

'Lock In:' After Court Rebuke, SEC and Ripple to Drop Appeals and Focus on What's Next

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What You Need to Know

- Ripple Labs and the SEC are calling it quits following a ruling by U.S. District Judge Analisa Torres in New York.
- Last week's ruling underscored the court's reluctance to revisit settled crypto enforcement penalties.
- The SEC may seek clearer crypto rulemaking before resuming aggressive enforcement action.



Brad Garlinghouse (L) chief executive officer of Ripple Labs Inc, and **Paul Atkins (R)** Chairman of the U.S. Securities and Exchange Commission. Photos: Shoko Takayasu/Bloomberg, Diego M. Radzinski/ALM

Ripple Labs' chief legal officer announced late Friday afternoon that the cryptocurrency exchange and the U.S. Securities and Exchange Commission intend to drop their appeals, following an order in which U.S. District Judge Analisa Torres of the U.S. District Court for the Southern District of New York denied their joint motions to vacate a final judgment and reduce a six-figure civil penalty.

"We're closing this chapter once and for all, and focusing on what's most important—building the Internet of Value," wrote Brad Garlinghouse, Ripple's chief legal officer, on social media. "Lock in."

The SEC declined to comment.

In 2020, the SEC alleged that Ripple's XRP token sale constituted an unregistered \$1.3 billion securities offering and sought a permanent injunction to prevent it from violating the Securities Act of 1933. And Torres ruled that Ripple sold unregistered securities to direct buyers, but not on the secondary market, where people purchased XRP through other platforms or exchanges.

The Biden administration's SEC appealed the partial ruling, and Ripple cross-appealed Torres' \$125 million fine. Since then, Ripple and the SEC, now under the Trump administration, which has vowed to end the previous administration's "war on crypto," sought to resolve their appeals through a post-judgment agreement to remove the injunction and reduce the penalty.

But Torres ruled Thursday that the parties failed to demonstrate, under Federal Rules of Civil Procedure 60(b), that they should be relieved from the final judgment. In addition, Torres observed that the court was not persuaded that a change in SEC policy under the Trump administration justified a court vacating an injunction and reducing a civil penalty.

"[T]he parties do not have the authority to agree not to be bound by a court's final judgment that a party violated an Act of Congress in such a manner that a permanent injunction and a civil penalty were necessary to prevent that party from violating the law again," Torres held. "For that, the parties must show exceptional circumstances that outweigh the public interest or the administration of justice. They have not come close to doing so here."

Scott Mascianica, who served for nearly a decade at the SEC and led teams that resulted in over a quarter billion dollars in judgments, characterized the order as targeted. While Torres' previous ruling has become settled case law, here, he said, Torres focused on the parties' ability to unwind the previously entered final judgment following extensive briefing and argument.

"Unlike the collection of SEC dismissals over the last several months, which did not include similar procedural hurdles, courts have historically defaulted to the premise that final judgments remain final absent extraordinary circumstances," said Mascianica, a partner in Dallas at Hilgers Graben and head of the firm's government investigations and regulatory enforcement practice.

“Although there is much room for disagreement about the court’s analysis of the relevant factors given the unique facts of the case and the parties’ agreement on modifying the judgment,” Mascianica said, “it would be surprising for the order to have wide-ranging enforcement implications.”

Arlo Devlin-Brown, ex-chief of the public corruption unit at the Manhattan U.S. Attorney's Office who was most recently a partner at Covington & Burling, said the SEC’s decision to nix its appeal showed the agency has no appetite to litigate the issue of what is or is not a security—once a major issue in crypto enforcement—as a new regulatory framework is under development.

Devlin-Brown, now a partner in New York at Treanor Devlin Brown, which opened its doors this month, said the SEC is in a position where it needs to establish clear rules of the road and a regulatory framework before taking action against crypto market players. Then, Devlin-Brown predicted, litigators will see a surge in work from the increase in enforcement action.

“The SEC wants to lay out a path where players in the industry can issue tokens, can trade tokens and build products off of those tokens with clear guidelines on what’s permitted and what isn’t,” Devlin-Brown said. “The regulated players who abide by those new guidelines will want to see the SEC take action on companies that are trying to avoid the regulations and undercut the players that are trying to be compliant with the SEC.”

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