any of its contractual obligations. It refused to redeem any shares, declined to confirm that it would abide by its obligation not to use its available cash or other liquid assets for any other purpose, and rejected Tetragon's request that funds be placed in escrow.

56. In an effort to justify itself, Ripple claimed that the Enforcement Proceeding constituted only "allegations," and not "SEC determinations." That distinction is illusory. Although a complaint sets forth "allegations" *in a court of law*, the Commission's decision to authorize the lawsuit—which it was required to

do to commence the enforcement action, *see* 17 C.F.R. § 200.10—necessarily reflects an *SEC determination* that XRP is a security.

57. Reaching further, Ripple cited case law to the effect that allegations in agency complaints cannot be introduced into evidence to prove the truth of the matter alleged. Of course, that is entirely irrelevant here, where Tetragon's redemption right is triggered, not by XRP in fact being a security, but by the SEC's determination that it is. Surely an agency's complaint can be introduced to prove that the agency determined to make the allegations contained therein. And because the SEC does not issue Wells Notices, let alone file enforcement actions in court, without engaging in a careful deliberative process, the Notice and the Enforcement Proceeding confirm that the SEC had made an official "determination" – just as the SEC's own Enforcement Manual says the SEC did.

58. Ripple also cited authority for the self-obvious proposition that an agency complaint in an enforcement proceeding is not "final agency action" permitting review under the Administrative Procedures Act. Of course, Tetragon's redemption right is not limited to "final agency action subject to review under the APA," a limitation Ripple could have tried to bargain for. But Ripple did not get that contract language. Which makes sense: Tetragon bargained for the optionality of a quick exit because the risks brought on by an SEC determination arise immediately upon the SEC making its "determination."

59. Ripple certainly could redeem if it abided by the contract. Based on information it has provided to Tetragon as a preferred stockholder, Ripple has no debt and historically has been able to generate enough cash from its operations to pay its obligations as they become due. Moreover, at the end of the third quarter of 2020, Ripple had at least $250 million in net cash available, an amount consistent with its cash balance over the period of Tetragon's investment, including when Tetragon invested in the Series C in December 2019. Tetragon understands and alleges that Ripple continues to hold approximately that amount of cash. Ripple also holds as many as 55 billion XRP tokens, for which there has long been a liquid market, and which is still worth as much as $10-15 billion dollars today (approximately the same value as when Tetragon invested); the Stockholders' Agreement requires Ripple to use its XRP to fund the payment of the redemption price. Ex. A § 5.1. Ripple thus has sufficient liquid assets at its disposal to redeem Tetragon's $175 million of Series C preferred stock and has never claimed otherwise, and the redemption of the Series C preferred stock would not impair Ripple's capital or cause its insolvency.

60. Upon information and belief, Ripple's obligations to other holders of Series C preferred stock do not exceed, in the aggregate, approximately $57.5 million (accounting for the accrual of approximately $7.5 million of payable-in-kind dividends).

61. Moreover, if Tetragon's information and beliefs are inaccurate, then Ripple failed to take actions or explore options that would have given it additional legally available funds with which to redeem the Series C stock. Had Ripple taken these actions, such as selling assets, issuing and selling additional equity, or issuing and selling additional cryptocurrencies, it would have yet further funds to repurchase all outstanding Series C preferred stock.

62. As a result, Ripple is exposing Tetragon to the very risks it bargained specifically to avoid. Ripple's contrary position, which would commit Tetragon to face the risks of litigation with the SEC while the value of Ripple and XRP are battered about, turns the bargained-for risk allocation on its head. A "Team Ripple" blog post reflected on Ripple's website acknowledged just days ago that the SEC's "lawsuit has already affected countless innocent XRP retail holders with no connection to Ripple," presumably by driving down the price of XRP—a harm that likewise affects Tetragon's investment in Ripple. Per "Team Ripple," the SEC "has also needlessly muddied the waters for exchanges, market makers and traders," thus "introduc[ing] more uncertainty into the market, actively harming the community they're supposed to protect."[6] The uncertainties created by the SEC's determination were predictable, and Tetragon bargained to have the optionality to avoid them.

[6] Team Ripple, *Our Statement on Recent Market Participant Activity*, Ripple

63. Tetragon's ongoing exposure to these risks imposes a harm that cannot be remedied later. The Court should enforce Tetragon's redemption and other protective rights, and order Ripple to honor the terms of its bargain with Tetragon.

FIRST CAUSE OF ACTION
(Declaratory Judgment)

64. The allegations of the preceding (and succeeding) paragraphs are incorporated as though set forth fully herein.

65. As described above, a Securities Default occurred when the SEC issued its Wells Notice to Ripple, and the Securities Default was confirmed, or another Securities Default occurred, when the SEC instituted the Enforcement Proceeding.

66. The Securities Defaults triggered Tetragon's redemption right. Tetragon provided notice to Ripple of the Securities Default occasioned by the Wells Notice on October 19, 2020, in accordance with the terms of the Stockholders' Agreement.

67. Ripple had 60 days from the date of Tetragon's notice letter to make a full cash payment of the Default Redemption Price with respect to the Series C preferred stock. It failed to do so.

Insights (Dec. 29, 2020), available at https://ripple.com/insights/our-statement-to-recent-market-participant-activity/.

68. Ripple has refused to acknowledge that a Securities Default occurred, refused to make a cash payment to Tetragon by December 18, 2020 or at all and refused to recognize that it has any obligations to take action to ensure it is able to redeem the shares.

69. An actual, substantial, justiciable, and continuing controversy exists between Tetragon and Ripple concerning the interpretation of the "Securities Default" term in the Agreement and the parties' rights and obligations under the Agreement in the event of a "Securities Default."

70. The parties' interests are real and adverse, a judicial declaration would conclusively decide the rights of the parties and resolve this dispute, a declaration will impact the parties' actions, and this controversy is ripe for judicial determination.

71. Accordingly, and pursuant to 10 *Del. C.* § 6501, *et seq.*, Tetragon seeks a declaration that (a) the SEC's issuance of the Wells Notice constituted and evidenced a Securities Default under the Stockholders' Agreement, *i.e.*, a determination on an official basis by the SEC that XRP is a security; (b) that, in any event and in the alternative, the SEC's commencement of the Enforcement Proceeding constituted and evidenced a Securities Default under the Stockholders' Agreement; (c) Tetragon is and was entitled to exercise its redemption right upon the occurrence of the Securities Default and appropriately exercised that right;

(d) Ripple's failure to redeem the Series C preferred shares constitutes a breach of the Stockholders' Agreement, or alternatively, by no later than February 22, 2021, Ripple is obligated to use all available cash and liquid assets to redeem Series C preferred stock; (e) Ripple's use of its available cash or other liquid assets for any purpose other than to redeem the shares constitutes a breach of the Stockholders' Agreement; (f) Ripple has sufficient legally available funds to redeem Tetragon's Series C preferred stock and must take all steps required by law and the Stockholders' Agreement to ensure Tetragon's shares are redeemed; and/or (g) any and all other declaratory relief that is appropriate and just in these circumstances.

SECOND CAUSE OF ACTION
(Breach of Contract – Duty to Redeem – Specific Performance)

72. The allegations of the preceding (and succeeding) paragraphs are incorporated as though set forth fully herein.

73. The Stockholders' Agreement is a valid and enforceable contract.

74. Tetragon has complied with all material terms of the Stockholders' Agreement.

75. By letter dated October 19, 2020, Tetragon noticed a Securities Default and requested redemption of its shares.

76. By letter dated December 24, 2020, Tetragon again noticed a Securities Default and requested redemption of its shares.

77. In accordance with Section 5.1 of the Stockholders' Agreement, by no later than December 18, 2020, 60 days from Tetragon's October 19, 2020 redemption notice, Ripple was obligated to use all available cash and liquid assets to redeem Series C preferred stock and, to the extent insufficient cash was on hand, to take necessary steps to generate additional cash.

78. In the alternative, in accordance with Section 5.1 of the Stockholders' Agreement, by no later than February 22, 2021, 60 days from Tetragon's December 24, 2020 redemption notice, Ripple is obligated to use all available cash and liquid assets to redeem Series C preferred stock and, to the extent insufficient cash was on hand, to take necessary steps to generate additional cash. To the extent that is so, however, Ripple has repudiated its obligations by stating it will not redeem Tetragon's Series C preferred stock and, on information and belief, by continuing to use legally available funds for purposes other than redeeming the Series C preferred stock.

79. Ripple has failed, and refuses, to redeem the Series C preferred stock, in contravention of its obligations to do so under the Stockholders' Agreement.

80. Further, under Section 5.2 of the Stockholders' Agreement, by December 3, 2020, Ripple was obligated to notify each holder of the preferred stock of the redemption to be effected on the Default Redemption Date, and to specify,

inter alia, the number of shares to be redeemed and the Default Redemption Price. Ripple failed to provide any such notice.

81. In Section 8.6 of the Stockholders' Agreement, headed "Specific Enforcement," the parties expressly agree "to specific enforcement of this Agreement and its terms and provisions . . . ."

82. Pursuant to the parties' agreement and applicable law, Tetragon seeks an order of specific performance requiring Ripple to comply with the Stockholders' Agreement and to immediately apply all of its available cash and other liquid assets (including any available XRP it may lawfully use) to redeem Tetragon's Series C preferred stock.

THIRD CAUSE OF ACTION
(Breach of Contract – Duty to Use Funds for No Other Purpose – Injunctive Relief)

83. The allegations of the preceding (and succeeding) paragraphs are incorporated as though set forth fully herein.

84. Under Section 5.1 of the Stockholders' Agreement, Ripple "shall apply all of its available cash and other liquid assets (including any available XRP the Company may lawfully use) to fund the payment of the redemption price in cash (and for no other purpose) . . . ."

85. Further, under Section 5.2(a), if Ripple lacks the funds to redeem the total number of shares of Series C preferred stock subject to redemption, it is

required to redeem "the maximum possible number of such shares ratably among the holders of such shares to be redeemed."

86. Where Ripple has made only partial redemption, the Stockholders' Agreement provides that when additional funds become legally available "for the redemption of shares of Series C Preferred Stock, such funds will immediately be used to redeem the balance of the shares . . . ." Ex. A § 5.2(a).

87. Throughout the period when Ripple is obligated to use all legally available cash to fund the redemption, and unless and until the Default Redemption Price is fully paid, Ripple is obligated to use all available cash and other liquid assets to fund the redemption and is prohibited from using available cash and liquid assets for any other purpose.

88. Despite notice from Tetragon of the Securities Default, Ripple has not applied any of its available cash or other liquid assets to redeem *any* of the Series C preferred stock, in contravention of Section 5.2(a) of the Stockholders' Agreement, and on information and belief has continued to use available cash and other liquid assets for other purposes.

89. Ripple's breaches of these specifically bargained-for contractual obligations have given rise to and continue to cause serious and irreparable damage to Tetragon, including protective and priority rights, loss of which cannot be adequately compensated by money damages.

90. The parties expressly agreed that breaches of the Stockholders' Agreement, much of which is concerned with rights of redemption, would constitute irreparable injury entitling the aggrieved party to injunctive relief: "Each party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Agreement are not performed by the parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that each of the Company and the Stockholders shall be entitled to an injunction to prevent breaches of this Agreement, and to specific enforcement of this Agreement and its terms . . . ." *Id*. § 8.6.

91. Tetragon seeks and is entitled to a preliminary injunction enjoining Ripple from applying legally available cash and other liquid assets for any purpose other than to redeem Tetragon's Series C preferred stock, until the Default Redemption Price is paid in cash to Tetragon.

92. Further, Tetragon seeks and is entitled to a permanent injunction (i) enjoining Ripple from applying legally available cash and other liquid assets for any purpose other than to redeem Tetragon's Series C preferred stock, until the Default Redemption Price is paid in cash to Tetragon, and (ii) ordering Ripple to apply all legally available cash and other liquid assets toward the Default Redemption Price, and to take actions or explore options that would give it legally available funds with which to purchase all outstanding Preferred Stock.

FOURTH CAUSE OF ACTION
(Attorneys' Fees)

93. The allegations of the preceding (and succeeding) paragraphs are incorporated as though set forth fully herein.

94. Section 8.16 of the Stockholders' Agreement provides that "[i]f any party to this Agreement seeks to enforce its rights under this Agreement by legal proceedings, the non-prevailing party shall pay all costs and expenses incurred by the prevailing party, including, without limitation, all reasonable attorneys' fees."

95. Tetragon respectfully requests that, in addition to the other relief sought herein, the Court award Tetragon's reasonable attorneys' fees pursuant to Section 8.16 of the Stockholders' Agreement, together with all costs and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Tetragon Financial Group Limited prays for relief and judgment as follows:

A. That the Court declare that (a) the SEC's issuance of the Wells Notice constituted and evidenced a Securities Default under the Stockholders' Agreement, *i.e.*, a determination on an official basis by the SEC that XRP is a security; (b) that the SEC's commencement of the Enforcement Proceeding constituted and evidenced a Securities Default under the Stockholders' Agreement; (c) that Tetragon is and was entitled to exercise its redemption right upon the occurrence of the Securities Default and appropriately exercised that right; (d) Ripple's failure to redeem the shares

constitutes a breach of the Stockholders' Agreement, or alternatively, by no later than February 22, 2021, Ripple is obligated to use all available cash and liquid assets to redeem Series C preferred stock; (e) Ripple's use of its available cash or other liquid assets for any purpose other than to redeem the shares constitutes a breach of the Stockholders' Agreement; (f) Ripple has sufficient legally available funds to redeem Tetragon's Series C preferred stock and must take all steps required by law and the Stockholders' Agreement to ensure Tetragon's shares are redeemed; and/or (g) any and all other declaratory relief that is appropriate and just in these circumstances;

B. That the Court specifically enforce Sections 5.1 and 5.2 of the Agreement and direct Ripple to promptly pay the Default Redemption Price, inclusive of all interest from December 18, 2020 through judgment;

C. That the Court issue a temporary restraining order and preliminary injunction enjoining Ripple from applying legally available cash and other liquid assets for any purpose other than to redeem Tetragon's Series C preferred stock, until the Default Redemption Price is paid in cash to Tetragon;

D. That the Court issue a permanent injunction (i) enjoining Ripple from applying legally available cash and other liquid assets for any purpose other than to redeem Tetragon's Series C preferred stock, until the Default Redemption Price is paid in cash to Tetragon, and (ii) ordering Ripple to apply all legally available cash

and other liquid assets toward the Default Redemption Price, and to take actions or explore options that would give it legally available funds with which to purchase all outstanding Series C preferred stock;

E. That the Court award Tetragon's reasonable and necessary attorneys' fees and expenses, together with all costs of court and expenses, pursuant to Section 8.16 of the Stockholders' Agreement; and

F. That the Court grant Tetragon such other further relief, at law and equity, as this Court deems just and proper.

ROSS ARONSTAM & MORITZ LLP

/s/ Garrett B. Moritz
Garrett B. Moritz (Bar No. 5646)
Elizabeth M. Taylor (Bar No. 6468)
100 S. West Street, Suite 400
Wilmington, Delaware 19801
(302) 576-1600

Attorneys for Plaintiff Tetragon Financial Group Limited

Of Counsel:

Michael S. Shuster
Vincent Levy
Neil R. Lieberman
Scott M. Danner
Brian T. Goldman
HOLWELL SHUSTER & GOLDBERG LLP
425 Lexington Avenue
New York, New York 10017
(646) 837-5151

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